



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

FREEDOM OF INFORMATION ACT PROGRAM

December 5, 2023

In reply refer to: FOIA #BPA-2023-01486-F

SENT VIA EMAIL ONLY TO: steve@oregonlandtrusts.org

Stephen Dilk
Coalition of Oregon Land Trusts
2540 NE Martin Luther King Jr. Blvd.
Portland OR 97212

Dear Mr. Dilk,

This communication is the Bonneville Power Administration's (BPA) final response to your request for agency records made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). BPA received your records request on August 22, 2023, and formally acknowledged your request on September 19, 2023.

Request

"...the Pine Creek Conservation Area Memoranda of Agreements (MOAs) for 1999, 2001, and 2021, as well as the Pine Creek Conservation Area conservation easement(s)."

Response

BPA has searched for and gathered records responding to your request from the agency's Real Property Operations personnel have provided 44 pages of agency records. The records accompany this communication, with the following redactions applied:

- 164 redactions applied under 5 U.S.C. § 552(b)(6) (Exemption 6).

You'll find a detailed explanation of the applied exemptions below.

Explanation of Exemptions

The FOIA generally requires the release of all agency records upon request. However, the FOIA permits or requires withholding certain limited information that falls under one or more of nine statutory exemptions (5 U.S.C. §§ 552(b)(1-9)). Further, section (b) of the FOIA, which contains FOIA's nine statutory exemptions, also directs agencies to publicly release any reasonably segregable, non-exempt information that is contained in those records.

Exemption 6

Exemption 6 serves to protect Personally Identifiable Information (PII) contained in agency records when no overriding public interest in the information exists. BPA does not find an overriding public interest in a release of the information redacted under Exemption 6 — specifically, BPA employee's and third parties' handwritten signatures. BPA cannot waive this PII redaction, as the protections afforded by Exemption 6 belong to individuals and not to the agency.

Lastly, as required by 5 U.S.C. § 552(a)(8)(A), information has been withheld only in instances where (1) disclosure is prohibited by statute, or (2) BPA foresees that disclosure would harm an interest protected by the exemption cited for the record. When full disclosure of a record is not possible, the FOIA statute further requires that BPA take reasonable steps to segregate and release nonexempt information. The agency has determined that in certain instances partial disclosure is possible and has accordingly segregated the records into exempt and non-exempt portions.

Certification

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the records search, the redactions applied thereto, and the records release described above.

Appeal

The records release certified above is final. Pursuant to 10 C.F.R. § 1004.8, you may appeal the adequacy of the records search, and the completeness of this final release, within 90 calendar days from the date of this communication. Appeals should be addressed to:

Director, Office of Hearings and Appeals
HG-1, L'Enfant Plaza
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-1615

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase "Freedom of Information Appeal" in the subject line. (The Office of Hearings and Appeals prefers to receive appeals by email.) The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE's records are situated, or (4) in the District of Columbia.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration

8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
E-mail: ogis@nara.gov
Phone: 202-741-5770
Toll-free: 1-877-684-6448
Fax: 202-741-5769

Questions about this communication or the status of your FOIA request may be directed to James King, FOIA Public Liaison, at jjking@bpa.gov or 503-230-7621. Questions may also be directed to E. Thanh Knudson, Case Coordinator (ACS Staffing Group), at 503-230-5221 or etknudson@bpa.gov.

Sincerely,

Rachel L. Hull
Freedom of Information/Privacy Act Officer

[Attachments / Enclosures: Agency records responsive to FOIA request BPA-2023-014786-F accompany this communication.](#)

WHEELER COUNTY, OREGON **2021-0192**
 D-E
 Cnt=1 Pgs=48 BSNOWPOTTER **07/14/2021 03:15:02 PM**
 \$240.00 \$11.00 \$10.00 \$60.00 **\$321.00**

I, Brenda Snow Potter, County Clerk for Wheeler County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.
 Brenda Snow Potter - County Clerk

**AFTER RECORDING, RETURN TO
 Bonneville Power Administration
 TERR-3
 P.O. BOX 3621
 PORTLAND, OR 97208-3621**

BPA TRACT ID: PINC-WL-3
 Replaces and amends BPA TRACT ID's: PINC-WL-1; PINC-WL-2
 BPA CASE: 20180243; 20190056

**PINE CREEK CONSERVATION AREA
 AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT**

THIS AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT is executed by the Confederated Tribes of the Warm Springs Reservation of Oregon (“CTWS” or “Grantor”), in favor of the United States of America and its assigns (“United States” or “Grantee”), acting by and through the Department of Energy, Bonneville Power Administration (“BPA”), headquartered in Portland, Oregon, at P.O. Box 3621, Portland, OR 97208-3621. The Grantor and Grantee together are referred to as the “Parties.”

I. RECITALS

- A. BPA is a power-marketing agency having legal obligations under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h (“Northwest Power Act”) to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of Federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Northwest Power Act, the Fish and Wildlife Program adopted by the Pacific Northwest Electric Power and Conservation Planning Council under subsection 4(h) of the Northwest Power Act (16 U.S.C. § 839b(h)), and other environmental laws, including the Endangered Species Act, 16 U.S.C. §§ 1531-1544 (“ESA”). BPA has the authority pursuant to the Northwest Power Act, 16 U.S.C. §§ 839b(h) and 839f(a), the Federal Columbia River Transmission System Act, 16 U.S.C. § 838i(b), or the Bonneville Project Act, 16 U.S.C. §§ 832a(c) through (f), to acquire real estate or to assist in the acquisition and transfer of real property interests.
- B. Grantor is a federally recognized tribe and sovereign entity with rights reserved in the Treaty with the Tribes of Middle Oregon of June 25, 1855 (12 Stat. 963).
- C. In 1999, per the terms contained in the Pine Creek Ranch Wildlife Project Memorandum of Agreement dated September 28, 1999, BPA began funding the Grantor to acquire and manage real property located near Clarno, Oregon. The acquisitions helped BPA fulfill its obligations to protect fish and wildlife and their habitats affected by the construction, inundation, and operation of John Day Dam as

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required under the Northwest Power Act and to help comply with BPA's duties under the ESA. Over several years, and under the terms of a second Memorandum of Agreement – The Amended and Restated Pine Creek Ranch Wildlife Project Memorandum of Agreement (signed September 29, 2001), BPA funded the Grantor to make additional acquisitions. The Grantor manages these parcels as a single Pine Creek Conservation Area under BPA project 1998-022-00. To ensure the Pine Creek Conservation Area continued to be managed to protect fish and wildlife and their habitats, at the time of their acquisition, the Grantor conveyed to the United States, acting through BPA, conservation easements and deed restrictions. This Amended and Restated Conservation Easement consolidates and replaces all prior conservation easements and deed restrictions executed by the Grantor and BPA for the Pine Creek Conservation Area. The CTWS and BPA have also updated their contractual arrangements regarding the Pine Creek Conservation Area in the Second Amended and Restated Pine Creek Ranch Fish and Wildlife Project Memorandum of Agreement signed in 2021 (“**2021 MOA**”).

- D.** Congress included provisions in the Omnibus Public Land Management Act of 2009, P.L. 111-11, for the United States, acting by and through the Department of Interior, Bureau of Land Management (“**BLM**”), to establish the Spring Basin Wilderness near Clarno, Oregon. The BLM has custody and control over certain real property inholdings surrounded by the Pine Creek Conservation Area (“**BLM Inholdings**”). The Grantor has fee title to real property within the boundaries of the Spring Basin Wilderness. The 2009 Omnibus Lands Act authorized the BLM to exchange real property with the Grantor to consolidate each entities respective holdings (the “**exchange**”). This Amended and Restated Conservation Easement includes the former BLM Inholdings within the Pine Creek Conservation Area that the Grantor now owns and controls. BPA helped facilitate the exchange by relinquishing its rights on the Grantor's tracts within the Spring Basin Wilderness ahead of the transfer to the BLM and by providing the Grantor the funds to pay BLM for the difference in value between the properties exchanged pursuant to the 2009 Omnibus Lands Act.
- E.** This Amended and Restated Deed of Conservation Easement (“**Conservation Easement**”) will encumber the reconfigured Pine Creek Conservation Area (including the newly exchanged lands), herein referred to as the “**Protected Property**” and which is legally described in Exhibit A (“**Legal Description**”) and depicted in Exhibit B (“**Map**”). The Parties agree the property exchange and this Amended and Restated Conservation Easement complies with the terms of their prior agreements and deed restrictions. The exchange consolidated the Pine Creek Conservation Area giving the CTWS greater control of public access, more effective means to achieve area-wide wildlife habitat management goals, and streamline management efforts resulting in reduced operational costs.

II. AGREEMENT

A. Conveyance and Consideration. The Grantor, for and in consideration of the

funding in the amount of \$217,200.00 (TWO HUNDRED SEVENTEEN THOUSAND TWO HUNDRED) U.S. dollars which BPA provided the Granter to acquire certain Federal inholdings within the Pine Creek Conservation Area, hereby voluntarily conveys and warrants to the United States of America and its assigns this perpetual Conservation Easement for conservation purposes in, over, under, upon and across the Protected Property, legally described in Exhibit A and shown in Exhibit B, together with rights of access and entry, created and implemented under applicable state and federal law, and creating an interest in property intended to be a conservation easement under ORS §§ 271.715-795. The Parties intend this Conservation Easement to be a perpetual and irrevocable easement in gross, and further intend that its terms and conditions, set forth below, create equitable servitudes and covenants running with the land, binding the Granter and the Granter's successors and assigns for the benefit of the United States.

- B. Purpose.** The purpose (“**Purpose**”) of this Conservation Easement is to protect and conserve, and as appropriate, to allow for the restoration or enhancement of the **Conservation Values** (Section C) of the Protected Property. As such, the Purpose of this Conservation Easement includes the prevention of any use of the Protected Property that will materially harm or materially interfere with any of the Conservation Values of the Protected Property. The Granter intends that this Conservation Easement will confine the use of the Protected Property to activities that comply with the Conservation Easement, including the final Management Plan (Section G). BPA shall have the right, but not the obligation, to enforce any and all terms of this Conservation Easement. The Granter shall only conduct activities on the Protected Property which are consistent with the Purpose of this Conservation Easement. In the event that there is a conflict between the Granter's uses or activities and the Purpose of Conservation Easement, the Purpose of the Conservation Easement shall be construed broadly and shall prevail over any conflicting uses or activities of the Granter.
- C. Conservation Values.** The Protected Property, in its present state, comprises 34,009.56 acres of streams, riparian, shrub steppe, and grassland habitats for fish and wildlife.

The Parties agree that the Protected Property includes important species, habitat, and other important ecosystem attributes. The Conservation Values of the Protected Property that currently exist specifically include the following, recognizing that such Conservation Values may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, floods, insect or disease, interdecadal climate events, and long-term climate change, as well as human-initiated enhancement, prescribed fire, or restoration actions:

1. Fish and wildlife species, including without limitation: Mid-Columbia summer steelhead (*Oncorhynchus mykiss*), mule deer (*Odocoileus hemionus*), Rocky Mountain elk (*Cervus elaphus*), beaver (*Castor canadensis*), mink (*Neovison vison*), a diversity of bird and bat species, insects, and several reptiles and amphibians.

2. Diversity of habitats providing biological and physical components to support fish and wildlife species; many of these habitats are identified as priority habitat for preservation and restoration in the Oregon Conservation Strategy. Important habitats include the Ponderosa forests, grasslands, sagebrush steppe, shrubland and riparian habitats, including the unique 10-mile riparian and floodplain zone from the Lone Creek-Pine Creek confluence to the Pine Creek-John Day River confluence within the Protected Property that are significant for numerous native species.
3. Scenic and open space values.
4. Ecosystem attributes and services, present as of the Effective Date of this Conservation Easement, including but are not limited to the fish and wildlife habitat described above, nutrient recycling, primary production (also called carbon sequestration), pollination, and soil formation.
5. Large, un-fragmented expanse of wildlands that offer potential for restoration of riparian and upland habitats.

D. Water Rights. The Protected Property includes several water rights, which the Grantor shall protect as described below.

1. Pine Creek water right certificate 24919 (priority date 1871) has not been proven to have been used continuously. Grantor will use reasonable best efforts to work with the State of Oregon to try and confirm this right and eventually convey it instream permanently.
2. Grantor has been leasing its John Day water rights under certificates 67640, 68636, 68638, and a portion of 67885 in five-year leases to the State of Oregon for instream benefits. Grantor intends to use reasonable best efforts to continue directing these rights for instream beneficial use for the foreseeable future.
3. To the extent Grantor has or after-acquires other water rights, Grantee may in its discretion ensure that the Grantor shall not abandon any of the water rights appurtenant to the Protected Property by virtue of non-use and that the Grantor may not transfer, change the point of diversion, change the purpose of use, or otherwise significantly change any Protected Property water right without receiving prior written approval from BPA.

E. Baseline Documentation. The Grantor and BPA agree that the characteristics and conditions of the Protected Property at the Effective Date (Section Y) are documented in a **Baseline Documentation Report**, signed and acknowledged by the Parties; the acknowledgement is Exhibit D.

F. Reserved Uses. The Grantor reserves, for itself and its successors and assigns, the right to use the Protected Property in any and all ways which are consistent with the Purpose of this Conservation Easement and which are not otherwise prohibited by

this Conservation Easement, including but not limited to: the right to record title, the right to convey, transfer, and otherwise alienate title to these reserved rights in accordance with Sections K(14) and Q; the right of quiet enjoyment of the rights reserved in Protected Property; and the right to prevent trespass and control access. Grantor reserves the right to maintain, retain, demolish, replace or upgrade existing improvements within the Protected Property as documented in the Baseline Documentation Report.

- G. Management Plan.** The Grantor has developed and BPA has approved a Management Plan for the Pine Creek Conservation Area. Within 18 months of the Effective Date of this Conservation Easement, the Grantor shall update and amend the Management Plan to guide the Grantor's management of the Protected Property. In amending the Management Plan, Grantor will solicit and incorporate as Grantor deems appropriate the views of interested natural resource management agencies, local governments, and the public. Grantor will submit documentation showing the nature and extent of such coordination with any draft Management Plan amendments to BPA. BPA shall review the Management Plan amendments for consistency with the Purpose of the 2021 MOA and this Conservation Easement, and provide its written concurrence of consistency. The Management Plan is considered "final" when BPA issues its written concurrence. The Grantor shall make the final Management Plan amendments available to the public.
- H. Public Access.** The Grantor shall, in the sole discretion of Grantor, provide reasonable access to the Protected Property (for example, for undeveloped recreational uses, such as hunting, fishing, hiking, wildlife viewing and primitive camping) to the general public, unless the Grantor determines such access may materially impair one or more of the Conservation Values of the Protected Property or interfere with the Purpose of the Conservation Easement. In addition, nothing in this section limits the authority or ability of the Tribe to manage the Protected Property for public safety or to preserve and protect cultural, historic and religious sites, and to carry out and protect the federally guaranteed rights of the Tribe and its members provided that treaty reserve rights are exercised consistent with the Conservation Values of the Protected Property. The Grantor will address access to the Protected Property in the Management Plan.
- I. Annual Report.** The Grantor shall annually submit a report to BPA that describes at a minimum any: changes in real property interests (including water rights) in the Protected Property; uses or activities undertaken, in progress, or planned; disposition of any proceeds and/or funds in the Pine Creek Ranch Mitigation Fund; any actions taken by the Grantor relating to its ownership of the Protected Property or its obligations under this Conservation Easement, which may include preventing Prohibited Uses (Section K), controlling public access, and managing the Protected Property consistent with the Management Plan, Conservation Values, and Purpose of the Conservation Easement; and enforcement action taken. The Grantor shall provide the initial annual report in the 15th month after the Effective Date, and then annually on April 15th thereafter, unless otherwise agreed by BPA.

J. Rights Conveyed to Grantee

1. *General Rights.* The Grantor has conveyed this Conservation Easement to the United States. BPA is the acquiring federal agency having jurisdiction and control over this Conservation Easement. Subject to valid existing rights of record and those rights specifically reserved to the Grantor, all development rights associated with the Protected Property are vested in Grantee. In addition to any other rights granted to the Grantee pursuant to this Conservation Easement, Grantee has the right to:
 - a. Access and inspect the Protected Property at all reasonable times upon reasonable notice (which may be by phone or electronic mail) to assure compliance with this Conservation Easement;
 - b. Access the Protected Property upon reasonable notice (which may be by phone or electronic mail) to survey the fish and wildlife habitat and evaluate the status of the Conservation Values;
 - c. Prevent any activity on the Protected Property inconsistent with this Conservation Easement, and to require the restoration of areas or features of the Protected Property that are damaged by any inconsistent activity; and
 - d. Should the Grantor fail to do so, retain and maintain the right to use any and all of the water rights associated with the Protected Property, and protect those rights from threat of abandonment or forfeiture under relevant law; Grantee may, after providing 90 days advance written notice to the Grantor enter upon the Protected Property and take actions reasonably necessary to maintain the validity of the water rights.
2. *Future Negotiations for Transmission Right-of-Way Easement.* The Grantor conveys the following rights to the United States: to construct, locate, operate, maintain, repair, reconstruct, upgrade, keep clear, access and patrol future transmission facilities including ancillary transmission communications facilities within the Conservation Easement at no additional cost for securing the transmission easement for these purposes. Transmission easements shall be for the sole purpose of transmission of electrical power and ancillary communications. Should such a perpetual transmission easement be needed, the Parties shall negotiate the final terms and conditions of the transmission easement in a form substantially similar to Exhibit E, ("**Form Transmission Easement**"). Such transmission easement shall not be precluded by the terms of this Conservation Easement.

In the negotiations and the final transmission right-of-way easement, BPA shall, at a minimum:

- a. Recognize the purposes for which the underlying fee or conservation easement was acquired.
- b. Use reasonable efforts to accommodate Grantor's preferences for siting

any transmission facilities.

- c. Use reasonable efforts to accommodate Grantor's preferences for siting, designing, using, and maintaining any necessary access road(s).
- d. Fund appropriate mitigation measures identified during negotiations or as part of the environmental analysis for the transmission right-of-way under NEPA, the ESA, the Clean Water Act, the National Historic Preservation Act, or any other applicable state or federal laws.

K. Prohibited Uses. The Grantor shall manage the Protected Property to conserve and protect the Conservation Values on behalf of BPA, preventing any and all uses of the Protected Property that are inconsistent with the Purpose of this Conservation Easement. The Grantor may also manage the Protected Property to restore or enhance the Conservation Values, provided Grantee consents to the restoration or enhancement activities, either in a final Management Plan or by prior written agreement (i.e. BPA Land Use Agreement). Prohibited uses of the Protected Property include those specifically listed below. The Parties intend that any activity that may materially harm or materially interfere with one or more of the Conservation Values is prohibited, and therefore the list identified below is not exhaustive.

Uses or activities otherwise prohibited under this Section K may be allowed but only if: (1) the use or activity is, in Grantee's sole discretion, consistent with the Purpose of this Conservation Easement; and (2) the use or activity and any necessary limits or prescriptions are agreed to by BPA in advance, either in a final Management Plan, or by written consent of BPA.

1. *Residential, Commercial or Industrial Uses.* Except within the Exclusion Zones, as provided below, any residential, agricultural, commercial, or industrial uses of the Protected Property is prohibited, except ecotourism—such as outdoor education, backpacking, bird watching, and hunting—may be allowed with strictly limited vehicular access and use as expressly provided in the Management Plan, and timber harvesting and grazing of livestock may be allowed on a temporary basis if done for the primary purpose of increasing or improving the Conservation Values and as expressly provided in the Management Plan.
2. *Construction of Buildings, Facilities, Fences or Other Structures.* Construction of new buildings, facilities, fences or other structures is prohibited. Repair, maintenance, or replacement of existing buildings, facilities, fences or other structures identified in the Baseline Documentation Report are permitted as detailed in the Management Plan. Construction of new fences may be allowed if justified and described in the Management Plan for the purpose of protecting Conservation Values. If new fences are constructed or existing fences outside the Exclusion Zones are repaired or replaced, then the fences must be wildlife-friendly, which allow for the safe passage of wildlife, increased fence visibility, and wildlife access to food, shelter, and water.
3. *Utilities.* Except as provided for in Section J.2, the installation or relocation of

new public or private utilities, including electric, telephone, or other communications services is prohibited, except where reasonably necessary to advance the Purpose of the Conservation Easement and subject to BPA's approval. Existing utilities on, over, or under the Protected Property may be maintained, repaired, removed or replaced at their current location as that location is documented in the Baseline Documentation Report or by recorded deed as described in Exhibit F ("Acceptable Encumbrances").

4. *Signs.* Except for no trespassing signs, for sale signs, signs identifying the owner of the Protected Property, signs identifying permitted public access, where allowed, safety and liability waiver as approved in the Management Plan, and signs that may be erected identifying the Purpose of the Protected Property, all other signs, advertisements, and billboards of any nature are prohibited. The permitted signs may not exceed 32 square feet in size.
5. *Waste.* Dumping, collecting, recycling, accumulating, or storing of trash, refuse, waste, sewage, bio-solids, or other debris is prohibited.
6. *Mining.* Subject to valid existing rights, if any, held by third parties at the conveyance of this Conservation Easement the exploration, development, mining or extraction of soil, sand, loam, gravel, mineral, oil, gas, or other substance from the surface or subsurface of the Protected Property is prohibited. Grantor shall notify the Grantee of any planned exploration, development, mining or extraction of any substances by third parties with valid existing rights as soon as possible, and at least 60 days before commencement of the action. Grantor shall not allow surface entry for any mining or mining related activity where not legally required to do so.
7. *Topography.* Except as reasonably required for emergency fire management and response activities and for road maintenance, repair or improvement purposes as described in the Management Plan, altering the existing topography of the Protected Property by digging, plowing, disking, or otherwise disturbing the surface or subsurface is prohibited.
8. *Watercourses/Wetlands.* Unless part of a restoration project approved in the Management Plan, draining, dredging, channeling, filling, leveling, pumping, diking, impounding or any other alteration of any watercourses, ponds, seeps, bogs, springs, wetlands, or any seasonally wet area is prohibited, as is altering or tampering with existing water control structures or devices.
9. *Vegetation.* The cutting, trimming, shaping, killing, or removal of any vegetation from the Protected Property, except for noxious weeds or invasive species, is prohibited, except for activities to maintain or improve the Protected Property as wildlife habitat or which is necessary for fire management, hazard treatment, or cultural resource protection and as approved by BPA and incorporated into the Management Plan. To the extent that such activities generate timber, grazing, or

other revenue, Grantor may use such revenue as allowed in Section R, below. The prohibitions in this provision do not apply to maintenance of transmission easements as conveyed to the United States in Section J.2.

10. *Exotic Species.* The introduction, cultivation, or use of exotic plant or animal species on the Protected Property is prohibited. Exotic plants include non-native invasive plant species. This prohibition excludes any biological control agents approved by the State of Oregon.
11. *Roads and Impervious Surfaces.* Construction of new roads and paving of any existing road not paved or otherwise covered in an impervious material as of the Effective Date is prohibited. Existing roads identified in the Baseline Documentation Report may be maintained, repaired or improved as reasonably necessary to provide for appropriate access to the Protected Property for the purposes of this Conservation Easement. Notwithstanding anything to the contrary in Section II.K.6, Grantor may, with prior written acknowledgement of Grantee, extract, shape, fill, and grade soil and rock (“the disturbed area”) from the Protected Property for the maintenance, and repair, including grading and drainage improvements, of existing roads; provided the disturbed area is (a) located within 30 feet of the edge of the active road prism; (b) is inspected by biologists prior to disturbance to ensure no sensitive biota, dens, or habitat are impacted; and (c) is altered only during periods that practically minimize disturbances to wildlife. Some road drainage features may extend beyond the 30-foot buffer as required by topography to ensure appropriate water drainage from the road prism zone. Relocating, resizing, reshaping of road prisms may be allowed with prior written acknowledgement of Grantee, either in the final Management Plan or by BPA Land Use Agreement.
12. *Vehicle Use.* The use of motorized vehicles is prohibited, except as necessary to carry out activities agreed to by the Grantee, e.g., for management activities.
13. *Grant of Rights.* The granting of any property interest or rights in the Protected Property, including easements, permits, licenses, and leases, without the prior written consent of the Grantee is prohibited, which consent shall not be unreasonably withheld.
14. *Subdivision.* The legal division, subdivision, partitioning of the Protected Property, or any attempt to convey the Protected Property except as a single property in its current configuration, which is documented in Exhibit A and shown in Exhibit B, is prohibited except as reasonably necessary to convey all or a portion of the Protected Property as provided in Section II.Q.2. Notwithstanding the foregoing, a lot line adjustment (or similar procedure) is permitted to update the planning lot lines, tax lots, and tax accounts for the Protected Property that result from the conveyance of partial lots exchanged pursuant to the 2009 Omnibus Lands Act.

L. Exclusion Zones. Within the Protected Property, the Parties have established “Exclusion Zones,” as depicted in Exhibit C. These Exclusion Zone are as follows:

- Headquarters area
- Huntley Homestead
- Corrals
- Robinson Camp
- Cove Creek Camp
- Eagles Nest Camp
- Rattlesnake Cabin

Notwithstanding the Prohibited Uses in Section K, above, the following uses are allowed within the established Exclusion Zones of the Protected Property.

1. Use of existing and future replacement of residential structures as short-term or long-term rentals for residential purposes and of existing facilities, fences and other structure in the following Exclusion Zones: Headquarters Area, Huntley Homestead, and Rattlesnake cabin. Establishment of future utilities in the following Exclusion Zones: Headquarters and Huntley Homestead. Tenants of such residential leases in the Headquarters Area, Huntley Homestead, and Rattlesnake cabin may keep domestic pets provided that those animals do not materially harm or materially interfere with any of the Conservation Values of the Protected Property.
2. Use of the Exclusion Zones and their structures by Grantor’s staff, volunteers, tribal members, and researchers for tribal purposes including ceremonial use, community meetings, or tribal functions such as education and outreach.
3. Management and administration of Grantor’s resource management activities, including general equipment or supplies storage and emergency response equipment.
4. Vehicle use across the Protected Property and within all Exclusion Zones for ingress and egress to the Exclusion Zones and its structures.
5. Public and administrative camping, including providing temporary and permanent structures (such as vault toilets) and charging fees for public use, at the following Exclusion Zones: Robinson Camp, Cove Creek Camp, Eagles Nest Camp, and Rattlesnake Cabin.
6. Maintaining vegetation for fire protection at all Exclusion Zones.
7. Providing a location for emergency fire suppression crew camps at the following Exclusion Zones: Headquarters and Huntley Homestead.
8. Temporary staging of cattle found trespassing on the Protected Property and maintenance of facilities as necessary for the continued use of the following

Exclusion Zone: Corrals.

M. Enforcement

1. *Notice of Violation, Corrective Action.* If Grantee determines that the Grantor or its representatives, contractors, successors, or assigns violates or threatens to violate this Conservation Easement, and if such determination or dispute is not resolved by negotiation as set forth in Section N, Grantee will give written notice to the Grantor and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose, sufficient to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.
2. *Grantor's Failure to Respond.* The Grantee may bring an action as provided in Section M.3 if the Grantor fails to cure the violation within thirty (30) calendar days after receipt of a notice of violation, or under circumstances where the violation cannot reasonably be cured within such thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.
3. *Grantee's Action.* Grantee may pursue an action in a court having jurisdiction to enforce the terms of this Conservation Easement: (1) to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction; (2) to require the restoration of the Protected Property to the condition that existed prior to any such injury; and (3) to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement. The remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing.
4. *Grantor's Action.* In the event that the Grantor seeks a determination as to the legal meaning or effect of this Conservation Easement, or as to any alleged violation hereof by Grantee, and if such determination or dispute is not resolved by negotiation set forth in Section N below, then the Grantor shall be entitled to bring judicial action in a court of competent jurisdiction.
5. *Emergency Enforcement.* Notwithstanding the provisions of M.1 and M.2, if Grantee determines on the basis of substantial evidence that circumstances require immediate action to prevent or mitigate significant damage to one or more of the Conservation Values, Grantee may undertake reasonable actions to remove, eliminate or mitigate damages to the Protected Property. Grantee shall provide prior notice to the Grantor of such actions to the extent reasonably practicable and may seek Grantor participation in such actions, but may proceed with such actions without permission from the Grantor or without waiting for the Grantor to take any action.

- N. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Conservation Easement by negotiation between executives or officials who have authority to settle the controversy.
- O. Acts of God/Force Majeure.** Nothing contained in this Conservation Easement entitles the Grantee to bring any action against the Grantor for any injury to or change in the Protected Property resulting from causes beyond the Grantor's control, including, without limitation, naturally caused fire, flood, storm, drought, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Such excuse from performance will be allowed only if such catastrophic event or other event beyond the Grantor's control has caused a substantial degradation of the Conservation Values. The Parties shall make all reasonable efforts to resume performance promptly once the force majeure is eliminated.
- P. Waiver.** The failure of any Party to require strict performance of any term of this Conservation Easement or a Party's waiver of performance shall not be a waiver of any future performance or of a Party's right to require strict performance in the future.
- Q. Conveyance and Assignment.** In the event Grantor chooses to convey the Protected Property, Grantor is authorized to convey, assign or transfer its rights in the Protected Property, its rights and obligations under the Conservation easement, or both to (a) BPA subject to BPA's consent, (b) to a federal or state land management agency (each an "agency" and collectively, "agencies") subject to the consent of the relevant agency; and (c) to any qualified entity (defined below) subject to the prior written consent of BPA which consent shall not be unreasonably withheld.
1. If Grantor chooses to convey the Protected Property, Grantor will first offer its rights, obligations or interests at no cost to BPA.
 2. If BPA declines to accept the Grantor's rights, obligations or interests in the Protected Property, then Grantor will offer its rights, obligations or interests at no cost to a list of agencies that must include but not be limited to the United States Department of Interior Bureau of Indian Affairs, National Park Service and the Oregon Department of Fish and Wildlife.
 3. If each of the agencies declines to accept the Grantor's rights, obligations or interests in the Protected Property, then Grantor may offer its rights, obligations or interests to any qualified entity, subject to BPA's prior written determination that the entity has reasonably demonstrated its qualifications to manage the Protected Property. Any conveyance shall further be subject to the prior written approval of BPA, which shall not be unreasonably withheld. In particular, BPA will agree to Grantor's conveyance of the Protected Property to the qualified entity if Grantor is unable to secure sufficient funding (from either BPA or alternative funding sources) to meet the operations and maintenance needs of the

Protected Property.

4. Should the Grantor seek to have the United States acting through the Bureau of Indian Affairs take the Protected Property into trust for the benefit of the Grantor, BPA agrees to approve the conveyance in a timely manner, contingent on the following:
 - a. that Grantor notifies BPA of its intent to transfer the Protected Property into trust;
 - b. Grantor provides BPA with any notices from the Bureau of Indian Affairs regarding the proposal;
 - c. the Grantor is abiding by the terms of this Conservation Easement;
 - d. the Bureau of Indian Affairs approves any transmission facility rights BPA has in the Protected Property and the permanent protection of the Conservation Values in accordance with this Conservation Easement as a condition of any fee to trust decision; and
 - e. the conveyance deed in which the BIA takes the property into trust contains a reference to and is taken subject to the terms of this Conservation Easement.

R. Proceeds from Activities on the Protected Property. The Grantor shall use net proceeds generated from activities on the Protected Property (e.g., leases) towards the operations, maintenance and restoration of the Protected Property. If proceeds exceed the operations, maintenance and restoration needs of the Protected Property, the Grantor may use the proceeds as per the 2021 MOA or the Grantor may place the proceeds into the Pine Creek Ranch Mitigation Fund for the property and roll the funds over to the next fiscal year until an operations or maintenance need arises.

S. Termination or Amendment

1. **Termination Standard.** This Conservation Easement may be voluntarily terminated by agreement of the Parties only if:
 - a. a subsequent, unexpected change in the conditions of the Protected Property or the surrounding area makes impossible the continued use of the Protected Property for the Purpose of this Conservation Easement (except that changed environmental conditions or other natural events, for example, wildfire, river channel migration, erosion or avulsion, shall not be grounds for termination); or
 - b. BPA agrees to exchange this Protected Property for another property proposed by the Grantor; factors that BPA will consider in determining whether to agree to an exchange include whether the new property is at the time of the proposed exchange determined by BPA to supply equal or better Conservation Values to meet BPA's mitigation needs as compared with the Protected Property; whether the property will be permanently

protected pursuant to a conservation easement granted to BPA on terms substantially similar to this Conservation Easement; and the costs to BPA of undertaking the acquisition of the new property, if any; or

c. BPA no longer claims mitigation credits based on the Protected Property.

2. Termination Process. If the Parties agree to voluntarily terminate this Conservation Easement and have met the above termination standard, the Parties shall terminate this Conservation Easement by executing and recording an instrument appropriate for the purpose. In the event of termination through an exchange for another property, the Parties must agree on the new property and its conservation easement before this Conservation Easement will be terminated.

3. Proceeds after any Termination. If this Conservation Easement is terminated either voluntarily by the Parties, or by involuntary extinguishment by a court of competent jurisdiction and the termination results in proceeds, BPA at its election is entitled to either (1) a share of such proceeds in proportion to the amount BPA contributed to the fee title acquisition, which is 100 percent or (2) to review and approve use of the proceeds by the Grantor to acquire new fish and wildlife habitat for BPA mitigation credit.

4. Amendment. This Conservation Easement may only be amended by agreement of the Parties, and any such amendment shall be properly documented, executed, and recorded. Amendments based on changed conditions may be made only when the effect of the amendment is to benefit the Conservation Values (for example, amending the Conservation Easement to place further restrictions on the use of or activities on the Protected Property). The Parties may not use amendments to impliedly terminate the Conservation Easement or remove any portion of the Protected Property from its terms.

T. Control. The Grantor has ownership and control of the Protected Property and is responsible for all incidents of ownership. Such incidents of ownership include, but are not limited to, maintenance and repair of existing structures, hazardous waste response, endangered species protection, noxious weed and invasive species response, tort liability, compliance with applicable laws, and payment of applicable taxes and assessments.

U. No Effect on Tribal Rights. In providing funding to the Grantor, BPA is not altering, diminishing, modifying or expanding the legal rights, authority, or jurisdiction of any Indian tribe whether with regard to natural resource management or otherwise, and no authority is implied by this Conservation Easement with regard to such rights, authority or jurisdiction. Grantor will not claim in any forum or context that BPA's funding, described in section II.A. above, the United States' acceptance of this grant, or Oregon's recognition of it, bears on the nature or extent of the Grantor's off-reservation rights.

- V. Cultural Resources.** The Grantor is responsible for cultural or historic resource mitigation or preservation on the Protected Property in accordance with applicable cultural resource laws.
- W. Hazardous Substances.** To Grantor's actual knowledge there are no hazardous substances present in, on, or under the Protected Property, including without limitation, in the soil, air, or groundwater, and there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of hazardous substances or the violation of any environmental law on the Protected Property, and that there are no underground storage tanks located on the Protected Property. If, at any time, there occurs, or has occurred a release in, on, or about the Protected Property of any hazardous substances, the Grantor agrees to take all steps necessary to assure its containment and remediation without cost to Grantee, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee will be responsible for remediation in accordance with applicable law. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Grantor's activities on the Protected Property, or otherwise become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"). The Grantor specifically agrees to release and hold harmless Grantee from and against all liabilities for violations or alleged violations of, or other failure to comply with, any federal state or local environmental law or regulation relating to hazardous substances, including, without limitation, CERCLA, by the Grantor in any way affecting, involving, or relating to the Protected Property, except to the extent such violations or alleged violations are caused by the acts or omissions of Grantee.
- X. Notice.** Any notice permitted or required by this Conservation Easement, unless otherwise specified, must be in writing, delivered personally to the persons listed below, or will be deemed given on the date deposited in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. The addresses listed below can be modified at any time through written notification to the other Party.

Notices to BPA should be sent to:

Director, Fish & Wildlife Program
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

Notices to the Grantor should be sent to:

General Manager
Branch of Natural Resources- CTWS
PO Box C
Warm Springs, OR 97761

and to BPA's Real Property Services:

Manager, Real Property Services
RE: PINC-WL-3
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

With a copy to:

Karnopp Petersen LLP
360 SW Bond Street, Suite 400
Bend, OR 97702

Y. Effect of this Amended and Restated Conservation Easement and Its Effective

Date. Grantor and Grantee agree that this Amended and Restated Conservation Easement shall replace and supersede all prior easements and deed restrictions on the Protected Property entered into by the Parties. Those prior easements and deed restrictions include the following, all recorded in Wheeler County Clerk's Office:

1. Deed of Conservation Easement, recorded as 010360, September 4, 2001
2. Deed of Conservation Easement, recorded as 020437, November 8, 2002
3. Deed Restriction, recorded as 990343, September 23, 1999
4. Deed Restriction, re-recorded as 990420, November 17, 1999, to correct a legal description on deed 990343
5. Deed Restriction, re-recorded as 000017, January 14, 2000, to correct a legal description on deed 990420
6. Deed Restriction, re-recorded as 20180323, December 11, 2018, to correct a legal description on deed 000017
7. Deed Restriction, recorded as 010359, September 4, 2001
8. Partial Release of Conservation Easement, recorded as 020429, November 8, 2002
 - o BPA partially released CE 10360 over portions of Sections 21, 22, 23, 26, 27, 28, 29, 33, 34 and 35 in T8S, R20E, W.M., Wheeler County, OR.
9. Deed of Conservation Easement, recorded as 020435, November 8, 2002

This Conservation Easement "**Effective Date**" is the date in which the Conservation Easement vests when signed by the Grantor, and accepted by the Grantee.

Z. Schedule of Exhibits. All exhibits are incorporated and made part of this Conservation Easement.

Exhibit A – Legal Description

Exhibit B – Map

Exhibit C – Exclusion Zones

Exhibit D – Acknowledgement of Baseline Documentation Report

Exhibit E – Form Transmission Easement
Exhibit F – Acceptable Encumbrances

**AA. GRANT, COVENANTS AND WARRANTIES, SIGNATURE AND
ACKNOWLEDGMENTS**

To have and to hold the Conservation Easement herein granted unto the United States and its assigns.

The Grantor warrants and covenants to and with the United States that the Grantor is lawfully seized and possessed of the Protected Property in fee simple, with a good and lawful right to grant the same, including a good and lawful right to grant this Conservation Easement; that the Protected Property is free and clear of all encumbrances and restrictions except the encumbrances and restrictions specifically set forth in Exhibit F; that the United States and its assigns shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement; that the Grantor shall at the request of the United States execute or obtain any reasonable further assurances of the title to the Property; and that the Grantor will forever warrant the title to the Property and defend the United States against all persons who claim a lawful interest in the Property, except for persons who claim interests under the exceptions described in Exhibit F.

BB. DEFINED TERMS

Capitalized terms not defined herein shall have the meaning as defined in the 2021 MOA.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this
30 day of June, 2021.

**GRANTOR:
THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF
OREGON**

(b)(6)

By: Michele Stacona
Title: Secretary-Treasurer/CEO

GRANTEE, ACCEPTANCE BY THE UNITED STATES

(b)(6)

Heidi Haserot
Realty Specialist
Bonneville Power Administration

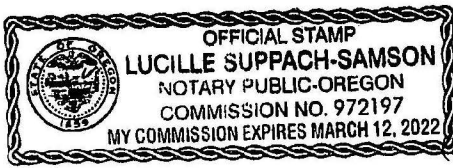
6/25/2021
Date

*****Acknowledgements to Follow*****

ACKNOWLEDGMENT

STATE OF)
) ss.
County of)

On this 30th day of June, 2021, before me personally appeared Michele Stacona, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Secretary-Treasurer/CEO, acknowledged to me that she executed the same freely and voluntarily in such capacity; and on oath stated that she was authorized to execute said instrument in such official or representative capacity.



Notary Public in and for the

State of Oregon

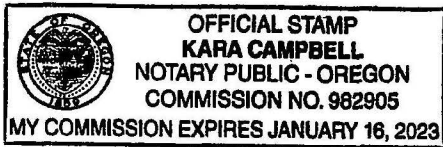
(SEAL) Signed (b)(6)

My commission expires: March 12, 2022

ACKNOWLEDGMENT

STATE OF Oregon)
County of Multnomah) ss.

On this 25th day of June, 2021, before me personally appeared Heidi Haserot, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Realty Specialist. acknowledged to me that she executed the same freely and voluntarily in such capacity; and on oath stated that she was authorized to execute said instrument in such official or representative capacity.



Notary Public in and for the

State of Oregon

(SEAL) Signed (b)(6)

My commission expires: January 16, 2023

EXHIBIT A

LEGAL DESCRIPTION

LOCATED IN WHEELER COUNTY, OREGON:

IN TOWNSHIP 7 SOUTH, RANGE 19 EAST OF THE WILLAMETTE MERIDIAN:

Section 33: SE1/4SE1/4; EXCEPTING therefrom a parcel of land described as follows: Beginning at a point which is 1333.73 feet South and 1417.82 feet East of the center of said Section 33; thence South 78°09'30" East, 233.51 feet; thence South 9°28'30" East 389.98 feet; thence North 72°56'00" West 264.57 feet; thence North 11°06'00" East 135.41 feet; thence North 16°31'30" West 231.62 feet to the place of beginning.

Section 34: S1/2SW1/4; SW1/4SE1/4; that portion of the SE1/4SE1/4 lying South of Oregon State Highway No. 218.

Section 35: E1/2SE1/4; those parts of W1/2SE1/4 and the S1/2SW1/4 lying South of Oregon State Highway No. 218.

Section 36: NE1/4NE1/4; S1/2NE1/4; S1/2; EXCEPTING therefrom a parcel of land located in the SE1/4 of said Section 36 described as follows: Commencing at a rock 30x24x20 inches and marked thus + situated near the East boundary of the NW1/4SE1/4 of said Section 36 and 21.8 chains along the Pine Creek County Road Northwest but not due Northwest of the sixth milestone on said County Road; thence North 72-3/4° West 3.15, chains to a stake in rock mound; thence North 17.25° East, 3.155 chains to rock mound; thence South 72.75° East, 3.155 chains to rock 24x24x20 inches marked + , thence South 17.25° West, 3.155 chains to the place of beginning.

IN TOWNSHIP 7 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

Section 19: S1/2; SE1/4NW1/4.

Section 20: S1/2SW1/4.

Section 24: S1/2SE1/4.

Section 25: All, EXCEPTING therefrom that portion lying Southerly and Easterly of Oregon State Highway No. 218.

Section 26: E1/2NE1/4, E1/2SE1/4, SW1/4SE1/4.

Section 29: W1/2; SW1/4SE1/4.

Section 30: All.

Section 31: All, EXCEPTING therefrom a parcel of land lying in the S1/2SE1/4 of said Section 31 described as follows: Beginning at the South quarter corner of said Section 31; thence North 34°04'15" East 899.82 feet to the true point of beginning; thence North 65°46'30" East 304.81 feet; thence South 73°17'00" East 255.85 feet; thence South 38°53'40" East 285.91 feet; thence South 66°45'40" East 640.71 feet; thence South 89°04'30" East 198.73 feet; thence North 14°50'00" East 270.0 feet; thence North 75°10'00" West 815.0 feet; thence North 14°50'00" East 280.0 feet; thence North 75°10'00" West 701.75 feet; thence South 14°50'00" West 481.15 to the true point of beginning.

Section 32: W1/2; SE1/4; SW1/4NE1/4.

Section 33: S1/2.

Section 34: S1/2; S1/2NE1/4, S1/2NW1/4;

Section 35: N1/2NE1/4; S1/2NE1/4, S1/2NW1/4, S1/2.

Section 36: N1/2; N1/2SW1/4, N1/2SE1/4, EXCEPTING therefrom that portion lying Southerly and Easterly of Oregon State Highway No. 218.

IN TOWNSHIP 7 SOUTH, RANGE 21 EAST OF THE WILLAMETTE MERIDIAN:

Section 19: S1/2, EXCEPTING therefrom that portion lying Southerly and Easterly of Oregon State Highway No. 218.

Section 30: NE1/4NW1/4; Lots 1 and 2 EXCEPTING therefrom that portion lying Southerly and Easterly of Oregon State Highway No. 218.

IN TOWNSHIP 8 SOUTH, RANGE 19 EAST OF THE WILLAMETTE MERIDIAN:

Section 1: All.

Section 2: All, EXCEPTING therefrom the SW1/4SW1/4.

Section 3: Lots 1, 2, 3, 4, 8 and 9; S1/2NE1/4; N1/2SE1/4; SE1/4NW1/4.

Section 4: Portion of Lot 1 described as follows: Commencing at a point in Township line between Township 7 and 8 South, above Range, which is 74 rods West of the Northeast corner of said Lot 1, and running thence East on said Township line 74 rods to the Northeast corner of said Lot 1; thence following East boundary of said Lot 1, 67 rods to the Southeast corner of said Lot 1; thence West on the South boundary of said Lot 1, 21 rods; thence in a Northwesterly direction in a straight line to the place of beginning.

IN TOWNSHIP 8 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

Section 1: Lots 3, 4, 5, 6 and 7.

Section 2: All, EXCEPTING therefrom a parcel of land lying in the S1/2NW1/4 of said Section 2 described as follows: Beginning at a point which is 40 feet distant Northerly from (when measured at right angles to) the relocated centerline of the Shaniko-Fossil Highway at Engineer's Center Line Station 234+00; said point also being South 1491 feet and East 565 feet from the Northwest corner of said Section 2; thence South 60°41' West parallel to said relocated centerline 400 feet; thence North 29°19' West 210 feet; thence 60°41' parallel to and 250 from said centerline 400 feet; thence South 29°19' East 210 feet to the point of beginning.

Section 3: All.

Section 4: All.

Section 5: All.

Section 6: All.

Section 7: E1/2NE1/4; NE1/4SE1/4.

Section 8: N1/2; N1/2SW1/4; that portion of the E1/2SE1/4 lying North of the metes-bounds survey line described in Exhibit B.

Section 9: N1/2; those portions of the SW1/4SW1/4 and E1/2SW1/4 and SE1/4 lying North and East of the metes-bounds survey line described in Exhibit B.

Section 10: All.

Section 11: All.

Section 12: W1/2; SE1/4; SW1/4NE1/4.

Section 13: All.

Section 14: All.

Section 15: All.

Section 16: That portion of the E1/2 lying East of the metes-bounds survey line described in Exhibit B.

Section 21: Those portions of the NE1/4 and NE1/4SW1/4 and N1/2SE1/4 lying East of the metes-bounds survey line described in Exhibit B.

Section 22: N1/2; N1/2SW1/4, N1/2SE1/4;

Section 23: N1/2; N1/2SW1/4, N1/2SE1/4, S1/2SE1/4.

Section 24: All.

Section 25: All.

Section 26: E1/2.

Section 33: S1/2NE1/4, S1/2NW1/4, S1/2.

Section 34: S1/2NE1/4, S1/2NW1/4, S1/2.

Section 35: N1/2NE1/4; S1/2NE1/4, S1/2NW1/4, S1/2.

Section 36: All.

IN TOWNSHIP 8 SOUTH, RANGE 21 EAST OF THE WILLAMETTE MERIDIAN:

Section 17: S1/2NE1/4, S1/2NW1/4, S1/2.

Section 18: All.

Section 19: All.

Section 20: N1/2; N1/2SW1/4.

Section 21: NE1/4NW1/4; Lots 1 and 2.

Section 29: W1/2.

Section 30: All.

Section 31: All.

Section 32: SE1/4SW1/4; Lots 1, 2, 3 and 4.

IN TOWNSHIP 9 SOUTH, RANGE 19 EAST OF THE WILLAMETTE MERIDIAN:

Section 12: That part of the NW1/4/SE1/4 lying West of the John Day River; that part of the SW1/4 lying East of the John Day River.

Section 13: That part lying East of the John Day River.

Section 24: Those parts of the NE1/4NW1/4 and N1/2NE1/4 and SW1/4NE1/4 and

SE1/4SE1/4 lying East of the John Day River.

IN TOWNSHIP 9 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

Section 1: All.

Section 2: All.

Section 3: All.

Section 4: All.

Section 8: All.

Section 9: All.

Section 10: All.

Section 11: All.

Section 12: All

Section 15: N1/2; N1/2SW1/4.

Section 16: All.

Section 17: All.

Section 18: All.

Section 19: All.

Section 20: All.

Totaling 33,238.54 acres, more or less.

EXHIBIT B - METES AND BOUNDS SURVEY:

Legal Description of Spring Basin Wilderness East Boundary

Feet Factor = 1.00000000

Geo Dist (at project elevation 2500 PLSS)

True Bearing (mean course convergence PLSS)

Beginning at a point on the north and south center line of the SE1/4 of Section 8, T. 8 S.,

R. 20 E., Willamette Meridian, Oregon, from which the SE 1/16 sec. cor. of sec. 8 bears N. 0° 14' 30" W. a distance of 21.50 ft., more or less;

thence on a line 30.00 ft. distant, southerly and westerly, and parallel with the meandered center line of a two tract dirt road the following courses:

S.30° 55' 45"E. for 91.20 ft.;

thence N.89° 06' 49"E. for 50.25 ft.;

thence N.63° 01' 44"E. for 99.86 ft.;

thence S.84° 04' 58"E. for 225.81 ft.;

thence N.82° 16' 59"E. for 126.17 ft.;

thence S.75° 18' 34"E. for 105.07 ft.;

thence N.72° 59' 12"E. for 227.72 ft.;

thence S.82° 36' 51"E. for 125.98 ft.;

thence N.83° 00' 49"E. for 215.91 ft.;

thence N.56° 20' 31"E. for 177.67 ft.;

thence S.36° 09' 15"E. for 776.62 ft.;

thence N.63° 13' 56"E. for 670.35 ft.;

thence S.87° 29' 31"E. for 403.27 ft.;

thence N.77° 41' 58"E. for 386.38 ft., from which the cor. of secs. 9, 10, 15 and 16, bears S. 70° 50' 51" E. a distance of 3334.36 ft.;

thence S.35° 47' 01"E. for 366.72 ft.;

thence S.42° 29' 05"E. for 114.97 ft.;

thence on a line 30.00 ft. distant, southerly and westerly, and parallel with the GPS line, the following courses:

N.82° 30' 41"E. for 279.78 ft.;

thence S.82° 57' 04"E. for 237.71 ft.;

thence S.25° 21' 36"E. for 242.12 ft.;

thence S.02° 48' 08"E. for 1007.61 ft.;

thence S.84° 48' 55"E. for 80.70 ft.;

thence S.34° 11' 14"E. for 493.71 ft.;

thence S.03° 32' 17"W. for 168.05 ft.;

thence S.06° 56' 58"E. for 257.14 ft.;

thence S.45° 01' 14"E. for 139.29 ft.;

thence S.27° 46' 32"E. for 222.55 ft.;

thence S.06° 00' 48"W. for 99.00 ft.;

thence S.39° 17' 46"E. for 249.73 ft.;

thence S.27° 17' 52"E. for 254.41 ft.;

thence S.77° 21' 05"E. for 249.79 ft.;

thence S.65° 11' 57"W. for 199.94 ft.;

thence S.18° 25' 10"W. for 303.62 ft.;

thence S.00° 33' 02"W. for 269.85 ft.;

thence S.08° 36' 12"E. for 173.33 ft.;

thence S.21° 59' 26"E. for 318.53 ft.;

thence S.10° 12' 44"E. for 277.88 ft.;

thence S.01° 12' 36"W. for 368.37 ft.;

thence S.22° 27' 45"W. for 169.67 ft.;

thence S.08° 50' 56"W. for 208.34 ft.;

thence on a line 30.00 ft. distant, southerly and westerly, and parallel with the meandered center line of a two tract dirt road the following courses:

S.03° 48' 50"W. for 332.95 ft.;

thence S.24° 53' 59"E. for 341.88 ft.;

thence S.12° 36' 28"W. for 143.58 ft.;

thence S.08° 00' 56"W. for 388.59 ft.;

thence S.00° 48' 36"E. for 281.23 ft.;

thence S.12° 13' 39"W. for 217.99 ft.;

thence S.41° 19' 33"W. for 177.16 ft.;

thence S.16° 51' 04"W. for 455.86 ft.;

thence S.54° 30' 17"W. for 65.70 ft.;

thence S.65° 14' 11"W. for 207.72 ft.;

thence S.45° 29' 19"W. for 623.25 ft.;

thence S.57° 04' 31"W. for 239.13 ft.;

thence S.38° 09' 15"W. for 967.67 ft.;

thence S.61° 23' 49"W. for 133.70 ft.;

thence S.26° 33' 37"W. for 223.43 ft.;

thence S.01° 34' 54"W. for 461.11 ft.;

thence S.54° 03' 17"W. for 58.04 ft.;

thence S.71° 40' 42"W. for 248.28 ft.;

thence S.53° 56' 23"W. for 214.17 ft.;

thence S.27° 12' 15"W. for 195.91 ft., more or less, to a point on the north line of the SW1/4 of the SW1/4 of section 21 and the terminus of said line, from which the cor. of secs. 20, 21 28 and 29, bears S. 42° 14' 49" W. a distance of 1756.52 ft.

EXHIBIT B

MAP

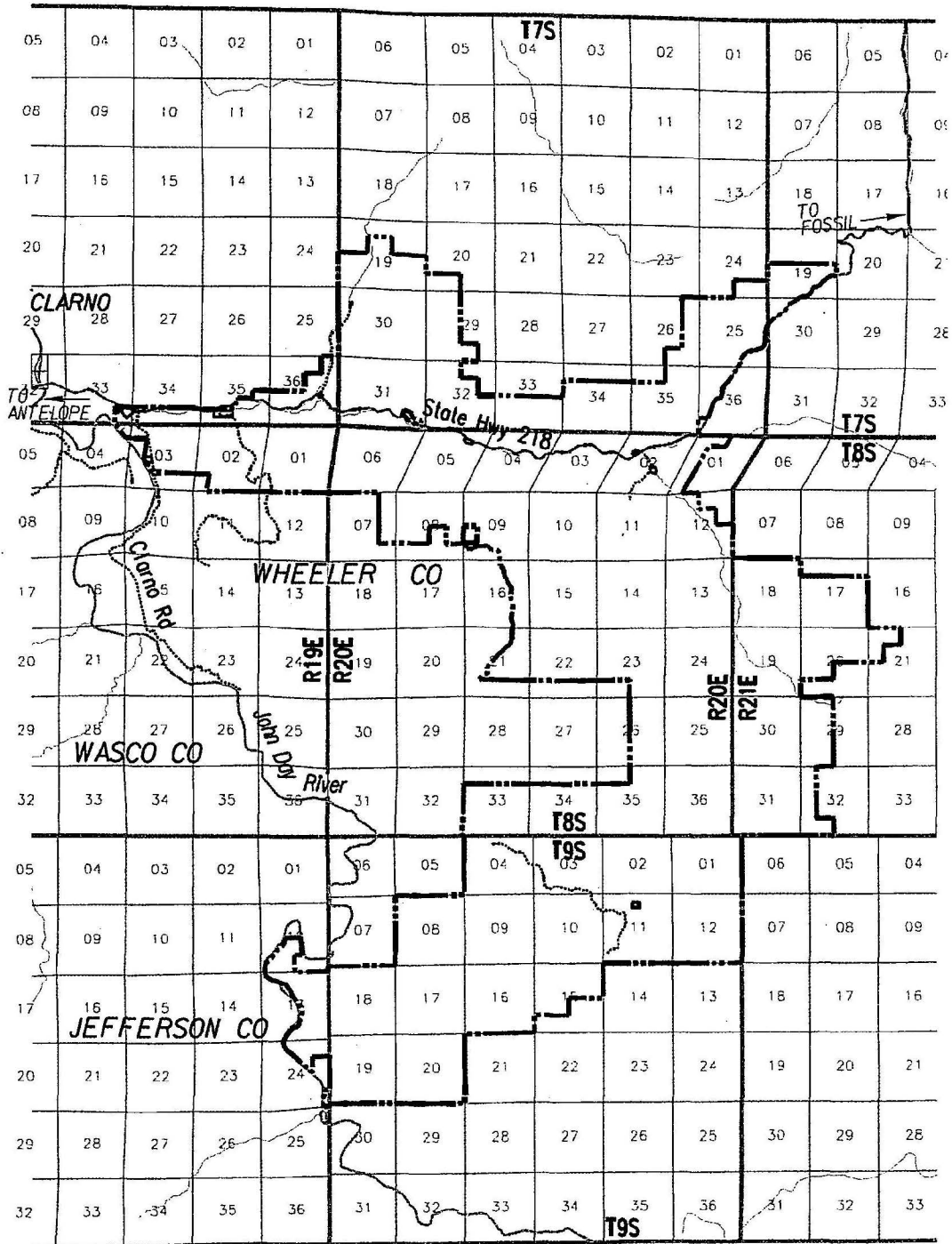
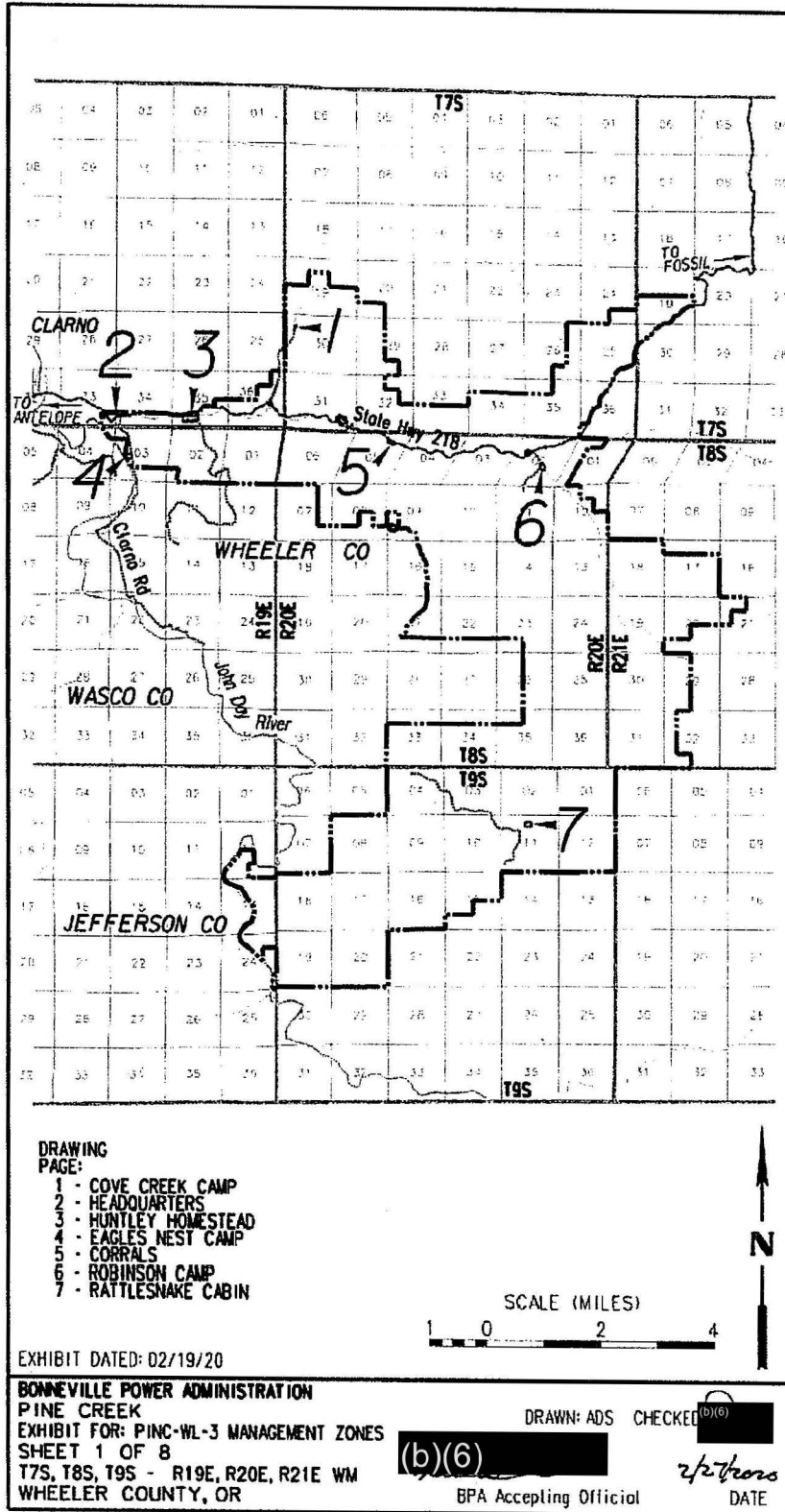
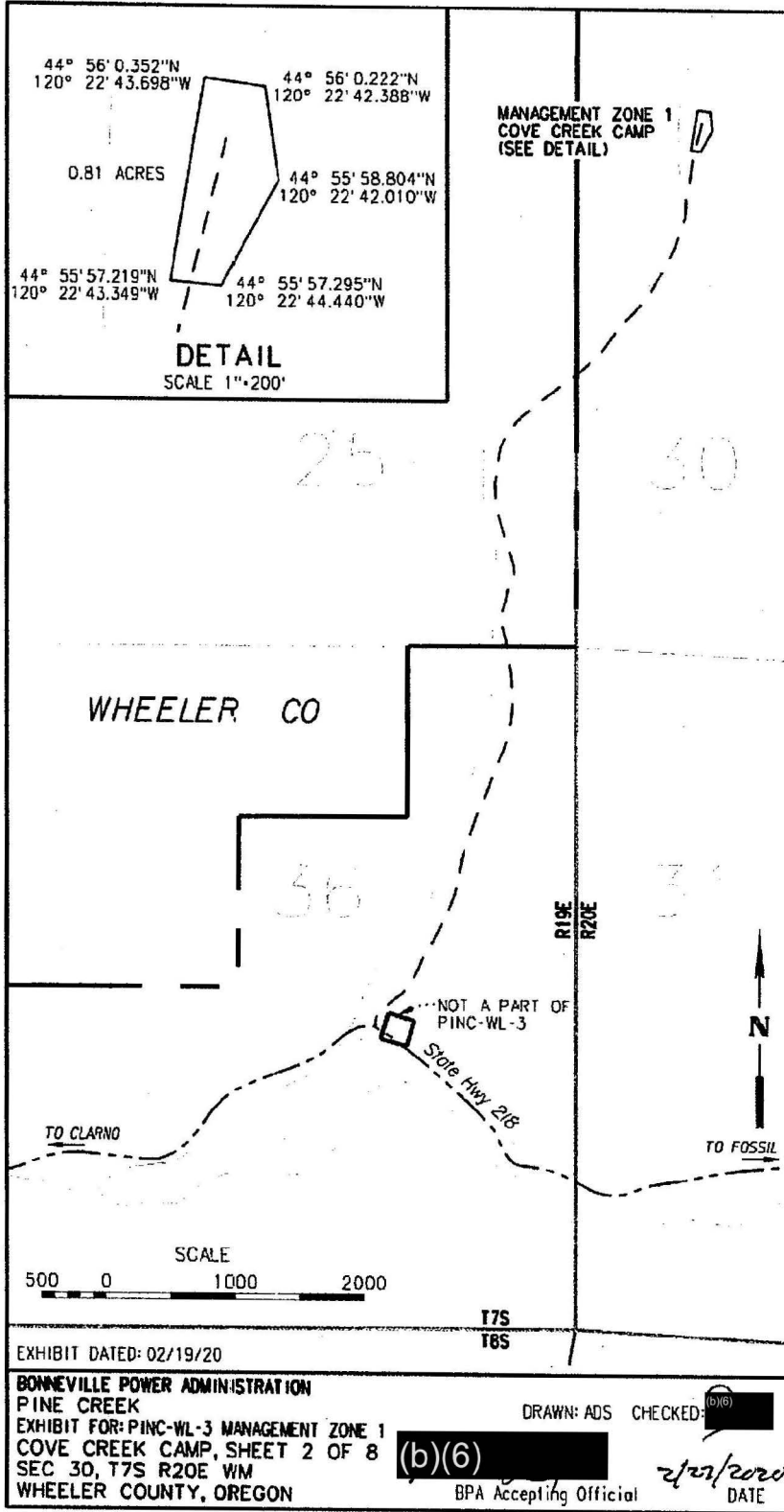
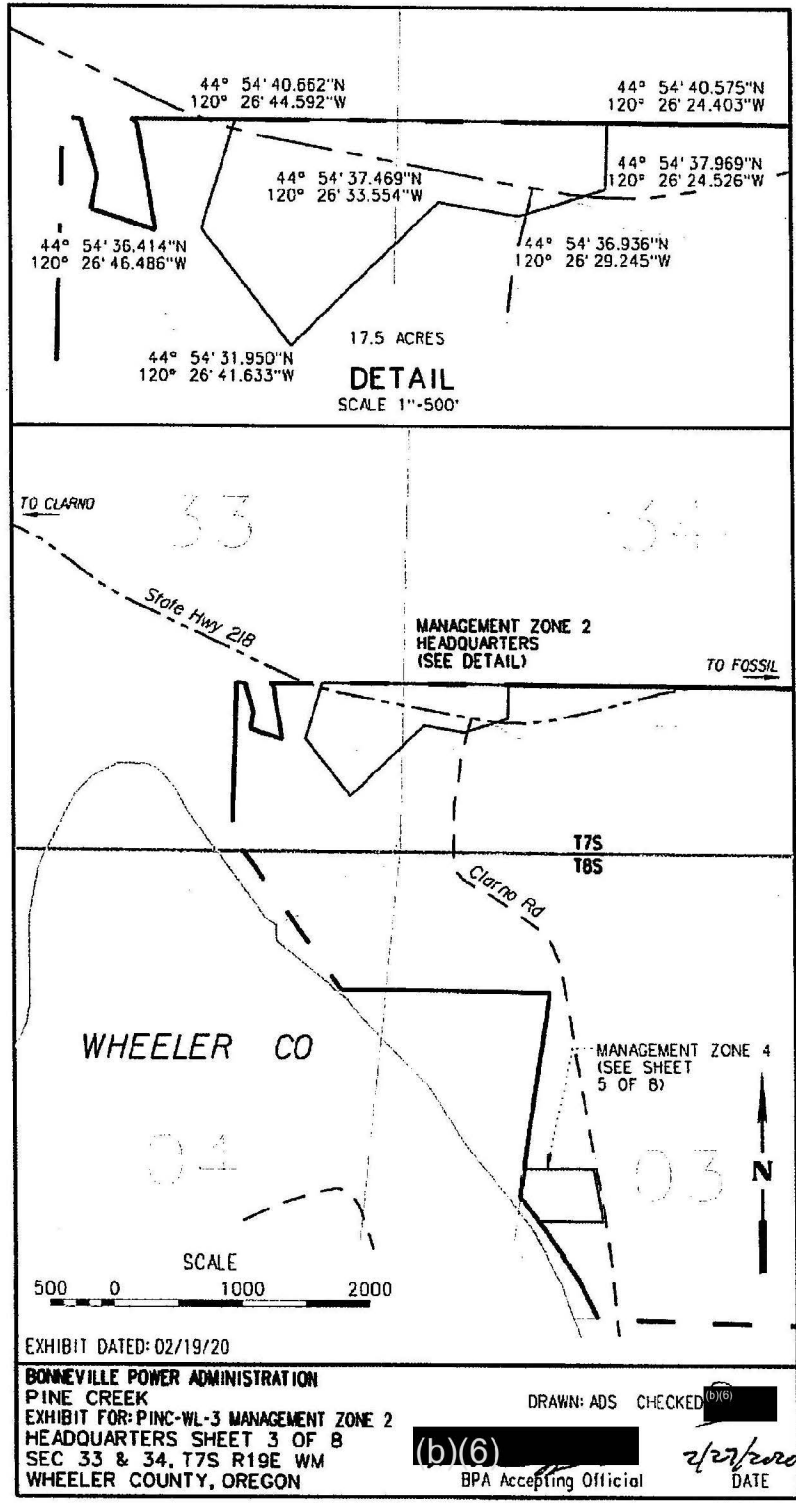


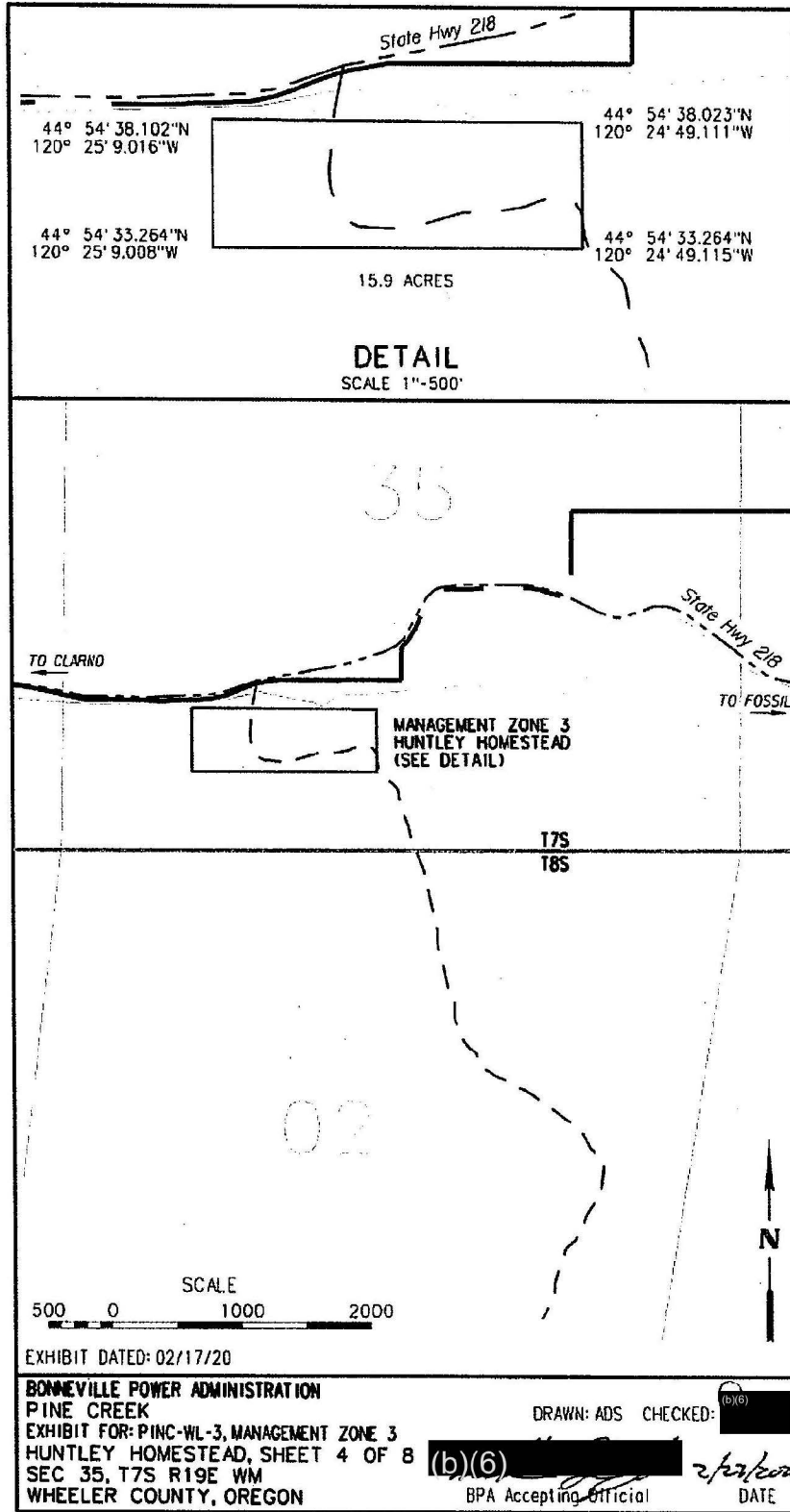
EXHIBIT C
EXCLUSION ZONES

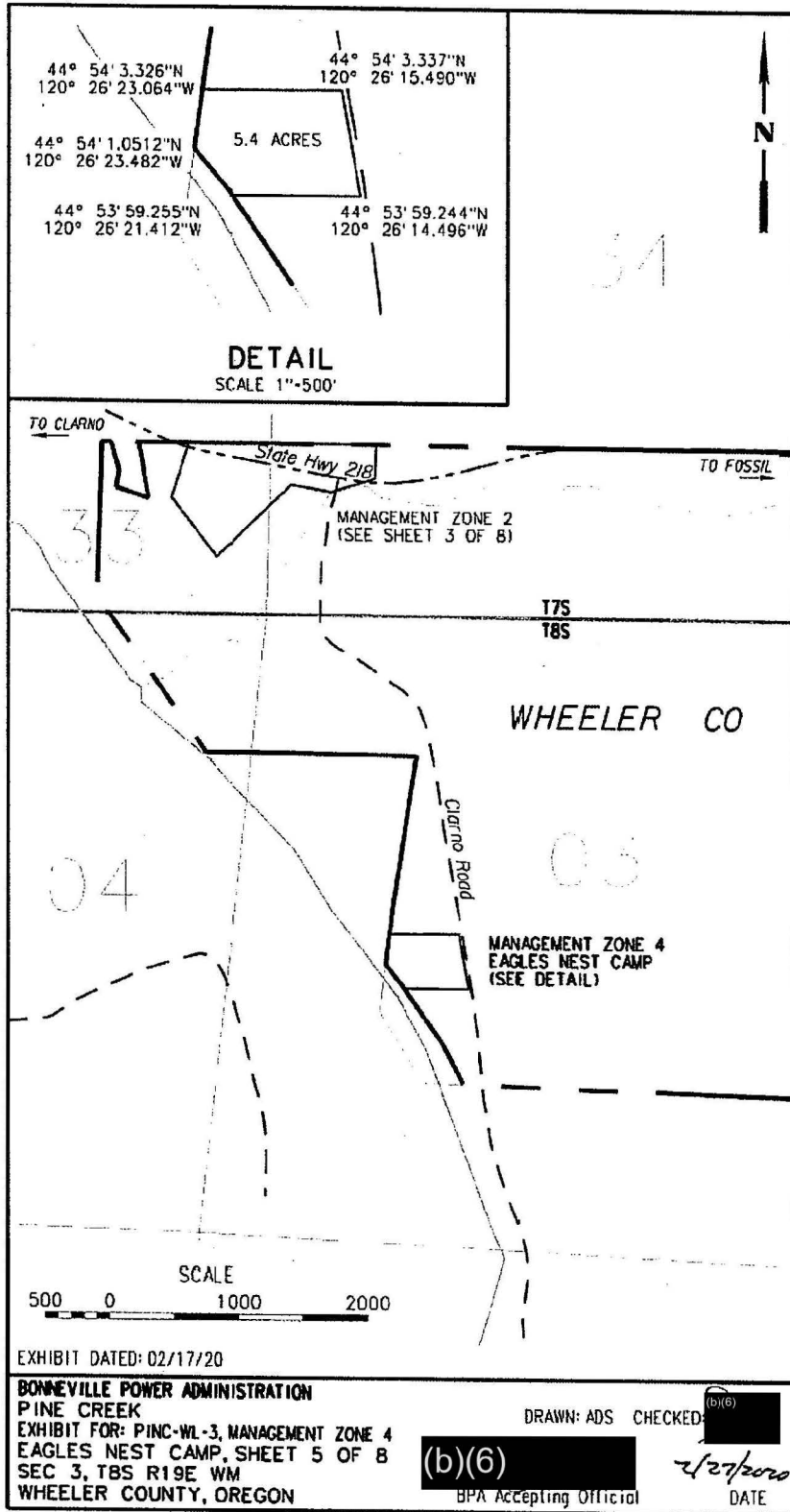
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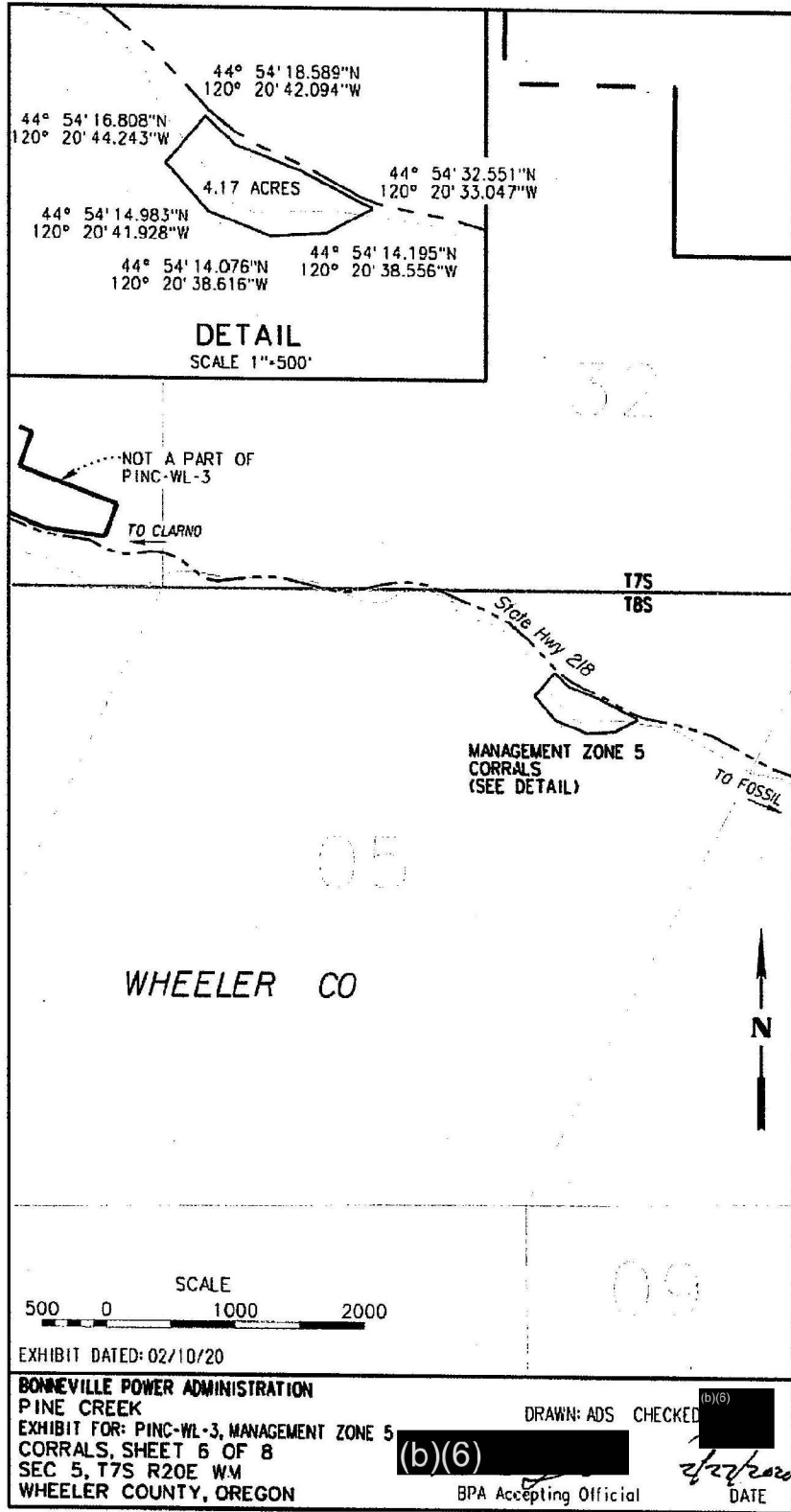


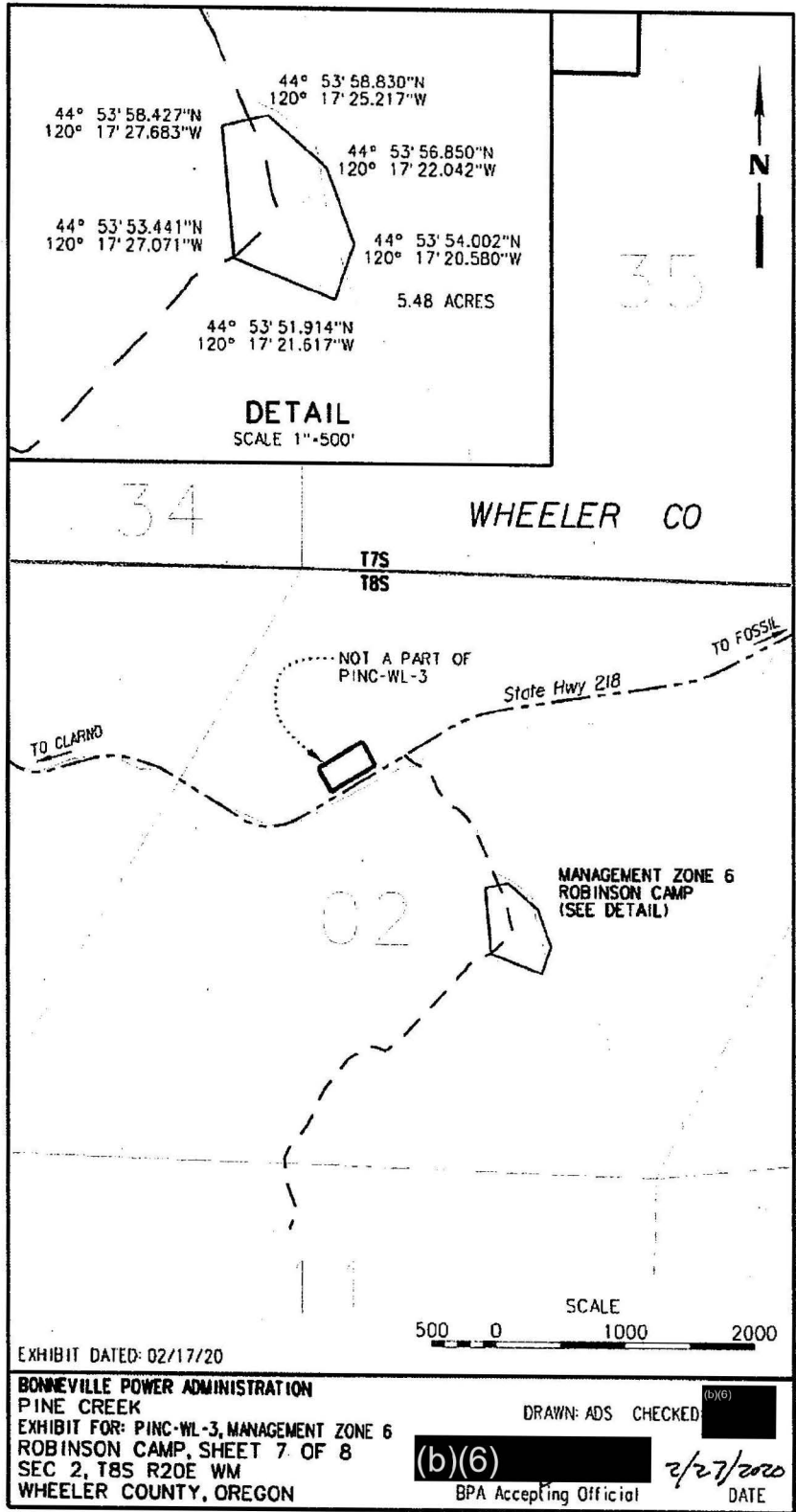












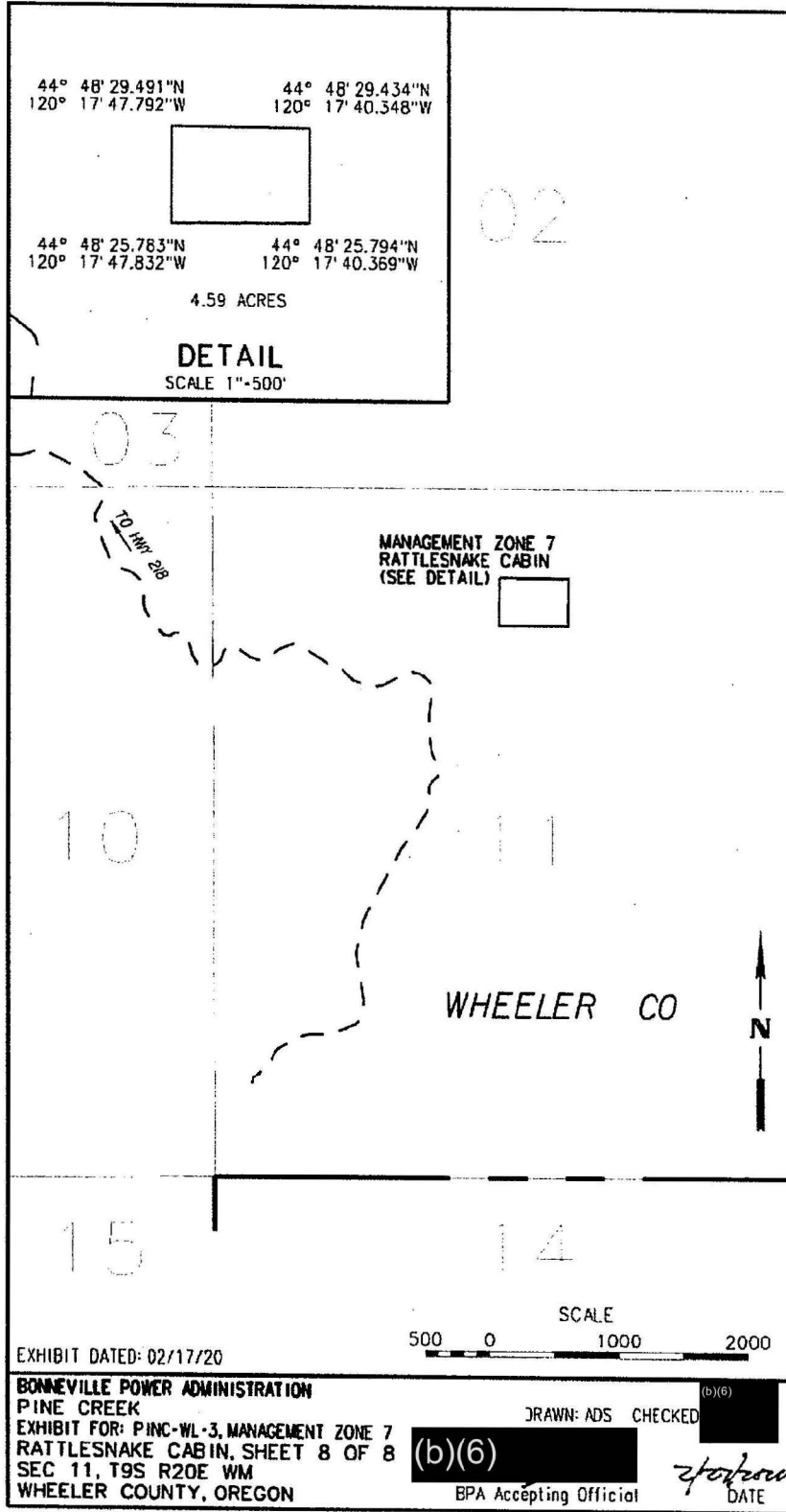


EXHIBIT D

**ACCEPTANCE AND ACKNOWLEDGEMENT
OF
BASELINE DOCUMENTATION**

The undersigned parties hereby acknowledge and agree that the Baseline Documentation for the Pine Creek Amended and Restated Conservation Easement property located in Wheeler County, Oregon prepared by Olivia Morgan, MSc, Ecology Specialist of Ash Creek Forest Management, LLC, Melissa Rowe Soll, MFR, Conservation Coordinator of Ash Creek Forest Management, LLC, Brian Cochran, MCRE, Conservation Lands Program Supervisor of the Confederated Tribes of the Warm Springs Reservation of Oregon and Troy Johnson, BS Pine Creek Conservation Area Project Leader of the Confederated Tribes of the Warm Springs Reservation of Oregon and dated April 8, 2020 is an accurate representation of the biological, physical and historical conditions of the subject property as of the Effective Date of this Conservation Easement. All of the undersigned parties have received copies of the Baseline Documentation and is on file with the Bonneville Power Administration.

Grantor:

The Confederated Tribes of the Warm Springs Reservation

(b)(6)

By: Michele Stacona
Its: Secretary-Treasurer/CEO

6/30/2021

Date

Grantee:

Bonneville Power Administration:

(b)(6)

Heidi Haserot
Realty Specialist
Bonneville Power Administration

6/25/2021

Date

EXHIBIT E

FORM TRANSMISSION EASEMENT

**AFTER RECORDING, RETURN TO
Bonneville Power Administration
TERP-3
P.O. BOX 3621
PORTLAND, OR 97208-3621**

Legal description: A portion of the [redacted] of
Section [redacted], Township [redacted], Range [redacted],
[redacted] M., [redacted] County, [redacted], as described in
Exhibit(s) [redacted] and shown on Exhibit(s) [redacted].
(Affects Tax Account No. [redacted].)

BPA Tract No.(s): [redacted]

**United States of America
Department of Energy, Bonneville Power Administration**

**EASEMENT AGREEMENT
Transmission Line**

This Easement Agreement is made between [redacted] ("Grantor"), whether one or more, and the UNITED STATES OF AMERICA and its assigns ("Grantee"), pursuant to the Bonneville Project Act, of August 20, 1937, as amended, 16 U.S.C. §§ 832 et seq.; the Federal Columbia River Transmission System Act, of October 18, 1974, as amended, 16 U.S.C. §§ 838 et seq.; the Department of Energy Organization Act, of August 4, 1977, as amended, 42 U.S.C. § 7152; and the Pacific Northwest Electric Power Planning and Conservation Act, of December 5, 1980, as amended, 16 U.S.C. §§ 839 et seq.

The parties agree as follows:

1. Conveyance and Consideration.

Grantor, for and in consideration of the sum of the funding Grantee provided to the Grantor to acquire fee title and the provisions contained herein, does hereby grant and convey to the UNITED STATES OF AMERICA and its assigns, a perpetual easement for electric power transmission purposes in, upon, over, across, and under the land described in Exhibit(s) [redacted] and shown on Exhibit(s) [redacted] ("Easement Area"), attached hereto and made a part hereof. The acquiring federal agency is the Department of Energy, Bonneville Power Administration.

2. Grant of Rights.

This Easement Agreement grants the following present and future rights:

a. Transmission Facilities. The right to enter the Easement Area and to locate, survey, construct, reconstruct, operate, maintain, repair, rebuild, upgrade, remove, inspect and patrol transmission lines consisting of one or more lines of poles or structures and appurtenances thereto, supporting conductors of one or more electric circuits of any voltage, as well as appurtenances for communication facilities (collectively, "Transmission Facilities").

b. Transmission Hazards. The right to clear and keep clear the Easement Area from all fire/electrical hazards, safety hazards, unauthorized structures or any other material Grantee deems could interfere with the safe operation and maintenance of the Transmission Facilities ("Transmission Hazards"). All Transmission Hazards within the Easement Area shall become the property of Grantee and may be disposed of by Grantee in any manner it deems suitable.

c. Incompatible Vegetation. The right to enter, cut, trim, remove, destroy, or otherwise control all trees (including crop-bearing trees, ornamental trees, and Christmas trees), shrubs, brush, or other vegetation Grantee deems could interfere with the safe operation and maintenance of the Transmission Facilities ("Incompatible Vegetation"), now or later growing within the Easement Area. All Incompatible Vegetation within the Easement Area shall become the property of Grantee and may be disposed of by Grantee in any manner it deems suitable.

d. Trees Outside Easement Area. The right to trim or cut down and to remove "Danger Trees" located on land adjacent to the Easement Area. A Danger Tree is any growing or dead tree, or snag, whether stable or unstable, which in the opinion of Grantee could interfere with the safe operation and maintenance of the Transmission Facilities. Title to Danger Trees shall vest in Grantee and the compensation paid for conveying this Easement Agreement is accepted as full compensation for all present and future Danger Trees.

e. Travel Within Easement Area. The right to travel over and across the Easement Area; and as determined by Grantee, the right to grade and gravel within the Easement Area when needed.

f. Travel To and From Easement Area. The right of ingress to and egress from the Easement Area over the lands of Grantor, using existing routes of access where practicable.

Limited use or non-use of the rights granted under this Easement Agreement shall not prevent later use to the full extent conveyed.

3. Grantee's Due Care.

Grantee shall exercise due care in the exercise of rights and privileges granted herein. Grantee agrees to repair or reasonably compensate Grantor for damage to Grantor's property caused by the exercise of Grantee's rights, excluding property conveyed to Grantee under section 2 of this Easement Agreement. Payment for such damage shall be made on the basis of a damage estimate approved by Grantee.

4. Grantor's Warranty.

Grantor warrants title to the rights granted herein. Grantor further covenants that Grantor is the sole owner of the property over which this easement is granted, that Grantor has the lawful right to convey this easement interest, and that the property is free and clear of encumbrances, except as agreed to by Grantee.

5. Grantee to Obtain Title Report and Record.

Grantee shall pay for the procurement of any title report or title insurance that Grantee may require, and shall pay to record this instrument.

6. Prohibited Uses of the Easement Area.

It is the intention of Grantee to allow Grantor a reasonable right to use and have access to and across the Easement Area, when and where such use does not interfere with the rights of Grantee. Certain uses, however, are prohibited unless Grantor obtains prior written permission from Grantee, which will not be unreasonably withheld. If Grantor proceeds without prior written permission to conduct a prohibited use, Grantee shall have the right to take any action deemed appropriate to address such use.

The following are examples of uses prohibited within the Easement Area unless prior written permission is obtained from Grantee. The examples provided below are not intended as an all-inclusive list of prohibited uses.

- a. Grantor shall not erect structures. By way of example, prohibited structures shall include, but are not limited to buildings, mobile homes, signs, light standards, fences, storage tanks, storage sheds, propane tanks, fueling stations, septic systems, swimming pools, tennis courts, or similar facilities.
- b. Grantor shall not drill wells or conduct mining operations.
- c. Grantor shall not construct, install or operate above-ground mechanical irrigation facilities.
- d. Grantor shall not appreciably change the grade of the land, normal farming practices excluded.
- e. Grantor shall not construct roads in the Easement Area.

7. Easements of Record.

The rights granted in this Easement Agreement are subject to easements of record and the mineral rights of third parties.

8. Heirs, Successors and Assigns Bound By Agreement.

The provisions hereof shall inure to the benefit of and be binding upon the heirs, executors, personal representatives, administrators, successors, and assigns of Grantor and Grantee.

FORM ONLY – SIGNATURES NOT REQUIRED

EXHIBIT F

ACCEPTABLE ENCUMBRANCES

1. The rights of the public in and to that portion of the herein described property lying within the limits of public roads, streets or highways.
2. Public roads, quarry and stockpile sites conveyed to the Oregon Department of Transportation.
3. Limits on access to Oregon State Highway No. 218.
4. Rights of the public and governmental bodies in and to that portion of said premises now or at any time lying below the high water line of John Day River and Pine Creek, including any ownership rights which may be claimed by the State of Oregon as to any portion now or at any time lying below the ordinary high water line. Such rights and easements for navigation and fishing as may exist over that portion of the property now or at any time lying beneath the waters of John Day River and Pine Creek.
5. All matters arising from any shifting in the course of John Day River and Pine Creek including but not limited to accretion, reliction and avulsion.
6. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
7. Reservation of minerals, including the terms and provisions contained therein, in deed from M.E. Lee and Minnie M. Lee.
Recorded: January 4, 1918
Book: 14, Page 363
8. Reservation of Oil, gas, minerals, including the terms and provisions contained therein, in deed from United States of America.
Recorded: April 13, 1925
Book: 17, Page 584
9. Reservation of Oil, gas, minerals, including the terms and provisions contained therein, in deed from United States of America.
Recorded: October 27, 1925
Book: 17, Page 601
10. Reservation of Oil, gas, minerals, including the terms and provisions contained

therein, in deed from United States of America.
Recorded: October 27, 1925
Book: 17, Page 602

11. Reservation of Oil, gas, minerals, including the terms and provisions contained therein, in deed from United States of America.
Recorded: May 28, 1927
Book: 17, Page 637
12. Reservation of Oil, gas, minerals, including the terms and provisions contained therein, in deed from United States of America.
Recorded: November 27, 1929
Book: 18, Page 581
13. Reservation of Oil, gas, minerals, including the terms and provisions contained therein, in deed from United States of America.
Recorded: April 27, 1931
Book: 19, Page 460
14. Reservation of Oil, gas, minerals, including the terms and provisions contained therein, in deed from United States of America.
Recorded: January 2, 1933
Book: 20, Page 196
15. Reservation of minerals, including the terms and provisions contained therein, in deed from United States of America.
Recorded: January 12, 1934
Book: 20, Page 205
16. Reservation of Oil, gas, minerals, including the terms and provisions contained therein, in deed from United States of America.
Recorded: May 14, 1934
Book: 20, Page 284
17. Reservation of Oil, gas, minerals, and mining easements, including the terms and provisions contained therein, in deed from William Lester Reinhart and Susan S. Reinhart and Ford Hendrickson, trustee.
Recorded: November 19, 1943
Book: 24, Page 80
18. Reservation of Oil, gas, minerals, including the terms and provisions contained therein, in deed from Federal Land Bank of Spokane.
Recorded: November 19, 1943
Book: 25, Page 29
19. Reservation of Oil, gas, minerals, and mining easement, including the terms and

provisions contained therein, in deed from State of Oregon.
Recorded: February 6, 1946
Book: 25, Page 105

20. Reservation of Oil, gas, minerals, including the terms and provisions contained therein, in deed from State of Oregon.
Recorded: July 3, 1946
Book: 25, Page 206
21. Reservation of minerals, or other coal, including the terms and provisions contained therein, in deed from State of Oregon.
Recorded: October 30, 1946
Book: 25, Page 310
22. Reservation of Oil, gas, minerals, including the terms and provisions contained therein, in deed from Federal Land Bank of Spokane.
Recorded: March 24, 1948
Book: 26, Page 150
23. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:
Granted To: Columbia Power Cooperative Association
Recorded: May 2, 1961
Book: 30, Page: 139
24. Reservation of minerals, including the terms and provisions contained therein, in deed from Maxine D. Burgess.
Recorded: November 30, 1962
Instrument No.: M-30-360
25. Easement, including the terms and provisions thereof,
Recorded: October 12, 1970
Book: 32, Page: 512
26. Easement, including the terms and provisions thereof,
Recorded: March 6, 1974
Book: 34, Page: 128
27. Mineral Reservation as disclosed in document,
Recorded: July 6, 1979
Book: 35, Page: 519
28. Reservation of minerals, including the terms and provisions contained therein, in deed from Helen L. Guyton. Recorded: November 21, 1979
Instrument No.: M-35-624

29. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:
Granted To: Cascade Utilities, Inc., an Oregon Corporation
Recorded: May 16, 1980
Book: 35, Page: 744
30. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:
Granted To: Wasco Electric Cooperative, Inc.
Recorded: January 13, 1982
Book: 36, Page: 242
31. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:
Granted To: Wasco Electric Cooperative, Inc.
Recorded: March 11, 1982
Book: 36, Page: 306
32. Reservation of Oil, gas, minerals, including the terms and provisions contained therein, in Real Estate Contract from William B. Potter and Mary E. Potter.
Recorded: September 14, 1982
Book: 36, Page 490
33. A lease with certain terms, covenants, conditions and provisions set forth therein.
Lessor: Jon H. Bowerman
Lessee: William B. Potter and Mary E. Potter husband and wife, and Frank William Lee Jr.
Dated: September 14, 1982
Recorded: September 14, 1982
Book: 36, Page: 491
34. Reservation of minerals, including the terms and provisions contained therein, in deed from Wm. B. Potter and Mary E. Potter.
Recorded: December 21, 1987
Instrument No.: M38-152
35. Reservation of one-half of all oil, minerals, including the terms and provisions contained therein, in deed from F.H. Tankersley and Mary Tankersley.
Recorded: December 9, 1992
Instrument No.: M-3-157
36. Lease and Sale of Road Materials, including the terms and provisions thereof,
Dated: July 1, 1998
Recorded: August 31, 1998
Instrument No.: 980319
Between: Warran Dan Eddleman
And: State of Oregon, by and through its Department of Transportation

37. Easements as shown on the Partition Plat No. 1998-02.
38. Easement and Reservations as set out in deed, including the terms and provisions thereof,
Recorded: September 30, 1999
Instrument No.: 990343
Re-recorded: November 17, 1999
Instrument No.: 990420
Re-recorded: January 14, 2000
Instrument No.: 000017
Re-recorded: December 11, 2018
Instrument No.: 20180323
39. Reservation of minerals, including the terms and provisions contained therein, in deed from William Byers Potter and Mary Elaine Potter.
Recorded: December 16, 1999
Instrument No.: 990461
40. Easement Agreement, including the terms and provisions thereof,
Dated: April 28, 2000
Recorded: May 5, 2000
Instrument No.: 000155
Between: The Confederated Tribes of Warm Springs Reservation of Oregon, a federally recognized Indian Tribe
And: James Gray Perkins and Shirlee Anne Perkins
41. Restrictions and conditions as disclosed in document, including the terms and provisions thereof,
Recorded: September 4, 2001
Instrument No.: 010359
42. Deed of Conservation Easement, including the terms and provisions thereof,
Recorded: September 4, 2001
Instrument No.: 010360

Amended by a Partial Release of Conservation Easement, including the terms and provisions thereof, Recorded: November 8, 2002
Instrument No.: 020429
43. Deed of Conservation Easement, including the terms and provisions thereof,
Recorded: November 8, 2002
Instrument No.: 020437
44. Effect, if any, of a QuitClaim Deed for Mineral and Royalty Interests,
From: AGAMERICA, FCB

To: Northwest Farm Credit Services, FLCA
Recorded: June 4, 2003
Instrument No.: 030272

45. Effect, if any, of a Statement of Claim for Mineral Interest,
From: Eastern Oregon Land Company, a California corporation
To: EOM, Limited, a California Limited Partnership
Recorded: September 25, 2015
Instrument No.: 20150253
46. Effect of designation that any portion of the subject land is within scenic
waterway boundaries under Oregon Revised Statutes Chapter 390, as disclosed, in
part, by notice or other instrument
Recorded: January 14, 2009
Instrument No.: 20090005
47. Access and Utility Easement Agreement, including the terms and provisions
thereof,
Dated: August 31, 2016
Recorded: April 19, 2017
Instrument No.: 20170092
Between: The Confederated Tribes of The Warm Springs Reservation of Oregon
And: Betty Jo Brooks and John Albert Brooks
48. The property described herein consists of many sections and portions of sections,
many of which are contiguous. Access to much of the property may be through
these adjoining tracts. Rights of access to the property is limited to those public
roads which abut or pass through the property described herein and no
representation is made that all sections and/or parts thereof have independent
rights of access.
49. A Settlement Agreement and Release, including the terms and provisions thereof,
Recorded: January 21, 2009
Instrument No.: 20090012
Between: The Confederated Tribes of Warm Springs Reservation of Oregon;
Wheeler County
And: West Linn Corporate Park II, LLC, an Oregon limited liability company

***PINE CREEK RANCH WILDLIFE PROJECT
MEMORANDUM OF AGREEMENT***

This Agreement is made between the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribe), and the United States of America, acting through the Department of Energy and the Bonneville Power Administration (hereinafter BPA), and is binding on the parties, their successors and assigns.

RECITALS

A. The Tribe is a sovereign entity with rights reserved in the Treaty with the Tribes of Middle Oregon of June 25, 1855 (12 Stat. 963). These rights include the authority to co-manage wildlife and wildlife habitat in the area ceded by the Tribe to the United States.

B. BPA is a power marketing agency within the United States Department of Energy. The Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501 (Act) directs BPA to protect, mitigate, and enhance fish and wildlife affected by the development and operation of federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Act, the program adopted by the Pacific Northwest Electric Power and Conservation Planning Council (Council) under subsection 4(h) of the Act, and other environmental laws.

C. The Tribe has developed the Pine Creek Ranch Project (Project) to assist BPA in fulfilling its wildlife mitigation obligation associated with the John Day Dam. A legal description of the Project is in Attachment A of this Agreement. The total cost of the Pine Creek Ranch is \$5.65 million. The Council has recommended and prioritized approximately \$3.2 million for Fiscal Years 1997-1999 for the Project. BPA has agreed to

fund the initial \$3.2 million and to work with the Tribe and Council to have BPA fund the remaining \$2.45 million in future fiscal years. In addition, the parties anticipate an opportunity to expand the scope of the Project to include the Wagner Ranch, an adjoining parcel of approximately 10,000 acres of habitat. If the Wagner Ranch is added to the Project, its acquisition and management shall be pursuant to this Agreement.

D. BPA has completed the Wildlife Mitigation Program Final Environmental Impact Statement (March 1997) and Record of Decision (June 1997). This EIS and a Supplement Analysis addressing the acquisition and management of the Project provide the basis for National Environmental Policy Act compliance for the Project.

E. BPA funding under this Agreement will be provided in a manner consistent with section 4(h)(10)(D) of the Act.

F. The Tribe will dedicate the Project to wildlife habitat protection permanently and will manage it according to the terms of this Agreement and the site-specific management plan (Plan) that the Tribe will prepare.

G. The purpose of this Agreement is to provide a mechanism for the BPA to fund, and the Tribe to implement, the protection, mitigation, and enhancement of wildlife habitat permanently to help fulfill BPA's duties under the Northwest Power Act. To implement this Agreement, the following activities will typically take place:

(i) Pursuant to a separate Intergovernmental Contract, the Tribe will conduct pre-project studies and analysis, such as estimating Habitat Evaluation Procedure (HEP) values for the Project, conducting landowner negotiations, and assisting BPA in National Environmental Policy Act compliance.

(ii) Under another Intergovernmental Contract, the Tribe will receive funding for Project acquisition or implementation. After acquisition or approval for implementation, the Tribe will conduct a baseline Habitat Evaluation Procedure, showing actual habitat units at the Project, and prepare a Management Plan.

(iii) Subsequent agreements will provide funding for habitat improvements, operation and maintenance, and follow-up Habitat Evaluation Procedures.

AGREEMENT

1. BPA Obligations. (a) In consideration of the promises and covenants made and set out herein, BPA shall make monetary transfers to the Tribe in amounts and at times mutually agreed upon by the parties and after BPA receives a signed Intergovernmental Contract and invoice from the Tribe.

(b) BPA shall reimburse the Tribe's costs of complying with federal real property acquisition law, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655, in the implementation of the Project.

(c) BPA shall also provide a reasonable amount of additional funds for operation and maintenance to help the Tribe ensure the habitat's natural characteristics and mitigation qualities are developed and self-sustaining. The parties expect those amounts to include allowances for items and activities such as vehicle acquisition, building maintenance, Project management, noxious weed treatment, and habitat evaluation. All operations and maintenance funding will be subject to a yearly prioritization process administered by the Council, its assigns or successors. By January 30, 2002, the parties shall make their best

efforts to negotiate a long-term operation and maintenance funding plan for payment on an annual basis, through establishment of a trust fund, or by any other means agreed to by the parties. Until such time that a long term agreement is reached, operations and maintenance funding will continue to be subject to the annual prioritization process.

(d) Where this Agreement grants BPA approval authority--of the Management Plan, for example--then unless provided otherwise BPA shall complete it's review and announce its decision within a reasonable time, typically within 30 days. For amended or redrafted submissions, review should typically be within 14 days. BPA shall not withhold its approval unreasonably.

2. Project Fund. (a) The monies provided pursuant to section 1 above, any interest earned from them, and net income earned from the Project shall constitute the Pine Creek Ranch Mitigation Fund (Fund). Subject to the prioritization process and prior BPA approval, the Tribe may use the Fund to acquire the Project and fulfill its other obligations under this agreement. The Tribe shall maintain the Fund in a discreet account similar to other accounts managed by the Tribe. The Tribe shall maintain accounting for the Fund sufficient to allow tracking of all income and expenditures for the Fund in accordance with generally accepted accounting principles.

(b) In addition to monies provided pursuant to section 1 above, the Tribe may use net revenue received from managing the Project, including but not limited to conservation reserve program payments or other similar payments, to pay costs associated with managing the Project or to implement the Plan. Such revenues generated that are in excess of amounts needed to pay property taxes may be subtracted from O&M funds that would otherwise have been provided by BPA, unless otherwise agreed by the parties.

3. Habitat Acquisition (a) Habitat Units. The Tribe shall acquire or otherwise provide BPA with habitat units (HUs) as specified in the Intergovernmental Contract(s) between the parties to implement the Project.

(b) Wildlife Inventory and Management Plans. The Tribe shall develop an inventory of the wildlife habitat on the Project. Based on the information obtained from the inventory the Tribe shall develop a site specific management plan (Plan). The Tribe shall develop the Plan within one year of completion of the baseline actual HEP described in section 4 below. The Tribe shall obtain BPA's review and approval of the Plan prior to implementing it. The completed plan shall be incorporated into and made a part of this Agreement. The Plan will focus on habitat management designed to achieve and maintain native habitat that is naturally self-sustaining. The Tribe will develop the Plan in consultation with any federal, state, tribal or public entity that wishes to participate. The Plan should address management methods and, if necessary, mitigation for all resources and incorporate the NEPA ROD by reference. The Tribe will integrate management planning for historic and cultural resources, as defined by the National Historic Preservation Act, with the wildlife management practices as a means of avoiding impacts to cultural and historic resources. Cultural resource surveys shall be done prior to acquisition of the Wagner Ranch and before initiating on the Project non-exempt ground-disturbing activities identified in the Wildlife EIS. The Tribe will also avoid sensitive sites if at all possible in implementing habitat improvement actions. Only ground-disturbing activities approved in the Plan may be undertaken.

(c) NEPA Compliance. The Tribe shall assist BPA in complying with NEPA by applying the process outlined in the BPA Wildlife Mitigation Programmatic EIS and its Record of Decision (ROD) to the Project. This process includes assisting BPA in the completion of a Supplement Analysis which will consider (1) whether the Project is substantially consistent with the ROD relevant to environmental concerns, and (2)

whether there are significant new circumstances or information relevant to environmental concerns. The NEPA compliance will be done prior to the acquisition of the Wagner Ranch.

(d) The Tribe will have all management and operation control of the Project, and will therefore be responsible for all incidents of ownership of real property interests acquired with the Fund. The Tribe shall hold harmless and indemnify BPA from any liability from any incident of ownership that may arise in the implementation of the Plan; provided BPA retains liability as provided for under the Federal Torts Claims Act. Such incidents of ownership include, but are not limited to, hazardous waste response, cultural resource mitigation, and tort liability. Should a catastrophic event such as a wildfire, destroy or diminish the wildlife habitat, the Tribe shall have no obligation to reproduce the pre-existing wildlife values any faster than natural regeneration reproduces them.

(e) The Tribe will ensure that all the habitat acquired, improved, or managed with BPA funds is permanently protected and managed for wildlife on behalf of BPA, preventing any and all uses of the properties that are inconsistent with this Agreement, the Northwest Power Planning Council's Columbia River Basin Fish and Wildlife Program, the Northwest Power Planning Act, and the Plan required by section 3(b). Prohibited uses of the habitat acquired, improved, or managed under this Agreement include by way of example, but are not limited to, the following:

(i) Grazing of domestic livestock and feral horses and cattle on the properties unless used as a method to manage the properties for wildlife as outlined in the Plan,

(ii) Timber harvesting, except such harvesting as is consistent with the Plan for the purpose of improving the properties as wildlife habitat, as is necessary for proper fire or land management, or protection of person or property as outlined in the Plan, and

(iii) All residential, commercial, or industrial uses of the properties, that are not permitted in the Plan, with the possible exception of a home site for a Project manager and the maintenance and use of the buildings, on the lands at the time they are acquired, for purposes furthering the intent of this Agreement. Unless otherwise agreed by the parties in writing, the Tribe will achieve permanent protection for wildlife habitat as described in section 6.

4. BPA Credit. The Tribe shall support BPA's taking of protection, mitigation, and enhancement credit. BPA intends to seek or assert credit as follows:

(a) For having used BPA funds to purchase, improve, and manage the Project, BPA shall receive as a credit to wildlife mitigation under the Act, at a minimum, the HUs agreed upon in the Intergovernmental Contract(s), and as a maximum, the HUs achieved or acquired.

(i) BPA shall receive full credit for all HUs achieved through protection or improvement activities. Full credit for protection means one credit for each HU acquired. Full credit for improvement or enhancement activities means one credit for each HU achieved over the baseline actual HEP. If BPA funds only a portion of the Project, BPA shall receive full credit in proportion to the share of costs it provides.

(ii) A minimum of three HEP events is anticipated. The first is an estimate of HUs; a full or complete HEP is not expected. This estimate will be used in

the Intergovernmental Contract conveying funds to Tribe for acquisition of the Project. Next is the baseline HEP analyses of actual or existing HUs on the Ranch. This second HEP event will precede development of the Plan. Finally, the Tribe will conduct additional HEP analysis to evaluate the results of implementing the Plan.

(b) The Tribe will conduct HEPs, using the HEP guidelines developed by the U.S. Fish and Wildlife Service. The parties will identify the study species in the Project's Intergovernmental Contract(s). Species and habitat selection will generally be based on the Wildlife Impact Assessment, John Day Project, Oregon and Washington (Annual Report 1990, DOE/BP - 924 30-1). HEP models will be followed when available for target species; however, some modifications may be necessary. For example, when models are not available or applicable for one species, the parties may agree to substitute other species. The Tribe will notify BPA of the HEPs in time for BPA to observe the HEPs. The results of the HEPs shall be used to evaluate the full credit due.

(i) Baseline HEP. The Tribe will conduct the baseline HEP to determine the then existing HUs at the Project within one year following the acquisition and prior to undertaking habitat improvement activities.

(ii) Subsequent HEPs. If the Project involves minor habitat improvement activities, such as non-native vegetation removal, minimal revegetation or minimal mechanical manipulation, HEP sampling should occur within five to seven years following completion of the improvement activities. If the Project involves major habitat improvement activities, such as revegetation, mechanical manipulation or other large scale land use modifications, HEP sampling should occur seven to ten years following completion of the improvement activities.

(iii) The parties may conduct additional HEP studies as agreed upon in an Intergovernmental Contract. The party requesting the study shall fund it unless the parties agree otherwise.

(c) BPA shall receive full credit for all HUs, including those from both the acquisition of real property interests and from habitat improvement and management activities which are a direct result of BPA funding. BPA may credit these HUs toward its mitigation duty for wildlife habitat losses at the John Day Project or any other Federal Columbia River Power System project (i) agreed to by BPA, the Tribe and the Council, or (ii) adopted by BPA consistent with the Northwest Power Act and applicable law.

(d) If another crediting methodology is imposed by applicable law or by judicial decision, or agreed to among the Council, BPA and the Tribe--and not overturned by any court of competent jurisdiction, that formula shall be used to recompute the credit provided in this part and the recomputed credit shall be used for all purposes, including the final determination of BPA's ultimate obligation to provide wildlife mitigation, protection and enhancement; however, in no event will any such recalculation affect BPA's obligations under this Agreement.

(e) The Tribe agrees that BPA's expenditure of money is consistent with sections 4(h) and 10(e) of the Act. The Tribe shall support BPA's obtaining full credit for its expenditures with respect to protecting and managing existing habitat on the Project, and for habitat improvements when implemented on the Project, so long as BPA complies with the terms of this Agreement, including but not limited to BPA's obligation to provide operation and maintenance funding as provided in section 1(c).

5. Acquisition Process. The Tribe may utilize its own processes in preparing to acquire real property interests. The Tribe will comply with federal real property acquisition laws, such as the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655. If the acquisition involves potential relocation and other costs of \$15,000 or more, the Tribe shall consult BPA's Manager, Real Property Services, before taking any action or making any commitments that may necessitate reimbursement by BPA under section 1(b). The Tribe shall obtain BPA's review and approval of an appraisal before the acquisition. BPA shall have ten calendar days to review the preliminary appraisal for compliance with Uniform Standards and Procedures of Appraisal Practices. BPA shall have five calendar days to approve the final appraisal after it has been revised and resubmitted, as necessary. Before acquisition of the Project, BPA shall conduct a hazardous material and petroleum products survey in a timely manner and promptly provide the Tribe a copy of the results.

6. Permanent Protection of Wildlife Mitigation. To ensure the Project is protected as self-sustaining native wildlife habitat permanently, the Tribe shall take title to it by a deed conveying fee simple subject to an executory interest in favor of BPA, in a form substantively equivalent to Attachment B. The Tribe shall record such deed and this Agreement in the appropriate county record. The parties intend that the real property transaction addressed in this Agreement shall be governed by ORS 105.950 to 105.975, Oregon's Uniform Statutory Rule Against Perpetuities.

7. Recording by the Tribe. Within 30 days of recording any conveyance described in section 6, the Tribe shall submit to the BPA contracting officer a copy of the recorded

documents showing the recording information. BPA may suspend its funding under section 1(c) if it has not received the recording information within 30 days of recording.

8. BPA Power Of Termination. Except as provided in section 10, if BPA determines that the Project is not being managed for wildlife habitat--as evidenced by a twenty percent drop in the highest documented actual HEP values and such reduction is not the result of force majeure as described in section 10 below-- and unless BPA provides written consent to the Tribe continuing to own and manage the Project despite the twenty percent drop, then fee title shall vest in BPA as provided by the deed conveying fee simple subject to an executory interest in favor of BPA that the Tribe will have had recorded as provided under section 6 above. This provision shall not apply if the United States takes the property into trust on behalf of the Tribe.

9. Tribal Power of Termination. In the event the Tribe determines that the operation and maintenance funds provided by BPA are inadequate to fulfill the Tribe's obligations under this Agreement the Tribe may provide BPA with written notice that the funds are inadequate and then take action as provided below.

(a) (i) Within 120 days of the letter, transfer any real property interests acquired with the Fund to BPA, upon receipt of BPA approval and acceptance. BPA shall assume full responsibility for managing the transferred property for the permanent protection of wildlife and wildlife habitat;

(ii) promptly sell at fair market value any remaining property and remit to BPA the received value less the Tribe's costs of each property sale, including reasonable management or other action to prepare the property for sale;

(iii) immediately transfer the balance of the Fund to BPA. The Fund may not be used to prepare property for sale or transfer under this provision without BPA's written approval.

(b) The Tribe may conduct a HEP on the Project and follow-up HEPs to determine HUs lost attributable to the reduction or elimination of BPA O&M funding as a result of prioritization or BPA action. Any loss of HUs may be subtracted from BPA's improvement HUs only, not acquisition HUs.

10. Force Majeure. Neither party shall be liable to the other or deemed in fault under this Agreement if and to the extent that the party's performance of the Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure includes, but is not limited to, acts of God, riots, strikes, fire, floods, epidemics, acts of government other than the Tribe or BPA, embargo, wrecks, or unavoidable delay in materials or manufacturing facilities from generally recognized sources in the applicable industry. The parties will make all reasonable efforts to resume performance promptly once the force majeure is eliminated. Tribe shall have no obligation to reproduce the Project's pre-existing wildlife habitat values any faster than natural regeneration reproduces them.

11. Acquisition, Exchange, Sale. If the Tribe determines that a sale or exchange of the Project would provide a net gain in HUs or aid in the fulfillment of the management

objectives as stated in this Agreement, then the Tribe may sell or exchange the Project ensuring the following conditions are met: (a) the new real property interests are of equal or greater wildlife habitat value, as measured by a habitat evaluation procedure, to the habitats targeted in this Agreement, or aid in fulfillment of the Project or facilitate management of real property already acquired, (b) BPA's Fish and Wildlife Division Director concurs in the sale or exchange, and (c) the Tribe complies with sections 6 and 7 of this agreement with regard to the new property acquired. BPA concurrence shall not be unreasonably withheld.

12. Conveyance to BPA. In the event of a conveyance of real property by the Tribe to BPA pursuant to section 9 of this Agreement, the Tribe will warrant (i) that it has not by affirmative act or negligence allowed any situation to occur with respect to the property, or entered into any leases or renewals, or other agreements relating to the property, that would frustrate BPA's ability to manage the property according to the site-specific management plan and (ii) that there is no known hazardous waste contamination on the Project.

13. Protection of Tribal Rights. Fishing, hunting, gathering and Tribal cultural and religious activities on the Project according to Tribal custom and law are not prohibited by this Agreement. Tribal members shall be subject to tribal regulation of wildlife harvest. All other hunters will be subject to state and federal regulations.

14. Public Access. The public shall have reasonable access to the Project. The Tribe may regulate access, provided that access and transportation regulations shall apply equally to tribal members and non-tribal members. The Tribe will not provide public access or use that will result in adverse impacts to wildlife, the reduction of wildlife habitat values, or the destruction of other natural resource values for which the Properties are managed, or impede

the increase in HEP value of improvement HUs. Nothing in this Agreement limits the authority or ability of the Tribe to manage the properties for public safety and wildlife habitat conservation, or to preserve and protect cultural, historic, and religious sites, and to carry out and protect the federally guaranteed rights of the Tribe and its members. Nothing in this Agreement limits or diminishes any treaty retained right or privilege of the Tribe or its members afforded under federal law as a result of the status of the Tribe or Tribal members, provided that treaty reserved rights will be exercised consistent with this Agreement.

15. Right to Enter. BPA shall have the right to enter upon the Project at reasonable times to monitor the Tribe's compliance with this Agreement and to enforce its terms.

16. Tribe Reporting. Beginning June 30, 2000, and every June 30 thereafter, or as agreed upon in Intergovernmental Contracts, the Tribe shall provide BPA an annual written report generally describing the real property interests in the Project, HEP analyses undertaken or in progress, and management activities undertaken or in progress. The Tribe shall also provide an accounting of the Fund at this time and provide, upon request, access to the records that will allow BPA to verify the accounting.

17. Limitation of Credit. The credit BPA obtains for the consideration paid to provide and maintain the project as wildlife habitat as required and provided in this Agreement shall not be affected or diminished as a result of the failure of the Tribe to carry out its obligations to maintain the properties as provided in this Agreement.

18. Binding Effect. This Agreement shall be binding on the parties and their assigns and successors. Either party shall have the right to enforce the terms of this Agreement as provided herein.

19. Dispute Resolution. BPA and the Tribe agree to submit in good faith any disputes regarding the implementation of this Agreement or the management of the Project to non-binding mediation. This provision shall be triggered when one party makes a written request for the other party to join in mediation. Within 30 days of this provision being triggered, the parties shall select a mediator, or if they are unable to select a mediator, each party shall select a mediator and the two selected will choose a third mediator who shall be the sole mediator. The parties shall use their best efforts to resolve the dispute in mediation. After a dispute has been in mediation for at least 60 days and there have been at least two mediation sessions, either party may initiate legal action to resolve the dispute. Except as provided in this part, pending completion of mediation no party shall initiate any legal proceeding except in aid of mediation.

20. Effective Date. This Agreement shall be effective when signed by the Chairman and the Secretary-Treasurer of the Tribal Council pursuant to Article 5, Section 1(a), (d) and (l) of the Tribal Constitution and Tribal Resolution # 9784 (Attachment C); BPA's Manager Real Property Services; BPA's Group Vice President of the Office of Environment, Fish and Wildlife; and the Secretary of Interior or his or her delegate.

21. Contract Approval. If a court of competent jurisdiction finds that the parties or either of them were not authorized to perform any obligation under this contract, this Agreement shall terminate and the parties will have no further obligations to each other under this Agreement. Upon such termination, and upon BPA's request and approval, the Tribe shall transfer title to real property acquired pursuant to section 3 to BPA, and convey to BPA any and all personal property acquired with funding provided by BPA under this Agreement; provided, the Tribe shall retain fixtures used for habitat improvement on land the Tribe

owned on or before the date of this Agreement. Unless otherwise agreed by the parties, the parties shall use their best efforts to enter into a new and binding agreement that accomplishes the intent of this Agreement. Either party may invoke the dispute resolution provisions of this Agreement to facilitate the negotiation of a new agreement.

22. Modification. The parties by mutual agreement may modify the terms of this Agreement. Any such modification shall be in writing signed by both parties. Should the Northwest Power Planning Council approve the acquisition of the Wagner Ranch, and BPA accepts that recommendation, then the parties may enter into additional Intergovernmental Contracts to effect that acquisition.

23. Applicable Law. All activities undertaken pursuant to this Agreement and the Intergovernmental Contracts must be in compliance with all applicable state and federal laws and regulations. Federal law shall govern the implementation of this Agreement and any action, whether mediated or litigated, brought or enforced. The Tribe grants a limited waiver of its sovereign immunity for BPA or its successors—but no other person or entity—if BPA alleges a breach of an obligation or duty by the Tribe under this Agreement and seeks to bring the Tribe into compliance with this Agreement or seeks payment of a monetary obligation arising from noncompliance; provided, any payments from the Tribe shall be payable only from monies, assets, or properties derived from the benefits of this Agreement—all other monies, assets or properties of the Tribe being unavailable to satisfy a judgment. The waivers of sovereign immunity by the United States bind BPA and can be found generally in the statutes establishing the jurisdiction of the United States District Courts, 28 U.S.C. § 1346, the Court of Claims, 28 U.S.C. § 1491, and the Federal Torts Claims Act, 28 U.S.C. §§ 1346, 1402, 2401, 2402, 2411, 2412, 2671 et seq.

24. Attorney Fees. In the event of litigation involving this Agreement each party shall bear its own costs and attorney fees, including those incurred on appeal.

25. Waiver. The failure of any party to require strict performance of any term of this Agreement or a party's waiver of performance shall not be a waiver of any future performance or of a party's right to require strict performance in the future.

26. Assignment. The Tribe may not assign or transfer its rights or delegate its responsibilities under this Agreement without written approval from BPA, which approval shall not be unreasonably withheld. The parties agree that Tribe will retain ownership of properties acquired in fee with the Fund and, unless otherwise agreed by the parties, may only delegate its duties through long term leases, conservation easements and management agreements.

27. In Lieu Funding. Tribe may use the Fund only for acquisitions and improvements that are in addition to, not in lieu of, other expenditures it is required to make under other agreements or provisions of law. Tribe will pay, from a source other than BPA, payments in lieu of taxes, county weed assessments and minimum noxious weed control costs as required by state law for the Project.

28. Notice. Any notice permitted or required by this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail.

Notices to BPA should be sent to:
[Project COTR] – KECW-4
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208

Notices to the Tribe should be sent to:
Director, Natural Resources
Confederated Tribes of the Warm Springs
Indian Reservation
Warm Springs, OR 97761

IN WITNESS WHEREOF, the parties have signed this Agreement below.

Bonneville Power Administration

By: (b)(6)

Date: 9/26/99

(b)(6)

9/28/99

Alexandra B. Smith
Group Vice President
Environment, Fish and Wildlife

By: (b)(6)

Date: 9/28/99

for John R. Cowger
Manager Real Property Services

Confederated Tribes of the Warm Springs Indian Reservation

By: (b)(6)

Date: 9/24/99

Olney Patt, Jr.
Chairman of the Tribal Council

By: (b)(6)

Date: 9-24-99

Charles V. Jackson
Secretary-Treasurer

Reviewed By:

(b)(6)

Date: 9-24-99

Gordon E. Cannon
Superintendent
Warm Springs Agency
Bureau of Indian Affairs

ATTACHMENT A

DESCRIPTION OF HABITAT TO BE PURCHASED

ATTACHMENT B

The Deed Conveying Fee Simple With an Executory Interest shall include the following provision or one substantively equivalent to it:

Tribe's acquisition of this real property has been enabled by the United States, Bonneville Power Administration (BPA), with the agreement that Tribe uses the property for wildlife habitat protection permanently and that title to this property shall vest in BPA, upon (1) the determination by BPA that this real property is not being managed for wildlife habitat protection, as described in the 1999 Pine Creek Ranch Wildlife Project Memorandum of Agreement recorded with this deed and on file with the BPA Manager, Real Property Services, and (2) BPA's choosing to accept conveyance of the property.

ATTACHMENT C
TRIBAL RESOLUTION

WC54686

EXHIBIT A

Located in WHEELER COUNTY, OREGON:

TRACT I:

IN TOWNSHIP 7 SOUTH, RANGE 19 EAST OF THE WILLAMETTE MERIDIAN:

Section 33: SE ¼ SE ¼; EXCEPTING therefrom a parcel of land described as follows: Beginning at a point which is 1,333.73 feet South and 1,417.82 feet East of the center of said Section 33; thence South 78°09'30" East, 233.51 feet thence South 9°28'30" East 389.98 feet; thence North 72°56' West 264.57 feet; thence North 11°06' East 135.41 feet; thence North 16°31'30" West 231.62 feet to the place of beginning.

Section 34: S ½ SW ¼; SW ¼ SE ¼.

Section 36: NE ¼ NE ¼; S ½ NE ¼; S ½; EXCEPTING therefrom a parcel of land located in the SE ¼ of said Section 36 described as follows: Commencing at a rock 30 x 24 x 20 inches and marked thus + situated near the East boundary of the NW ¼ SE ¼ of said Section 36 and 21.8 chains along the Pine Creek County Road Northwest but not due Northwest of the sixth milestone on said County Road; thence North 72-¾° West 3.15 chains to a stake in rock mound; thence North 17.25° East 3.155 chains to rock mound; thence South 72.75° East 3.155 chains to rock 24 x 24 x 20 inches marked +, thence South 17.25° West 3.155 chains to place of beginning.

IN TOWNSHIP 7 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

Section 19: Lots 3 and 4; SE ¼ NW ¼; NW ¼ SW ¼; SE ¼.

Section 20: SW ¼ SW ¼.

Section 24: S ½ SE ¼.

Section 25: All, EXCEPTING therefrom that portion lying Southerly and Easterly of State Highway No. 218.

Section 26: E ½ E ½; SW ¼ SE ¼.

Section 29: SW ¼ NW ¼; W ½ SW ¼; E ½ W ½; SW ¼ SE ¼.

Section 30: Lots 1, 2, 3, and 4; E ½ W ½; E ½.

Section 31: Lots 1, 2, 3, and 4; E ½ W ½; W ½.

EXCEPTING therefrom a parcel of land lying in the S ½ SE ¼ of said Section 31 described as follows: Beginning at the South quarter corner of said Section 31; thence North 34°04'15" East 899.82 feet to the true point of beginning; thence North 65°46'30" East 304.81 feet; thence South 73°17'00" East 255.85 feet; thence South 38°53'40" East 285.91 feet; thence South 66°45'40" East 640.71 feet; thence South 89°04'30" East 198.73 feet; thence North 14°50'00" East 270.0 feet; thence North 75°10'00" West 815.0 feet; thence North 14°50'00" East 280.0 feet; thence North 75°10'00" West 701.75 feet; thence South 14°50'00" West 481.15 feet the true point of beginning.

Section 32: W ½; SE ¼ SE ¼.

Section 33: N ½ S ½; S ½ SW ¼.

Section 34: S ½; S ½ N ½.

Section 35: N ½ NE ¼; S ½ N ½; S ½.

Section 36: N ½; N ½ S ½, EXCEPTING therefrom that portion lying Southerly and Easterly of State Highway No. 218.

See Exhibit A - Continued (Page 1)

WC54686

Exhibit A - Continued (Page 1)

Located in WHEELER COUNTY, OREGON:

IN TOWNSHIP 7 SOUTH, RANGE 21 EAST OF THE WILLAMETTE MERIDIAN:

Section 19: NE $\frac{1}{4}$ SW $\frac{1}{4}$; SE $\frac{1}{4}$; Lots 3 and 4, EXCEPTING therefrom that portion lying Southerly and Easterly of State Highway No. 218.

Section 30: NE $\frac{1}{4}$ NW $\frac{1}{4}$; Lots 1, and 2 EXCEPTING therefrom that portion lying Southerly and Easterly of State Highway No. 218.

IN TOWNSHIP 8 SOUTH, RANGE 19 EAST OF THE WILLAMETTE MERIDIAN:

Section 1: S $\frac{1}{2}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$; Lots 1, 2, 3, and 4.

Section 3: Lot 4.

Section 4: Portion of Lot 1 described as follows: Commencing at a point on Township line between Township 7 and 8 South, above Range, which is 74 rods West of the Northeast corner of said Lot 1, and running thence East on said Township line 74 rods to the Northeast corner of said Lot 1; thence following East boundary of said Lot 1, 67 rods to the Southeast corner of said Lot 1; thence West on the South boundary of said Lot 1, 21 rods, thence in a Northwesterly direction in a straight line to the place of beginning.

Section 12: N $\frac{1}{2}$ NE $\frac{1}{4}$.

IN TOWNSHIP 8 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

Section 1: Lots 3, 4, 5, 6, and 7.

Section 2: All, EXCEPTING therefrom a parcel of land lying in the S $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 2 described as follows: Beginning at a point which is 40 feet distant Northerly from (when measured at right angles to) the relocated centerline of the Shaniko-Fossil Highway at Engineer's Center Line Station 234+00; said point also being South 1,491 feet and East 565 feet from the Northwest corner of said Section 2; thence South 60°41' West parallel to said relocated centerline 400 feet; thence North 29°19' West 210 feet; thence 60°41' parallel to and 250 feet from said centerline 400 feet; thence South 29°19' East 210 feet to the point of beginning.

Section 3: All.

Section 4: All.

Section 5: All.

Section 6: S $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$; Lots 1, 2, 3, 4, 5, and 6.

Section 7: NE $\frac{1}{4}$; E $\frac{1}{2}$ SE $\frac{1}{4}$.

Section 8: NE $\frac{1}{4}$; E $\frac{1}{2}$ W $\frac{1}{2}$; E $\frac{1}{2}$ SE $\frac{1}{4}$; Lots 1, 2, 3, and 4.

Section 9: All EXCEPT Lot 3.

Section 10: All.

Section 11: E $\frac{1}{2}$ W $\frac{1}{2}$; NE $\frac{1}{4}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ SE $\frac{1}{4}$; W $\frac{1}{2}$ E $\frac{1}{2}$; Lots 1, 2, 3, and 4.

Section 12: SW $\frac{1}{4}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$; Lots 1 and 4.

Section 13: All.

Section 14: All.

Section 15: E $\frac{1}{2}$ E $\frac{1}{2}$; W $\frac{1}{2}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$; NW $\frac{1}{4}$ SE $\frac{1}{4}$; Lot 3.

Section 16: All.

Section 17: All.

Section 18: E $\frac{1}{2}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$; E $\frac{1}{2}$ W $\frac{1}{2}$.

See Exhibit A - Continued (Page 2)

9/23

WC54686

Exhibit A - Continued (Page 2)

Located in WHEELER COUNTY, OREGON:

IN TOWNSHIP 8 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

- Section 19: N $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$ NE $\frac{1}{4}$.
- Section 20: E $\frac{1}{2}$ NW $\frac{1}{4}$; Lots 1, and 2: W $\frac{1}{2}$ NE $\frac{1}{4}$.
- Section 21: E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$; Lot 4; NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$.
- Section 22: E $\frac{1}{2}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; Lots 1, 2, and 4.
- Section 23: All.
- Section 24: All.
- Section 25: All.
- Section 26: NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$; NW $\frac{1}{4}$ SE $\frac{1}{4}$; E $\frac{1}{2}$ SE $\frac{1}{4}$.
- Section 27: Lot 1.
- Section 28: N $\frac{1}{2}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$; Lot 1.
- Section 29: SE $\frac{1}{4}$ NE $\frac{1}{4}$.
- Section 36: All.

IN TOWNSHIP 8 SOUTH, RANGE 21 EAST OF THE WILLAMETTE MERIDIAN:

- Section 17: S $\frac{1}{2}$ N $\frac{1}{2}$; S $\frac{1}{2}$.
- Section 18: All.
- Section 19: All.
- Section 20: N $\frac{1}{2}$; N $\frac{1}{2}$ SW $\frac{1}{4}$.
- Section 21: NE $\frac{1}{4}$ NW $\frac{1}{4}$; Lots 1 and 2.
- Section 29: E $\frac{1}{2}$ W $\frac{1}{2}$; Lots 1, 2, 3, and 4.
- Section 30: All.
- Section 31: All.
- Section 32: SE $\frac{1}{4}$ SW $\frac{1}{4}$; Lots 1, 2, 3, and 4.

IN TOWNSHIP 9 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

- Section 1: S $\frac{1}{2}$ N $\frac{1}{2}$.

TRACT II:

IN TOWNSHIP 7 SOUTH, RANGE 19 EAST OF THE WILLAMETTE MERIDIAN:

- Section 34: That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ lying South of the Oregon State Highway No. 218.
- Section 35: The E $\frac{1}{2}$ SE $\frac{1}{4}$; those parts of the W $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ lying South of the Oregon State Highway No. 218.

IN TOWNSHIP 8 SOUTH, RANGE 19 EAST OF THE WILLAMETTE MERIDIAN:

- Section 1: S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$.
- Section 2: All.
- Section 3: Lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$.
- Section 11: Lots 1 and 2, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$.
- Section 12: NW $\frac{1}{4}$.

COPY

**AMENDED AND RESTATED PINE CREEK RANCH FISH AND WILDLIFE
PROJECT
MEMORANDUM OF AGREEMENT**

This Amended and Restated Pine Creek Ranch Wildlife Project Memorandum of Agreement is made by and between **THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON** (“Tribe”) and **THE UNITED STATES OF AMERICA**, acting through the Department of Energy, Bonneville Power Administration (“BPA”).

RECITALS

WHEREAS, the Tribe and BPA are parties to that certain Pine Creek Ranch Wildlife Project Memorandum of Agreement dated September 28, 1999, and now desire to amend and restate that agreement as set forth herein.

WHEREAS, The Tribe is a sovereign entity with rights reserved in the Treaty with the Tribes of Middle Oregon of June 25, 1855 (12 Stat. 963). These rights include the authority to co-manage fish and wildlife and their habitats in the area ceded by the Tribe to the United States.

WHEREAS, BPA is a power marketing agency within the United States Department of Energy. The Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501 (Act) directs BPA to protect, mitigate, and enhance fish and wildlife affected by the development and operation of federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Act, the program adopted by the Pacific Northwest Electric Power and Conservation Planning Council (Council) under subsection 4(h) of the Act, and other environmental laws.

WHEREAS, The Tribe developed, in 1999, the Pine Creek Ranch Project (Project) to assist BPA in fulfilling its wildlife mitigation obligation associated with the John Day Dam. A legal description of the Project is in Attachment A of this Agreement. The total cost of the Pine Creek Ranch was \$5.65 million. The Council recommended and prioritized approximately \$3.2

million for Fiscal Years 1997-1999 for the Project. BPA funded the initial \$3.2 million, in 1999, the remaining \$2.45 million in subsequent fiscal years.

WHEREAS, BPA completed a Wildlife Mitigation Program Final Environmental Impact Statement (March 1997), the Watershed Management Program Final Environmental Impact Statement (July 1997), and their Record of Decision. This EIS and a Supplemental Analysis addressing the acquisition and management of the Project provided the basis for National Environmental Policy Act compliance for the Project.

WHEREAS, BPA funding under this Agreement has been and will be provided in a manner consistent with section 4(h)(10)(D) of the Act.

WHEREAS, The Tribe has and will continue to dedicate the Project to wildlife habitat protection permanently and will manage it according to the terms of this Agreement and the site-specific management plan (Plan) that the Tribe will prepare.

WHEREAS, The purpose of this Agreement is to provide a mechanism for the BPA to fund, and the Tribe to implement, the protection, mitigation, and enhancement of wildlife habitat permanently to help fulfill BPA's duties under the Northwest Power Act. To implement this Agreement, the following activities will typically take place:

(i) Pursuant to a separate Intergovernmental Contract, the Tribe will conduct pre-project studies and analysis, such as estimating Habitat Evaluation Procedure values for the Project, conducting landowner negotiations, and assisting BPA in National Environmental Policy Act compliance.

(ii) Under another Intergovernmental Contract, the Tribe will receive funding for Project acquisition or implementation. After acquisition or approval for implementation, the Tribe will conduct a baseline Habitat Evaluation Procedure, showing actual habitat units at the Project, undertake a fish habitat survey and prepare a Management Plan.

(iii) Subsequent agreements will provide funding for habitat improvements, operation and maintenance, and follow-up Habitat Evaluation Procedures.

WHEREAS, the Tribe and BPA anticipated in 1999 the opportunity to expand the scope of the Project to include the Wagner Ranch, an adjoining parcel of approximately 10,000 acres of habitat, a legal description of which is attached as Attachment B. Wagner Ranch is contiguous with Pine Creek and the parties intent the properties to be managed as a single block of fish and wildlife habitat. **WHEREAS**, the Tribe and BPA now wish to purchase the Wagner Ranch and include it within the scope of the Pine Creek Ranch Wildlife Project (“Project”).

AGREEMENT

1. BPA Obligations. (a) In consideration of the promises and covenants made and set out herein, BPA shall make monetary transfers to the Tribe in amounts and at times mutually agreed upon by the parties and after BPA receives a signed Intergovernmental Contract and invoice from the Tribe.

(b) BPA shall reimburse the Tribe’s costs of complying with federal real property acquisition law, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655, in the implementation of the Project.

(c) BPA shall also provide a reasonable amount of additional funds for operation and maintenance to help the Tribe ensure the habitat's natural characteristics and mitigation qualities are developed and self-sustaining. The parties expect those amounts to include allowances for items and activities such as vehicle acquisition, building maintenance, Project management, noxious weed treatment, and habitat evaluation. All operations and maintenance funding will be subject to a yearly prioritization process administered by the Council, its assigns or successors. By January 30, 2003, the parties shall make their best efforts to negotiate a long-term operation and maintenance funding plan for payment on an annual basis, through establishment of a trust fund, or by any other means agreed to by the parties. Until such time that a long term agreement is reached, operations and maintenance funding will continue to be subject to the annual prioritization process.

(d) Where this Agreement grants BPA approval authority--of the Management Plan, for example--then unless provided otherwise BPA shall complete its review and announce its decision within a reasonable time, typically within 30 days. For amended or redrafted submissions, review should typically be within 14 days. BPA shall not withhold its approval unreasonably.

2. Project Fund. (a) The monies provided pursuant to section 1 above, any interest earned from them, and net income earned from the Project shall constitute the Pine Creek Ranch Mitigation Fund (Fund). Subject to the prioritization process and prior BPA approval, the Tribe may use the Fund to acquire the Project and fulfill its other obligations under this agreement. The Tribe shall maintain the Fund in a discreet account similar to other accounts managed by the Tribe. The Tribe shall maintain accounting for the Fund sufficient to allow tracking of all income and expenditures for the Fund in accordance with generally accepted accounting principles.

(b) In addition to monies provided pursuant to section 1 above, the Tribe may use net revenue received from managing the Project, including but not limited to conservation reserve program payments or other similar payments, to pay costs associated with managing the Project or to implement the Plan. Such revenues generated that are in excess of amounts needed to pay property taxes may be subtracted from O&M funds that would otherwise have been provided by BPA, unless otherwise agreed by the parties.

3. Habitat Acquisition (a) Habitat Units. The Tribe shall acquire or otherwise provide BPA with habitat units (HUs) as specified in the Intergovernmental Contract(s) between the parties to implement the Project.

(b) Habitat Inventory and Management Plans. The Tribe shall develop an inventory of the fish and wildlife habitat on the Project. Based on the information obtained from the inventory the Tribe shall develop a site specific management plan (Plan). The Tribe shall develop the Plan within one year of completion of the baseline actual HEP and fish habitat inventory described in section 4 below. The Tribe shall obtain BPA's review and approval of the Plan prior to implementing it. The completed plan shall be incorporated into and made a part of this

Agreement. The Plan will focus on habitat management designed to achieve and maintain native habitat that is naturally self-sustaining. The Tribe will develop the Plan in consultation with any federal, state, tribal or public entity that wishes to participate. The Plan should address management methods and, if necessary, mitigation, for all resources incorporate the NEPA ROD by reference. The Tribe will integrate management planning for historic and cultural resources, as defined by the National Historic Preservation Act, with the fish and wildlife management practices as a means of avoiding impacts to cultural and historic resources. Cultural resource surveys shall be done prior to acquisition of the Wagner Ranch and before initiating on the Project non-exempt ground-disturbing activities identified in the Wildlife EIS. The Tribe will also avoid sensitive sites if at all possible in implementing habitat improvement actions. Only ground-disturbing activities approved in the Plan may be undertaken.

(c) NEPA Compliance. The Tribe shall assist BPA in complying with NEPA by applying the process outlined in the BPA Wildlife Mitigation and Watershed Management Programmatic EISs and their Records of Decision (ROD) to the Project. This process includes assisting BPA in the completion of a Supplement Analysis which will consider (1) whether the Project is substantially consistent with the ROD relevant to environmental concerns, and (2) whether there are significant new circumstances or information relevant to environmental concerns. The NEPA compliance will be done prior to the acquisition of the Wagner Ranch.

(d) The Tribe will have all management and operation control of the Project, and will therefore be responsible for all incidents of ownership of real property interests acquired with the Fund. The Tribe shall hold harmless and indemnify BPA from any liability from any incident of ownership that may arise in the implementation of the Plan; provided BPA retains liability as provided for under the Federal Torts Claims Act. Such incidents of ownership include, but are not limited to, hazardous waste response, cultural resource mitigation, and tort liability. Should a catastrophic event such as a wildfire, destroy or diminish the fish and wildlife habitat, the Tribe shall have no obligation to reproduce the pre-existing wildlife values any faster than natural regeneration reproduces them.

(e) The Tribe will ensure that all the habitat acquired, improved, or managed with BPA funds is permanently protected and managed for fish and wildlife on behalf of BPA, preventing any and all uses of the properties that are inconsistent with this Agreement, the Northwest Power Planning Council's Columbia River Basin Fish and Wildlife Program, the Northwest Power Planning Act, and the Plan required by section 3(b). Prohibited uses of the habitat acquired, improved, or managed under this Agreement include by way of example, but are not limited to, the following:

(i) Grazing of domestic livestock and feral horses and cattle on the properties unless used as a method to manage the properties for wildlife as outlined in the Plan,

(ii) Timber harvesting, except such harvesting as is consistent with the Plan for the purpose of improving the properties as wildlife habitat, as is necessary for proper fire or land management, or protection of person or property as outlined in the Plan, and

(iii) All residential, commercial, or industrial uses of the properties, that are not permitted in the Plan, with the possible exception of a home site for a Project manager and the maintenance and use of the buildings, on the lands at the time they are acquired, for purposes furthering the intent of this Agreement. Unless otherwise agreed by the parties in writing, the Tribe will achieve permanent protection for wildlife habitat as described in section 6.

(f) Management Plan and Wildlife and Fish Inventories for Wagner Ranch. Based on the information obtained from the following wildlife and fish inventories, the Tribe shall amend the Project management plan to include Wagner Ranch. The Tribe shall amend the management plan within two years of acquisition of the Wagner Ranch. The amended management plan will focus on the criteria set forth in Section 3(b). The Tribe shall obtain BPA's review and approval of the amended management plan before implementing it. The amended management plan shall be incorporated into and made a part of this Agreement.

(i) Fish Habitat Inventory. The Tribe shall complete a fish habitat inventory on the Wagner Ranch, including a baseline, modified Hankin and Reeves, or other widely accepted stream habitat assessment.

(ii) **Wildlife Habitat Inventory.** The Tribe shall complete a wildlife habitat inventory for Wagner Ranch, using the HEP methodology. The Tribe will conduct HEPs, using the HEP guidelines developed by the U.S. Fish and Wildlife Service. The parties will identify the study species in the Project's Intergovernmental Contract(s). Species and habitat selection will generally be based on the Wildlife Impact Assessment, John Day Project, Oregon and Washington (Annual Report 1990, DOE/BP-924 30-1). HEP models will be followed when available for target species; however, some modifications may be necessary. For example, when models are not available or applicable for one species, the parties may agree to substitute other species. The Tribe will notify BPA of the HEPs in time for BPA to observe the HEPs.

The Tribe must conduct a baseline HEP to determine then existing HUs at the Wagner Ranch within one year following the acquisition and prior to undertaking wildlife habitat improvement activities. The parties may conduct additional HEP studies as agreed upon in an Intergovernmental Contract. The party requesting the study shall fund it, unless the parties agree otherwise.

4. BPA Credit. The Tribe shall support BPA's taking of protection, mitigation, and enhancement credit. BPA intends to seek or assert credit as follows:

(a) For having used BPA funds to purchase, improve, and manage the Project, BPA shall receive as a credit to wildlife mitigation under the Act, at a minimum, the HUs agreed upon in the Intergovernmental Contract(s), and as a maximum, the HUs achieved or acquired.

(i) BPA shall receive full credit for all HUs achieved through protection or improvement activities. Full credit for protection means one credit for each HU acquired. Full credit for improvement or enhancement activities means one credit for each HU achieved over the baseline actual HEP. If BPA funds only a portion of the Project, BPA shall receive full credit in proportion to the share of costs it provides.

(ii) A minimum of three HEP events is anticipated. The first is an estimate of HUs; a full or complete HEP is not expected. This estimate will be used in the Intergovernmental Contract conveying funds to Tribe for acquisition of the Project. Next is the baseline HEP analyses of actual or existing HUs on the Ranch. This second HEP event will precede development of the Plan. Finally, the Tribe will conduct additional HEP analysis to evaluate the results of implementing the Plan.

(b) The Tribe will conduct HEPs, using the HEP guidelines developed by the U.S. Fish and Wildlife Service. The parties will identify the study species in the Project's Intergovernmental Contract(s). Species and habitat selection will generally be based on upon the Wildlife Impact Assessment, John Day Project, Oregon and Washington (Annual Report 1990, DOE/BP - 924 30-1). HEP models will be followed when available for target species; however, some modifications may be necessary. For example, when models are not available or applicable for one species, the parties may agree to substitute other species. The Tribe will notify BPA of the HEPs in time for BPA to observe the HEPs. The results of the HEPs shall be used to evaluate the full credit due.

(i) Baseline HEP. The Tribe will conduct the baseline HEP to determine the then existing HUs at the Project within one year following the acquisition and prior to undertaking habitat improvement activities.

(ii) Subsequent HEPs. If the Project involves minor habitat improvement activities, such as non-native vegetation removal, minimal revegetation or minimal mechanical manipulation, HEP sampling should occur within five to seven years following completion of the improvement activities. If the Project involves major habitat improvement activities, such as revegetation, mechanical manipulation or other large scale land use modifications, HEP sampling should occur seven to ten years following completion of the improvement activities.

(iii) The parties may conduct additional HEP studies as agreed upon in an Intergovernmental Contract. The party requesting the study shall fund it unless the parties agree otherwise.

(c) BPA shall receive full credit for all HUs, including those from both the acquisition of real property interests and from habitat improvement and management activities which are a direct result of BPA funding. BPA may credit these HUs toward its mitigation duty for wildlife habitat losses at the John Day Project or any other Federal Columbia River Power System project (i) agreed to by BPA, the Tribe and the Council, or (ii) adopted by BPA consistent with the Northwest Power Act and applicable law.

(d) If another crediting methodology is imposed by applicable law or by judicial decision, or agreed to among the Council, BPA and the Tribe--and not overturned by any court of competent jurisdiction, that formula shall be used to recompute the credit provided in this part and the recomputed credit shall be used for all purposes, including the final determination of BPA's ultimate obligation to provide wildlife mitigation, protection and enhancement; however, in no event will any such recalculation affect BPA's obligations under this Agreement.

(e) The Tribe agrees that BPA's expenditure of money is consistent with sections 4(h) and 10(e) of the Act. The Tribe shall support BPA's obtaining full credit for its expenditures with respect to protecting and managing existing habitat on the Project, and for habitat improvements when implemented on the Project, so long as BPA complies with the terms of this Agreement, including but not limited to BPA's obligation to provide operation and maintenance funding as provided in section 1(c).

(f) Crediting for Wagner Ranch. The original Pine Creek Ranch Wildlife Project Memorandum of Agreement, Recital D, provided that "[I]f the Wagner Ranch is added to the Project, its acquisition and management shall be pursuant to this Agreement." The Tribe agrees to perform fish and wildlife habitat inventories for Wagner Ranch pursuant to Sections 3(f)(i) and (ii) of this Agreement. BPA believes it is entitled to crediting under the Act and pertinent biological opinions for fish, wildlife, and ESA benefits resulting from implementation of this Agreement and intends to take such credits in a manner consistent with the Act and the biological opinions. The Tribe takes no position in this MOA as to whether or not BPA is entitled to credit under the Act.

5. Acquisition Process. (a) The Tribe may utilize its own processes in preparing to acquire real property interests. The Tribe will comply with federal real property acquisition laws, such as the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655. If the acquisition involves potential relocation costs, the Tribe shall consult BPA's Manager, Real Property Services, before taking any action or making any commitments that may necessitate reimbursement by BPA under section 1(b). The Tribe shall obtain BPA's review and approval of an appraisal before the acquisition. BPA shall have ten calendar days to review the preliminary appraisal for compliance with Uniform Standards and Procedures of Appraisal Practices. BPA shall have five calendar days to approve the final appraisal after it has been revised and resubmitted, as necessary. Before acquisition of the Project, BPA shall conduct a hazardous material and petroleum products survey in a timely manner and promptly provide the Tribe a copy of the results.

(b) Allocating Responsibility for Wagner Ranch.

(i) Incidents of Ownership. Once acquisition is complete, the Tribe will have all management and operation control of Wagner Ranch and will, therefore, be responsible for all incidents of ownership of real property interests acquired under this Agreement.

(ii) Uniform Relocation Act. BPA agrees to hold harmless and indemnify the Tribe against claims arising under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601 to 4655, ("Uniform Relocation Act"), as long as the Tribe complies with the notice provisions of Section 5(a) of this Agreement.

(iii) Unauthorized Actions. If either party engages in actions that are not authorized by this Agreement, that party will indemnify and hold harmless the other party from any and all liability and costs resulting from such unauthorized action.

(iv) Management Plan's Allocation of Responsibility. The parties understand and agree that responsibility for actions taken pursuant to the Management Plan under Section 3(f) will be agreed to and allocated among the parties in the Management Plan, contract modifications, or subsequent Intergovernmental Contracts.

6. Permanent Protection of Wildlife Mitigation. (a) To ensure the Project is protected as self-sustaining native wildlife habitat permanently, the Tribe shall take title to it by a deed conveying fee simple subject to an executory interest in favor of BPA, in a form substantively equivalent to Attachment C. The Tribe shall record such deed and this Agreement in the appropriate county record. The parties intend that the real property transaction addressed in this Agreement shall be governed by ORS 105.950 to 105.975, Oregon's Uniform Statutory Rule Against Perpetuities.

(b) Title Requirements for Wagner Ranch. The Tribe shall take title to the Wagner Ranch by a deed conveying fee simple interest. To ensure that the Wagner Ranch is protected as self-sustaining native fish and wildlife habitat permanently, the Tribe shall execute the deed of conservation easement in favor of BPA, in a form substantially equivalent to Attachment D immediately upon obtaining ownership of the Project. At closing the Tribe shall record the deeds and easements in the appropriate county record.

(c) Rights of Way over Wagner Ranch. If at any time BPA needs a transmission line right-of-way over Wagner Ranch, the Tribe must grant BPA perpetual easements and rights-of-way, in a form substantively equivalent to Attachment E. Provided, prior to the Tribe granting such easements, BPA must first provide proof of compliance with all applicable Federal laws, including but not limited to the National Environmental Policy Act, the Endangered Species Act, and the Clean Water Act. Provided further, that BPA shall fund (1) the Tribe to complete additional habitat evaluations after the transmission facility is complete and (2) habitat improvements as agreed upon by the parties, such as fencing or replanting, to protect the remaining fish and wildlife habitat.

7. Recording by the Tribe. Within 30 days of recording any conveyance described in section 6, the Tribe shall submit to the BPA contracting officer a copy of the recorded documents showing the recording information. BPA may suspend its funding under section 1(c) if it has not received the recording information within 30 days of recording.

8. BPA Power Of Termination. Except as provided in section 10, if BPA determines that the Project is not being managed for fish and wildlife habitat--as evidenced by a twenty percent drop

in the highest documented actual HEP values and such reduction is not the result of force majeure as described in section 10 below--and unless BPA provides written consent to the Tribe continuing to own and manage the Project despite the twenty percent drop, then fee title shall vest in BPA as provided by the deed conveying fee simple subject to an executory interest in favor of BPA that the Tribe will have had recorded as provided under section 6 above. This provision shall not apply if the United States takes the property into trust on behalf of the Tribe.

9. Tribal Power of Termination. In the event the Tribe determines that the operation and maintenance funds provided by BPA are inadequate to fulfill the Tribe's obligations under this Agreement the Tribe may provide BPA with written notice that the funds are inadequate and then take action as provided below.

(a) (i) Within 120 days of the letter, transfer any real property interests acquired with the Fund to BPA, upon receipt of BPA approval and acceptance. BPA shall assume full responsibility for managing the transferred property for the permanent protection of fish and wildlife habitats;

(ii) promptly sell at fair market value any remaining property and remit to BPA the received value less the Tribe's costs of each property sale, including reasonable management or other action to prepare the property for sale;

(iii) immediately transfer the balance of the Fund to BPA. The Fund may not be used to prepare property for sale or transfer under this provision without BPA's written approval.

(b) The Tribe may conduct a HEP on the Project and follow-up HEPs to determine HUs lost attributable to the reduction or elimination of BPA O&M funding as a result of prioritization or BPA action. Any loss of HUs may be subtracted from BPA's improvement HUs only, not acquisition HUs.

10. Force Majeure. Neither party shall be liable to the other or deemed in fault under this Agreement if and to the extent that the party's performance of the Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the

control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure includes, but is not limited to, acts of God, riots, strikes, fire, floods, epidemics, acts of government other than the Tribe or BPA, embargo, wrecks, or unavoidable delay in materials or manufacturing facilities from generally recognized sources in the applicable industry. The parties will make all reasonable efforts to resume performance promptly once the force majeure is eliminated. Tribe shall have no obligation to reproduce the Project's pre-existing wildlife habitat values any faster than natural regeneration reproduces them.

11. Acquisition, Exchange, Sale. If the Tribe determines that a sale or exchange of the Project would provide a net gain in HUs or aid in the fulfillment of the management objectives as stated in this Agreement, then the Tribe may sell or exchange the Project ensuring the following conditions are met: (a) the new real property interests are of equal or greater wildlife habitat value, as measured by a habitat evaluation procedure, to the habitats targeted in this Agreement, or aid in fulfillment of the Project or facilitate management of real property already acquired, (b) BPA's Fish and Wildlife Division Director concurs in the sale or exchange, and (c) the Tribe complies with sections 6 and 7 of this agreement with regard to the new property acquired. BPA concurrence shall not be unreasonably withheld.

12. Conveyance to BPA. In the event of a conveyance of real property by the Tribe to BPA pursuant to section 9 of this Agreement, the Tribe will warrant (i) that it has not by affirmative act or negligence allowed any situation to occur with respect to the property, or entered into any leases or renewals, or other agreements relating to the property, that would frustrate BPA's ability to manage the property according to the site-specific management plan and (ii) that there is no known hazardous waste contamination on the Project.

13. Protection of Tribal Rights. Fishing, hunting, gathering and Tribal cultural and religious activities on the Project according to Tribal custom and law are not prohibited by this Agreement. Tribal members shall be subject to tribal regulation of wildlife harvest. All other hunters will be subject to state and federal regulations.

14. Public Access. The public shall have reasonable access to the Project. The Tribe may regulate access, provided that access and transportation regulations shall apply equally to tribal members and non-tribal members. The Tribe will not provide public access or use that will result in adverse impacts to fish and wildlife, the reduction of fish and wildlife habitat values, or the destruction of other natural resource values for which the Properties are managed, or impede the increase in HEP value of improvement HUs. Nothing in this Agreement limits the authority or ability of the Tribe to manage the properties for public safety and wildlife habitat conservation, or to preserve and protect cultural, historic, and religious sites, and to carry out and protect the federally guaranteed rights of the Tribe and its members. Nothing in this Agreement limits or diminishes any treaty retained right or privilege of the Tribe or its members afforded under federal law as a result of the status of the Tribe or Tribal members, provided that treaty reserved rights will be exercised consistent with this Agreement.

15. Right to Enter. BPA shall have the right to enter upon the Project at reasonable times to monitor the Tribe's compliance with this Agreement and to enforce its terms.

16. Tribe Reporting. Beginning June 30, 2000, and every June 30 thereafter, or as agreed upon in Intergovernmental Contracts, the Tribe shall provide BPA an annual written report generally describing the real property interests in the Project, HEP analyses undertaken or in progress, and management activities undertaken or in progress. The Tribe shall also provide an accounting of the Fund at this time and provide, upon request, access to the records that will allow BPA to verify the accounting.

17. Limitation of Credit. The credit BPA obtains for the consideration paid to provide and maintain the project as fish and wildlife habitat as required and provided in this Agreement shall not be affected or diminished as a result of the failure of the Tribe to carry out its obligations to maintain the properties as provided in this Agreement.

18. Binding Effect. This Agreement shall be binding on the parties and their assigns and successors. Either party shall have the right to enforce the terms of this Agreement as provided herein.

19. Dispute Resolution. BPA and the Tribe agree to submit in good faith any disputes regarding the implementation of this Agreement or the management of the Project to non-binding mediation. This provision shall be triggered when one party makes a written request for the other party to join in mediation. Within 30 days of this provision being triggered, the parties shall select a mediator, or if they are unable to select a mediator, each party shall select a mediator and the two selected will choose a third mediator who shall be the sole mediator. The parties shall use their best efforts to resolve the dispute in mediation. After a dispute has been in mediation for at least 60 days and there have been at least two mediation sessions, either party may initiate legal action to resolve the dispute. Except as provided in this part, pending completion of mediation no party shall initiate any legal proceeding except in aid of mediation.

20. Effective Date. The original Pine Creek Agreement was effective on September 28, 1999. This Amended and Restated Agreement shall be effective when signed by the Chairman of the Tribal Council pursuant to Article 5, Section 1(a), (d) and (l) of the Tribal Constitution and Tribal Resolution # _____ (Attachment F); BPA's Manager Real Property Services; and BPA's Group Vice President of the Office of Environment, Fish and Wildlife.

21. Contract Approval. If a court of competent jurisdiction finds that the parties or either of them were not authorized to perform any obligation under this contract, this Agreement shall terminate and the parties will have no further obligations to each other under this Agreement. Upon such termination, and upon BPA's request and approval, the Tribe shall transfer title to real property acquired pursuant to section 3 to BPA, and convey to BPA any and all personal property acquired with funding provided by BPA under this Agreement; provided, the Tribe shall retain fixtures used for habitat improvement on land the Tribe owned on or before the date of this Agreement. Unless otherwise agreed by the parties, the parties shall use their best efforts to enter into a new and binding agreement that accomplishes the intent of this Agreement. Either party may invoke the dispute resolution provisions of this Agreement to facilitate the negotiation of a new agreement.

22. Modification. The parties by mutual agreement may modify the terms of this Agreement. Any such modification shall be in writing signed by both parties. The parties may enter into additional Intergovernmental Contracts to effect the acquisition of Wagner Ranch.

23. Applicable Law. All activities undertaken pursuant to this Agreement and the Intergovernmental Contracts must be in compliance with all applicable state and federal laws and regulations. Federal law shall govern the implementation of this Agreement and any action, whether mediated or litigated, brought or enforced. THIS WAIVER OF SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. Without such waiver the contract would be unenforceable by BPA, BPA requires enforceability, and therefore there is no other workable alternative. The Tribe grants a limited waiver of its sovereign immunity for BPA or its successors--but no other person or entity--if BPA alleges a breach of an obligation or duty by the Tribe under this Agreement and seeks to bring the Tribe into compliance with this Agreement or seeks payment of a monetary obligation arising from noncompliance; provided, any payments from the Tribe shall be payable only from monies, assets, or properties derived from the benefits of this Agreement--all other monies, assets or properties of the Tribe being unavailable to satisfy a judgment. The waivers of sovereign immunity by the United States bind BPA and can be found generally in the statutes establishing the jurisdiction of the United States District Courts, 28 U.S.C. § 1346, the Court of Claims, 28 U.S.C. § 1491, and the Federal Torts Claims Act, 28 U.S.C. §§ 1346, 1402, 2401, 2402, 2411, 2412, 2671 et seq.

24. Attorney Fees. In the event of litigation involving this Agreement each party shall bear its own costs and attorney fees, including those incurred on appeal.

25. Waiver. The failure of any party to require strict performance of any term of this Agreement or a party's waiver of performance shall not be a waiver of any future performance or of a party's right to require strict performance in the future.

26. Assignment. The Tribe may not assign or transfer its rights or delegate its responsibilities under this Agreement without written approval from BPA, which approval shall not be unreasonably withheld. The parties agree that Tribe will retain ownership of properties acquired in fee with the Fund and, unless otherwise agreed by the parties, may only delegate its duties through long term leases, conservation easements and management agreements.

27. In Lieu Funding. Tribe may use the Fund only for acquisitions and improvements that are in addition to, not in lieu of, other expenditures it is required to make under other agreements or provisions of law. Tribe will pay, from a source other than BPA, payments in lieu of taxes, county weed assessments and minimum noxious weed control costs as required by state law for the Project.

28. Notice. Any notice permitted or required by this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail.

Notices to BPA should be sent to:
[Project COTR] B KECW-4
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208

Notices to the Tribe should be sent to:
Director, Natural Resources
Confederated Tribes of the Warm Springs
Indian Reservation
Warm Springs, OR 97761

IN WITNESS WHEREOF, each of the parties hereto has executed this Amended and Restated Pine Creek Ranch Wildlife Project Memorandum of Agreement.

BONNEVILLE POWER ADMINISTRATION

(b)(6) _____ Date: Aug 29, 2001
By: [Signature]
Alexandra B. Smith
Group Vice President
Environment, Fish and Wildlife

(b)(6) _____ Date: 8/29/01
By: _____
John R. Cowger
Manager, Real Property Services

CONFEDERATED TRIBES OF THE WARM SPRINGS INDIAN RESERVATION OF OREGON

(b)(6) _____ Date: Aug 28, 2001
By: _____
Charles V. Jackson
Secretary-Treasurer

ATTACHMENT A
PINE CREEK LEGAL DESCRIPTION

WC54686

EXHIBIT A

Located in WHEELER COUNTY, OREGON:

TRACT I:

IN TOWNSHIP 7 SOUTH, RANGE 19 EAST OF THE WILLAMETTE MERIDIAN:

Section 33: SE $\frac{1}{4}$ SE $\frac{1}{4}$; EXCEPTING therefrom a parcel of land described as follows: Beginning at a point which is 1,333.73 feet South and 1,417.82 feet East of the center of said Section 33; thence South 78°09'30" East, 233.51 feet thence South 9°28'30" East 389.98 feet; thence North 72°56' West 264.57 feet; thence North 11°06' East 135.41 feet; thence North 16°31'30" West 231.62 feet to the place of beginning.

Section 34: S $\frac{1}{2}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$.

Section 36: NE $\frac{1}{4}$ NE $\frac{1}{4}$; S $\frac{1}{2}$ NE $\frac{1}{4}$; S $\frac{1}{2}$; EXCEPTING therefrom a parcel of land located in the SE $\frac{1}{4}$ of said Section 36 described as follows: Commencing at a rock 30 x 24 x 20 inches and marked thus + situated near the East boundary of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 36 and 21.8 chains along the Pine Creek County Road Northwest but not due Northwest of the sixth milestone on said County Road; thence North 72-3/4° West 3.15 chains to a stake in rock mound; thence North 17.25° East 3.155 chains to rock mound; thence South 72.75° East 3.155 chains to rock 24 x 24 x 20 inches marked +, thence South 17.25° West 3.155 chains to place of beginning.

IN TOWNSHIP 7 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

Section 19: Lots 3 and 4; SE $\frac{1}{4}$ NW $\frac{1}{4}$; NW $\frac{1}{4}$ SW; SE $\frac{1}{4}$.

Section 20: SW $\frac{1}{4}$ SW $\frac{1}{4}$.

Section 24: S $\frac{1}{2}$ SE $\frac{1}{4}$.

Section 25: All, EXCEPTING therefrom that portion lying Southerly and Easterly of State Highway No. 218.

Section 26: E $\frac{1}{2}$ E $\frac{1}{2}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$.

Section 29: SW $\frac{1}{4}$ NW $\frac{1}{4}$; W $\frac{1}{2}$ SW $\frac{1}{4}$; E $\frac{1}{2}$ W $\frac{1}{2}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$.

Section 30: Lots 1, 2, 3, and 4; E $\frac{1}{2}$ W $\frac{1}{2}$; E $\frac{1}{2}$.

Section 31: Lots 1, 2, 3, and 4; E $\frac{1}{2}$ W $\frac{1}{2}$; W $\frac{1}{2}$.

EXCEPTING therefrom a parcel of land lying in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of said Section 31 described as follows: Beginning at the South quarter corner of said Section 31; thence North 34°04'15" East 899.82 feet to the true point of beginning; thence North 65°46'30" East 304.81 feet; thence South 73°17'00" East 255.85 feet; thence South 38°53'40" East 285.91 feet; thence South 66°45'40" East 640.71 feet; thence South 89°04'30" East 198.73 feet; thence North 14°50'00" East 270.0 feet; thence North 75°10'00" West 815.0 feet; thence North 14°50'00" East 280.0 feet; thence North 75°10'00" West 701.75 feet; thence South 14°50'00" West 481.15 feet the true point of beginning.

Section 32: W $\frac{1}{2}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$.

Section 33: N $\frac{1}{2}$ S $\frac{1}{2}$; S $\frac{1}{2}$ SW $\frac{1}{4}$.

Section 34: S $\frac{1}{2}$; S $\frac{1}{2}$ N $\frac{1}{2}$.

Section 35: N $\frac{1}{2}$ NE $\frac{1}{4}$; S $\frac{1}{2}$ N $\frac{1}{2}$; S $\frac{1}{2}$.

Section 36: N $\frac{1}{2}$; N $\frac{1}{2}$ S $\frac{1}{2}$, EXCEPTING therefrom that portion lying Southerly and Easterly of State Highway No. 218.

See Exhibit A - Continued (Page 1)

Exhibit A - Continued (Page 1)

Located in WHEELER COUNTY, OREGON:

IN TOWNSHIP 7 SOUTH, RANGE 21 EAST OF THE WILLAMETTE MERIDIAN:

- Section 19: NE $\frac{1}{4}$ SW $\frac{1}{4}$; SE $\frac{1}{4}$; Lots 3 and 4, EXCEPTING therefrom that portion lying Southerly and Easterly of State Highway No. 218.
- Section 30: NE $\frac{1}{4}$ NW $\frac{1}{4}$; Lots 1, and 2 EXCEPTING therefrom that portion lying Southerly and Easterly of State Highway No. 218.

IN TOWNSHIP 8 SOUTH, RANGE 19 EAST OF THE WILLAMETTE MERIDIAN:

- Section 1: S $\frac{1}{2}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$; Lots 1, 2, 3, and 4.
- Section 3: Lot 4.
- Section 4: Portion of Lot 1 described as follows: Commencing at a point on Township line between Township 7 and 8 South, above Range, which is 74 rods West of the Northeast corner of said Lot 1, and running thence East on said Township line 74 rods to the Northeast corner of said Lot 1; thence following East boundary of said Lot 1, 67 rods to the Southeast corner of said Lot 1; thence West on the South boundary of said Lot 1, 21 rods, thence in a Northwesterly direction in a straight line to the place of beginning.
- Section 12: N $\frac{1}{2}$ NE $\frac{1}{4}$.

IN TOWNSHIP 8 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

- Section 1: Lots 3, 4, 5, 6, and 7.
- Section 2: All, EXCEPTING therefrom a parcel of land lying in the S $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 2 described as follows: Beginning at a point which is 40 feet distant Northerly from (when measured at right angles to) the relocated centerline of the Shaniko-Fossil Highway at Engineer's Center Line Station 234+00; said point also being South 1,491 feet and East 565 feet from the Northwest corner of said Section 2; thence South 60°41' West parallel to said relocated centerline 400 feet; thence North 29°19' West 210 feet; thence 60°41' parallel to and 250 feet from said centerline 400 feet; thence South 29°19' East 210 feet to the point of beginning.
- Section 3: All.
- Section 4: All.
- Section 5: All.
- Section 6: S $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$; Lots 1, 2, 3, 4, 5, and 6.
- Section 7: NE $\frac{1}{4}$; E $\frac{1}{2}$ SE $\frac{1}{4}$.
- Section 8: NE $\frac{1}{4}$; E $\frac{1}{2}$ W $\frac{1}{2}$; E $\frac{1}{2}$ SE $\frac{1}{4}$; Lots 1, 2, 3, and 4.
- Section 9: All EXCEPT Lot 3.
- Section 10: All.
- Section 11: E $\frac{1}{2}$ W $\frac{1}{2}$; NE $\frac{1}{4}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ SE $\frac{1}{4}$; W $\frac{1}{2}$ E $\frac{1}{2}$; Lots 1, 2, 3, and 4.
- Section 12: SW $\frac{1}{4}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$; Lots 1 and 4.
- Section 13: All.
- Section 14: All.
- Section 15: E $\frac{1}{2}$ E $\frac{1}{2}$; W $\frac{1}{2}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$; NW $\frac{1}{4}$ SE $\frac{1}{4}$; Lot 3.
- Section 16: All.
- Section 17: All.
- Section 18: E $\frac{1}{2}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$; E $\frac{1}{2}$ W $\frac{1}{2}$.

See Exhibit A - Continued (Page 2)

Exhibit A - Continued (Page 2)

Located in WHEELER COUNTY, OREGON:

IN TOWNSHIP 8 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

- Section 19: N $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$ NE $\frac{1}{4}$.
- Section 20: E $\frac{1}{2}$ NW $\frac{1}{4}$; Lots 1, and 2: W $\frac{1}{2}$ NE $\frac{1}{4}$.
- Section 21: E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$; Lot 4; NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$.
- Section 22: E $\frac{1}{2}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; Lots 1, 2, and 4.
- Section 23: All.
- Section 24: All.
- Section 25: All.
- Section 26: NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$; NW $\frac{1}{4}$ SE $\frac{1}{4}$; E $\frac{1}{2}$ SE $\frac{1}{4}$.
- Section 27: Lot 1.
- Section 28: N $\frac{1}{2}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$; Lot 1.
- Section 29: SE $\frac{1}{4}$ NE $\frac{1}{4}$.
- Section 36: All.

IN TOWNSHIP 8 SOUTH, RANGE 21 EAST OF THE WILLAMETTE MERIDIAN:

- Section 17: S $\frac{1}{2}$ N $\frac{1}{2}$; S $\frac{1}{2}$.
- Section 18: All.
- Section 19: All.
- Section 20: N $\frac{1}{2}$; N $\frac{1}{2}$ SW $\frac{1}{4}$.
- Section 21: NE $\frac{1}{4}$ NW $\frac{1}{4}$; Lots 1 and 2.
- Section 29: E $\frac{1}{2}$ W $\frac{1}{2}$; Lots 1, 2, 3, and 4.
- Section 30: All.
- Section 31: All.
- Section 32: SE $\frac{1}{4}$ SW $\frac{1}{4}$; Lots 1, 2, 3, and 4.

IN TOWNSHIP 9 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

- Section 1: S $\frac{1}{2}$ N $\frac{1}{2}$.

TRACT II:

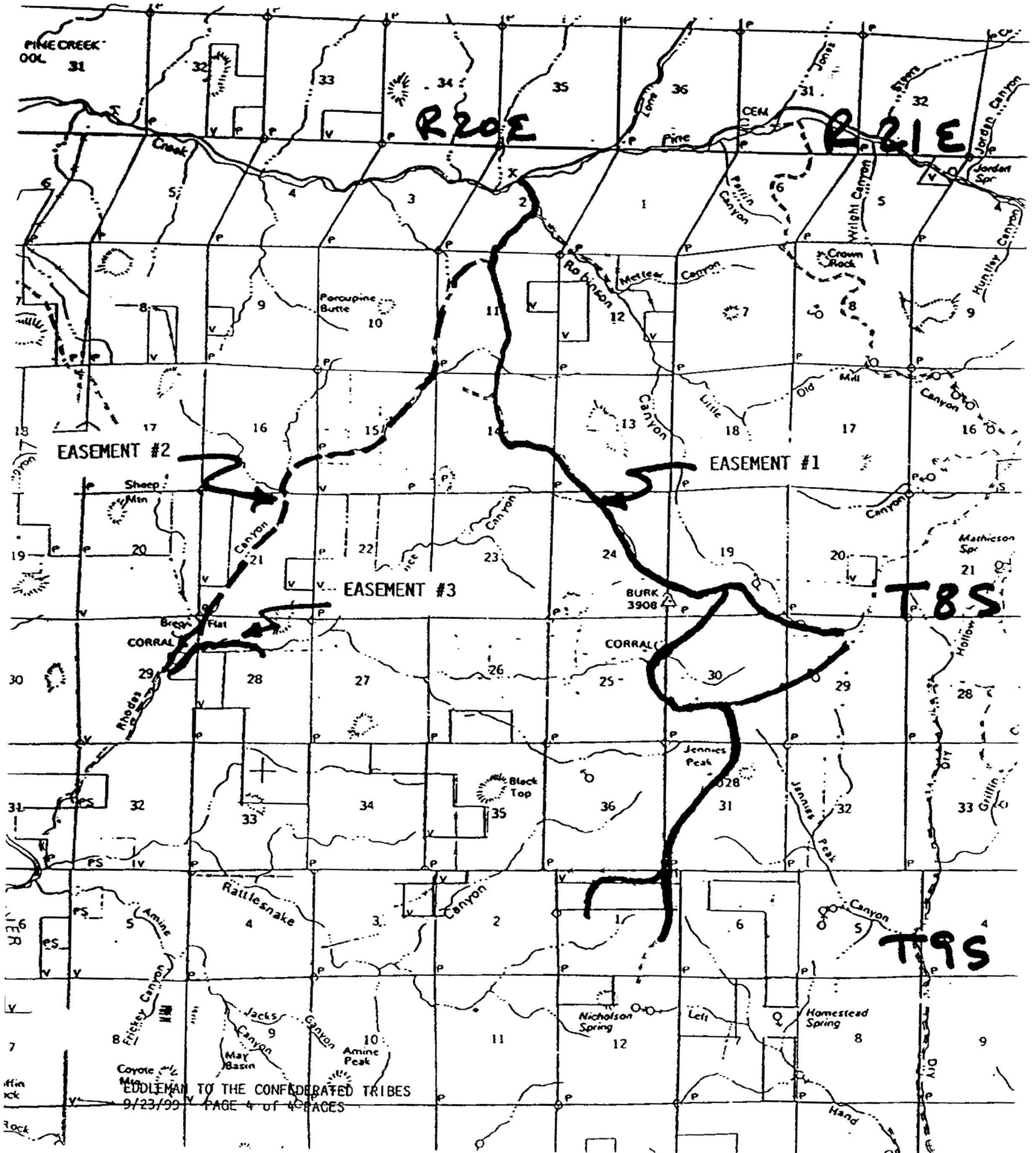
IN TOWNSHIP 7 SOUTH, RANGE 19 EAST OF THE WILLAMETTE MERIDIAN:

- Section 34: That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ lying South of the Oregon State Highway No. 218.
- Section 35: The E $\frac{1}{2}$ SE $\frac{1}{4}$; those parts of the W $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ lying South of the Oregon State Highway No. 218.

IN TOWNSHIP 8 SOUTH, RANGE 19 EAST OF THE WILLAMETTE MERIDIAN:

- Section 1: S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$.
- Section 2: All.
- Section 3: Lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$.
- Section 11: Lots 1 and 2, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$.
- Section 12: NW $\frac{1}{4}$.

RESERVED EASEMENTS
EDDLEMAN TO THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON



ATTACHMENT B
WAGNER RANCH LEGAL DESCRIPTION

Warren Dan Eddleman to The Confederated Tribes of the Warm Springs Reservation

IN WHEELER COUNTY, OREGON:

IN TOWNSHIP 8 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

Section 23: NE $\frac{1}{4}$ NE $\frac{1}{4}$.

IN TOWNSHIP 8 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

Section 26: SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$.

Section 28: Lot 4; SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Section 33: Lots 1, 2, 3, and 4; E $\frac{1}{2}$ W $\frac{1}{2}$; SE $\frac{1}{4}$.

Section 34: Lots 1, 2, 3, and 4; E $\frac{1}{2}$ W $\frac{1}{2}$; S $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$.

Section 35: Lot 4; E $\frac{1}{2}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; E $\frac{1}{2}$.

IN TOWNSHIP 9 SOUTH, RANGE 19 EAST OF THE WILLAMETTE MERIDIAN:

Section 12: That part of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ lying West of the John Day River; that part of the SW $\frac{1}{4}$ lying East of the John Day River.

Section 13: That part lying East of the John Day River.

Section 24: Those parts of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$ lying East of the John Day River.

Section 25: That part of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ lying East of the John Day River.

IN TOWNSHIP 9 SOUTH, RANGE 20 EAST OF THE WILLAMETTE MERIDIAN:

Section 1: S $\frac{1}{2}$.

Section 2: All (fractional), EXCEPT Lot 4.

Section 3: All (fractional), EXCEPT the SE $\frac{1}{4}$ NE $\frac{1}{4}$.

Section 4: All (fractional).

Section 7: That part of the E $\frac{1}{2}$ W $\frac{1}{2}$ lying East of the John Day River; S $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$.

Section 10: All.

Section 11: All.

Section 12: All.

Section 15: N $\frac{1}{2}$.

Section 16: All.

Section 17: All.

Section 19: All (fractional).

Section 29: All.

TOGETHER WITH ASSOCIATED BLM PERMITS.

Eddleman to Confederated Tribes
Attachment B to Amended MOA
8-22-01

ATTACHMENT C

The deed described in Section 6(a) of this Memorandum of Agreement shall include the following provision or one substantively equivalent to it:

The Grantee's acquisition of this real property has been enabled by the United States, Bonneville Power Administration (BPA), with the agreement that the Grantee use the property for wildlife habitat protection permanently and that title to this property shall vest in BPA, upon (1) the determination by BPA that this real property is not being managed for wildlife habitat protection, as described in the Amended and Restated Pine Creek Ranch Fish and Wildlife Project Memorandum of Agreement on file with the BPA Manager, Real Property Services, and (2) BPA's choosing to accept conveyance of the property.

ATTACHMENT C TO AMENDED MOA
RH 8-22-01

ATTACHMENT D

DEED OF CONSERVATION EASEMENT FOR WAGNER RANCH

THIS GRANT DEED OF CONSERVATION EASEMENT is made this ____ day of _____ 2001, by the Confederated Tribes of the Warm Springs Reservation of Oregon, based in Warm Springs, Oregon ("the Grantor or Tribes"), in favor of the United States of America, acting by and through the Department of Energy, Bonneville Power Administration, based in Portland, Oregon ("the Grantee or BPA").

I. RECITALS

- A. The Grantor is the fee simple owner of the real property ("Wagner Ranch") in Wheeler County, Oregon, described in Exhibit A, attached to this deed and incorporated by reference.
- B. The Bonneville Power Administration (BPA) is a power-marketing agency within the United States Department of Energy. The Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839b et seq. ("Act") directs BPA to protect, mitigate, and enhance fish and wildlife affected by the development and operation of Federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Act, the program adopted by the Pacific Northwest Electric Power and Conservation Planning Council ("Council") under subsection 4(h) of the Act, and other environmental laws. BPA has the authority pursuant the Northwest Power Act, 16 U.S.C. §§ 839b(h) and 839f(a), the Federal Columbia River Transmission System Act, 16 U.S.C. §838i(b), or the Bonneville Project Act, 16 U.S.C. §§ 832a(e) through(f), to acquire real estate or to assist in the acquisition and transfer of real property interests.
- C. The Wagner Ranch is located on the John Day River and provides passage, spawning and rearing habitat for anadromous fish species listed under the Endangered Species Act, and is a high priority sub basin for fish habitat protection pursuant to the 2000 National Marine Fisheries Service Biological Opinion on the Operation of the Federal Columbia River Power System. In addition, the Wagner Ranch provides wildlife habitat for species affected by the construction and operation of the Federal Columbia River Power System. This Conservation Easement is created for the purpose of retaining and protecting the natural values of the Wagner Ranch by protecting its natural resources, maintaining or enhancing air or water quality, and preserving its underlying archaeological or cultural aspects.
- D. The Tribes and BPA have entered an agreement governing the acquisition and use of the Wagner Ranch. The Pine Creek Ranch Wildlife Project Memorandum of Agreement (September 1999), together with the Amended and Restated Pine Creek Ranch Fish and Wildlife Memorandum of Agreement (_____, 2001), (hereinafter "MOA") is incorporated into this agreement and is on file with BPA Manager, Real Property Services, 905 NE 11th Street (97232), P.O. Box 3621(97208), Portland, OR. The Tribes intends to convey to BPA the right to preserve and protect the attributes of the Wagner Ranch, listed in subsection C above, in perpetuity.

II. CONVEYANCE AND CONSIDERATION

For and in consideration of the funding BPA provided to the Tribes to acquire the Wagner Ranch, the Tribes hereby voluntarily grants and conveys to the United States of America a conservation easement over the Wagner Ranch in perpetuity.

III. PURPOSE

It is the purpose of this Conservation Easement to retain the conservation values of the Wagner Ranch by protecting its natural resources, maintaining or enhancing air or water quality, and preserving its underlying archaeological or cultural aspects in perpetuity, and preventing any use of the Ranch that will impair or interfere with the conservation values of the of the Ranch. The MOA describes what in this Easement are called the conservation values, which include the following: anadromous fish and their habitat, including the riparian and upland habitats that affect instream habitat; resident fish and wildlife and their habitats; historical and cultural resources; and water quality including temperature, sediment load, and flow levels. The Tribes intend that this Easement will confine the use of the Wagner Ranch to such activities as are consistent with this purpose. BPA shall have the right, but not the obligation, to enforce any and all terms of this Easement.

IV. RIGHTS CONVEYED TO GRANTEE

A. To accomplish the purpose of this Conservation Easement, the Tribes convey the following rights to BPA. BPA has the right to:

- Access the Wagner Ranch at all reasonable times.
- To inspect the Wagner Ranch to assure compliance with this Conservation Easement.
- To prevent any activity on the Wagner Ranch inconsistent with this Conservation Easement, the MOA, or any property management plan developed and adopted by the parties under the MOA, and to require the restoration of areas or features of the Ranch that are damaged by any inconsistent use.
- To ensure the Tribes do not convey the Wagner Ranch without BPA's written consent.
- To prevent the Tribes from allowing or taking any ground disturbing actions before completion of a management plan approved by BPA, or from allowing or taking such actions that are not part of the management plan once the plan is developed and approved.
- To prohibit grazing of domestic livestock and feral horses and cattle on Wagner Ranch, unless it is done pursuant to the property management plan to manage Wagner Ranch for fish and wildlife.

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Page 2 of 4 -- DEED OF CONSERVATION EASEMENT

w1108.16fWagner Conservation Easement Attachment D MOA 8-21-01.doc

- To prohibit timber harvesting unless it is done pursuant to the property management plan to improve Wagner Ranch as fish and wildlife habitat, for proper fire or land management, or protection of person or property.
- To prohibit all residential, commercial, or industrial uses of Wagner Ranch, except as permitted in the property management plan.

B. Under the MOA the Tribes are obligated to develop a Property Management Plan for the Wagner Ranch, and BPA has the right to approve that plan. Once the plan is completed and approved, the parties may record a copy with the Wheeler County Clerk and substitute the restrictions in the plan for those in Subsection IV(A) above.

V. PROHIBITED USES

The Tribes may not take or allow any activity on or use of the Wagner Ranch inconsistent with the purpose of this Conservation Easement or the MOA. The Tribes agree not to engage in or permit any such activity or use.

VI. PERMITTED USES

The Tribes reserve, for itself and its heirs, successors, and assigns, the right to pursue activities on or use of the Wagner Ranch, which are consistent with the purposes of the Conservation Easement or the MOA and which are not otherwise prohibited.

VII. ADMINISTRATIVE MATTERS

The provisions of the MOA shall govern the administration of this Conservation Easement. Such administration provisions include, but are not limited to, notice, dispute resolution, hold harmless and indemnification, remedies, and waivers of sovereign immunity.

VIII. SIGNATURE AND ACKNOWLEDGMENTS

To have and to hold the easement herein granted unto BPA and its successors and assigns, forever.

IN WITNESS WHEREOF, the undersigned the Tribes has executed this instrument this ____ day of _____ 2001.

**THE CONFEDERATED TRIBES OF WARM
SPRINGS RESERVATION OF OREGON**

Charles V. Jackson
Secretary-Treasurer

STATE OF OREGON)
) ss.
County of Jefferson)

The foregoing instrument was acknowledged before me this ____ day of _____ 2001, by Charles Jackson, Secretary-Treasurer of The Confederated Tribes of The Warm Springs Reservation of Oregon, a Federally recognized Indian tribe

Notary Public for Oregon
My Commission Expires: _____

ATTACHMENT E

CONTRACT AND GRANT OF EASEMENT

Transmission Line and Danger Trees

WITNESSETH:

That the parties hereto covenant and agree as follows:

The Grantor, for and in consideration of the provisions contained in the Amended and Restated Pine Creek Ranch Fish and Wildlife Project Memorandum of Agreement between the Grantor and Grantee herein, dated _____, and the provisions contained in this agreement, hereby grants and conveys to the United States of America a perpetual easement and right-of-way for electric power transmission purposes in, upon, over, and under the land described in Attachment A. The width of each right-of-way shall be based on BPA's Right-of-Way Width Policy dated July 17, 1991, or the appropriate future amendments to or successor of that policy.

The grant shall include the right to enter and to locate, construct, operate, maintain, repair, reconstruct, upgrade, remove and patrol one or more lines of poles or structures and appurtenances thereto, supporting conductors of one or more electric circuits of any voltage and any communication lines or equipment and appurtenances thereto, together with the present and future right to clear the right-of-way and to keep the same clear of all trees, whether natural or cultivated, and all structure supported crops, other structures, brush, vegetation, fire and electrical hazards, except non-structure supported agricultural crops less than 10 feet in height. All such trees, brush, vegetation, structures, and fire hazards presently on the right-of-way shall become the property of the United States on the date of acceptance hereof and may be disposed of by the United States in any manner it deems suitable; provided, however, such disposal shall not occur upon the real property owned by the Grantor without the Grantor's written permission.

The Grantor also hereby grants and conveys to the United States the present and future right to top, limb, or fell, and to remove, sell, burn, or otherwise dispose of "danger trees" located on the Grantor's land adjacent to said right-of-way. A danger tree is any growing or dead tree, or snag, whether stable or unstable, which the United States at any time determines could within a five-year period fall, bend or swing against the transmission or communications lines or equipment or within electrical arcing distance of said lines, or which the United States determines could interfere with the construction or maintenance of said lines and equipment.

ATTACHMENT E TO AMENDED MOA
RH 8-22-01 PAGE 1 OF 2 PAGES

The Grantor covenants to and with the United States and its assigns that the title to all brush and timber cut or hereinafter growing within said described easement and also all danger trees identified or cut from the Grantor's land adjacent to said described easement is and shall be vested in the United States of America and its assigns and that the consideration paid for conveying said easement and rights herein described is accepted as full compensation for all damages incidental to the exercise of any said rights. At the United States' election title to danger trees may revert to the Grantor.

The rights granted herein are subject to easements of record and mineral rights of third parties.

In addition to the consideration recited herein, the United States shall repair or make compensation for damage to agricultural crops, and to United States-permitted fences, irrigation and drainage systems within the easement area. The United States shall repair or make compensation only for damage caused by the United States and which results from and during construction, reconstruction, removal, or maintenance activities within the easement area. Payment for such damage shall be made on the basis of a damage estimate approved by the United States.

The United States shall be responsible for any loss, or damage to property, or injury to persons resulting from the United States' acts or omissions, only in accordance with the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 1402, 2401, 2402, 2411, 2412, 2671 et seq.

The Grantor agrees to satisfy of record such encumbrances, including taxes and assessments, as may be required by the United States and to obtain such curative evidences of title as may be requested by the United States.

The United States shall pay all costs incidental to the preparation and recordation of this instrument and for the procurement of a title report.

The Grantor covenants to and with the United States that the Grantor is lawfully seized and possessed of the land aforesaid, with a good and lawful right and power to sell and convey the same; that the land is free and clear of encumbrances, except as herein provided; and that the Grantor will forever warrant and defend the title to the rights granted herein and the quiet possession thereof against the lawful claims and all demands of all persons whomsoever.

The provisions hereof shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the Grantor and upon the assigns of the United States and its agents.

ATTACHMENT F
TRIBAL RESOLUTION NO. 10076

RESOLUTION NO. 10076

WHEREAS, The Northwest Power Planning Act requires the Bonneville Power Administration ("BPA") to mitigate for, among other things, fish & wildlife losses caused by the construction of the Columbia River Hydroelectric System; and,

WHEREAS, The Warm Springs Tribe ("Tribe") desires that all such losses be fully mitigated; and,

WHEREAS, The BPA has developed a program through which Indian tribes, states and other federal and private managers may participate in fish & wildlife mitigation actions through the acquisition, operation and maintenance of individual mitigation projects funded by the BPA; and,

WHEREAS, In 1999 the Tribe in conjunction with BPA acquired the Pine Creek Ranch consisting of approximately 30,000 acres in the John Day River Basin pursuant to the foregoing program; and,

WHEREAS, The acquisition and operation of the Pine Creek Ranch was carried out through a Memorandum of Understanding between the Tribe and BPA; and,

WHEREAS, As a part of the acquisition of the Pine Creek Ranch the Tribe obtained an option to acquire from the Seller an adjoining ranch commonly referred to as the "Wagner Ranch" comprised of approximately 10,000 acres; and,

WHEREAS, The option agreement with the seller must be exercised on or before September 1, 2001; and,

WHEREAS, The Tribe and BPA now desire to proceed with the acquisition of the Wagner Ranch; and,

WHEREAS, The Tribe and BPA desire to manage both the Pine Creek Ranch and the Wagner Ranch as a single project; and,

WHEREAS, The Tribe and BPA have negotiated an amendment to the original Pine Creek Ranch Memorandum of Agreement to provide for the acquisition and operation of the Wagner Ranch, and,

WHEREAS, The Tribe now desires to complete the Wagner Ranch acquisition; now, therefore

BE IT RESOLVED, By the (Twenty-Second) Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article V, Section 1 (a) (d) and (l) of the Tribal Constitution that the attached "Amended and Restate Pine Creek Ranch Fish and Wildlife Project Memorandum of Agreement" between the Warm Springs Tribe and the Bonneville Power Administration attached hereto as Exhibit "A" is hereby approved, contingent upon approval by the Bonneville Power Administration; and the Secretary-Treasurer of the Tribe is hereby authorized to execute the aforementioned Memorandum of Agreement, exercise the purchase option for the Wagner Ranch, and execute and approve all other documents necessary to complete the acquisition of the Wagner Ranch in accordance with this resolution.

CERTIFICATION

The undersigned as Secretary-Treasurer of the Confederated Tribes of the Warm Springs Reservation of Oregon, hereby certifies that the Tribal Council is composed of 11 members of whom 10, constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held this 13th day of August, 2001; and that the foregoing resolution was passed by the affirmative vote of 9 members, the Chairman not voting; and that said resolution has not been rescinded or amended in any way.

Benson Heath for

Charles V. Jackson
Secretary-Treasurer

NOTED: AUG 21 2001


Gerald Henrikson
Acting Superintendent

cc: Secretary-Treasurer
Superintendent
Administrative Services Center

THE SECOND AMENDED AND RESTATED PINE CREEK RANCH FISH AND WILDLIFE PROJECT

MEMORANDUM OF AGREEMENT

This Second Amended and Restated Pine Creek Ranch Wildlife Project Memorandum of Agreement (“**Agreement**”) is made by and between **THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON** (“**Tribe**”) and **THE UNITED STATES OF AMERICA**, acting through the Department of Energy, Bonneville Power Administration (“**Bonneville**”). Together the Tribe and Bonneville are the “**parties**” to this Agreement.

RECITALS

WHEREAS, the Tribe and Bonneville are parties to the Pine Creek Ranch Wildlife Project Memorandum of Agreement dated September 28, 1999 and the Amended and Restated Pine Creek Ranch Wildlife Project Memorandum of Agreement dated April 28, 2001 (together the “**MOA**”) and now desire to amend and restate that agreement as set forth herein.

WHEREAS, The Tribe is a sovereign entity with rights reserved in the Treaty with the Tribes of Middle Oregon of June 25, 1855 (12 Stat. 963). These rights include the authority to co-manage fish and wildlife and their habitats in the area ceded by the Tribe to the United States.

WHEREAS, Bonneville is a power marketing agency within the United States Department of Energy. The Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501 (“**Act**”) directs Bonneville to protect, mitigate, and enhance fish and wildlife affected by the development and operation of federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Act, the fish and wildlife program adopted by the Pacific Northwest Electric Power and Conservation Planning Council (“**Council**”) under subsection 4(h) of the Act, and other environmental laws.

WHEREAS, in 1999 Bonneville began funding the Tribe to acquire and manage real property near Clarno, Oregon, along the John Day River. The acquisitions became the “**Pine Creek Conservation Area**,” or the “**Project**,” which helped Bonneville fulfill its obligations to protect fish and wildlife and their habitats affected by the construction, inundation, and operation of John Day Dam as required under the Northwest Power Act and to help Bonneville comply with its duties under the Endangered Species Act. Over several years Bonneville funded the Tribe to make additional acquisitions, and these parcels were combined with the Project, which is now managed by the Tribe under Bonneville project #1998-022-00. To ensure the properties acquired under the Project continued to be managed to protect fish and wildlife and their habitats, the Tribe granted to the United States, by and through Bonneville, multiple conservation easements or other deed restrictions. These conservation easements and deed restrictions will be consolidated into one single conservation easement, the 2021 Pine Creek Restated and Amended

Conservation Easement, as part of the land exchange defined below.

WHEREAS, Congress included provisions in the Omnibus Public Land Management Act of 2009, P.L. 111-11, sections 1751-55, for the United States, acting by and through the Department of Interior, Bureau of Land Management (“**BLM**”), to establish the Spring Basin Wilderness near Clarno, Oregon. The BLM has custody and control over certain real property inholdings surrounded by the Project. The Tribe has fee title to real property within the boundaries of the Spring Basin Wilderness, and the BLM has fee title real property adjacent to the Project. The 2009 Omnibus Lands Act authorizes the BLM to “**exchange**” real property with the Tribe to consolidate each entity’s respective holdings.

WHEREAS, Bonneville funding under this Agreement has been and will be provided in a manner consistent with section 4(h)(10)(A) of the Act.

WHEREAS, The parties are therefore amending and restating The Pine Creek Ranch Wildlife Project Memorandum of Agreement (September 1999), together with the Amended and Restated Pine Creek Ranch Memorandum of Agreement (April 28, 2001) to facilitate the land exchange and consolidate the land rights and management of the Project. The Tribe has and will continue to dedicate the Project to wildlife habitat protection permanently and will manage it according to the terms of this Agreement, one consolidated conservation easement (the “**2021 Amended and Restated Pine Creek Conservation Area Conservation Easement**” or “**Conservation Easement**”) and the Tribe’s site-specific Pine Creek Conservation Area Management Plan (“**Management Plan**”).

WHEREAS, capitalized terms not defined herein shall have the meaning as defined in the conservation easement.

AGREEMENT

1. BONNEVILLE OBLIGATIONS

(a) In consideration of the promises and covenants made and set out herein, Bonneville shall make a monetary transfer into escrow on behalf of the Tribe not to exceed \$217,200.00 for an equalization payment for the land exchange. The BLM property was determined to have a higher value than the Tribal property and this payment shall equalize the land values. The Tribe shall provide Bonneville escrow information ten (10) business days prior to the planned closing of the exchanged properties. Bonneville shall then provide its escrow instructions promptly to the closing agent.

(b) Bonneville shall continue to provide a reasonable amount of funds for operation and maintenance of the Project to help the Tribe ensure the habitat's natural characteristics and conservation values are developed and, if feasible, self-sustaining. The parties expect those amounts to include allowances for items and activities necessary for Project management. Representative operation and maintenance activities include, but are not limited to, the following:

- Write, maintain, and append, as needed, a land management plan as approved by Bonneville;
- Maintain and defend boundaries and other legal property interests;
- Monitor and address surrounding land uses or activities that could adversely affect conservation values;
- Maintain Pine Creek Conservation Area files, including photos, maps, tax and ownership information;
- Update site management plans;
- Maintain property equipment, buildings, public toilets, corrals, roads, bridges, trails, gates, fences, locks, and signage;
- Prevent unauthorized public or livestock trespass or user impacts;
- Provide managed public use, including facilities at camps, outreach information on the property, and a permit and reservation system for access, hunting and camping
- Prevent encroachment and mitigate risk of catastrophic wildfire;
- Suppress wildfires that could damage neighboring properties or tribal facilities;
- Inventory, map, and evaluate wildlife and habitat conditions;
- Provide outreach to neighbors, stakeholders, local governments, and volunteers;
- Detect, map, and treat invasive species;
- Plan, conduct, and monitor effects from prescribed fire;
- Manage vegetation around facilities and Exclusion Zones through mowing and other activities;
- Prepare monitoring, management, and annual reports;
- Participate in watershed resource management groups, advisory committees, and activities with various partners, agencies, and concerned stakeholders which could affect the Project;
- Patrol and monitor activities on the Project including hiking, camping, educational and research programs, volunteer programs, and hunting and fishing activities;
- Plan, develop, implement, and assess natural resource maintenance and improvement projects for agencies, NGO's, educational and volunteer groups;
- Train key personnel and leadership to conduct successful ecological projects for Project management objectives.

All operations and maintenance funding will be subject to negotiation and where appropriate consider the views of the Council, its assigns or successors, and are subject to available funds.

(c) Where this Agreement grants Bonneville approval authority (*i.e.* ensure amendments to the Management Plan comply with the terms of this Agreement and the Conservation Easement), then unless provided otherwise, Bonneville shall complete its review and announce its decision within a reasonable time, typically within 180 days.

2. PROJECT FUND

(a) The monies provided pursuant to Section 1 above, any interest earned from them, and net income earned from the Project shall constitute the Pine Creek Ranch Mitigation Fund (“**Fund**”). The Tribe may use the Fund to fulfill its obligations under this Agreement and any subsequent Cooperative Agreement executed by the parties for Bonneville project #1998-022-00 “Pine Creek Conservation Area.” The Tribe shall maintain the Fund in a discreet account similar to other accounts managed by the Tribe. The Tribe shall maintain accounting for the Fund sufficient to allow tracking of all income and expenditures for the Fund in accordance with generally accepted accounting principles.

(b) In addition to monies provided pursuant to section 1 above, the Tribe may use net revenue received from managing the Project, including but not limited to conservation reserve program payments or other similar payments, to pay costs associated with managing the Project or to implement the Management Plan. Such revenues generated that are in excess of amounts needed to pay property taxes may be subtracted from annual operation and maintenance funds that would otherwise have been provided by Bonneville, unless otherwise agreed by the parties.

(c) In the event the Tribe determines that the operation and maintenance funds provided by Bonneville are or may become inadequate to fulfill the Tribe’s obligations under this Agreement including the Conservation Easement, the Tribe may provide Bonneville with written notice of its determination, and Bonneville agrees to participate within sixty (60) days of the receipt of the notice in a government-to-government consultation with the Tribe regarding funding levels, conservation burdens related to the ongoing management of the Protected Property, the Tribe’s support for Bonneville mitigation credits, and potential disposition by the Tribe of the Protected Property, among other matters.

3. MANAGEMENT PLAN

(a) The Tribe will update and amend the Management Plan to include the post-exchange properties. After signing this Agreement, the Tribe shall within eighteen (18) months submit to Bonneville for its review and formal acknowledgement proposed amendments to the Management Plan for the Project. BPA shall review the proposed updates and amendments to the Management Plan and provide its written concurrence of consistency of the Management Plan with the Pine Creek Conservation Easement prior to Grantor implementing any amendment of the Management Plan. Once it is completed by the Tribe and approved by Bonneville, the amended Management Plan shall be incorporated into and made a part of this Agreement. The Management Plan will continue to focus on habitat management designed to promote and maintain native habitat that is naturally self-sustaining.

(b) The Management Plan shall integrate management planning for historic and cultural resources, as applicable, as defined by the National Historic Preservation Act, with the fish and wildlife management practices as a means of avoiding impacts to cultural and historic resources. The Tribe will also avoid sensitive sites if at all possible in implementing habitat

improvement actions. Ground-disturbing activities may only occur if they have been included in the Management Plan or covered by a separate land use agreement with Bonneville.

(c) The Tribe shall assist Bonneville in complying with the National Environmental Policy Act (“NEPA”) and other applicable laws, as provided in an annual Cooperative Agreement for Bonneville project #1998-022-00 “Pine Creek Conservation Area”, for operation and maintenance or habitat improvement actions that require federal environmental compliance.

(d) The Tribe will continue to have all management and operation control of the Project and will therefore be responsible for all incidents of ownership of the Project. Provided Bonneville retains liability for its actions as provided for under the Federal Torts Claims Act, the Tribe shall hold harmless and indemnify Bonneville from any liability from any incident of ownership that may arise in the implementation of the Management Plan. Such incidents of ownership include, but are not limited to, taxes; hazardous waste, and noxious or invasive weed response; cultural resource mitigation; and tort liability. Should a catastrophic event, a “**force majeure**,” such as a wildfire, destroy or diminish the fish and wildlife habitat, the Tribe shall have no obligation to reproduce the pre-existing wildlife values any faster than natural regeneration reproduces them and Bonneville shall have no obligation to provide additional funding to the Tribe to address the effects of such catastrophic events.

(e) The Tribe will ensure the Project is permanently protected and managed for fish and wildlife on behalf of Bonneville, preventing any and all uses of the Project that are inconsistent with this Agreement, the Conservation Easement, the Act, and the Management Plan and its amendments. Prohibited uses of the property acquired, improved, or managed under this Agreement are enumerated in the Conservation Easement, executed and recorded simultaneously with the exchange.

4. BONNEVILLE CREDIT.

a) In the MOA, the Tribe supported Bonneville’s claim of protection, mitigation, and enhancement credit in the form of Habitat Units. The parties now lack the capacity to produce reliable, accurate, habitat evaluations using Habitat Units or to update or review past habitat evaluations that used Habitat Units. Consequently, notwithstanding anything to the contrary in the MOA, the parties will no longer require a wildlife habitat inventory that utilizes the Habitat Evaluation Procedure methodology nor track mitigation accomplishments and obligations in terms of Habitat Units. Instead, the parties agree to use acres as the crediting metrics for the Project.

b) The Tribe will support Bonneville taking credit for the Project against its fish and wildlife protection, mitigation, and enhancement obligations under the Act and the Endangered Species Act, 16 U.S.C. section 1531 et seq., (“ESA”), provided Bonneville is not in default of any obligation under this Agreement, including but not limited to Section 1(b) of the Agreement. Bonneville may credit the 34,012 acres of habitat in a method legally permissible against its

responsibility to mitigate for the development of any of the lower four Columbia River dams: Bonneville, The Dalles, John Day, or McNary.

c) The Tribe agrees that Bonneville's expenditure of money is consistent with sections 4(h) and 10(e) of the Act. The Tribe shall support Bonneville obtaining full credit for its expenditures with respect to protecting and managing existing habitat on the Project and for habitat improvements when implemented on the Project, so long as Bonneville complies with the terms of this Agreement, including but not limited to Bonneville's obligations as provided in Section 1(b).

5. TRIBAL POWER OF TERMINATION

a) If the Tribe determines that the operation and maintenance funds provided by Bonneville are inadequate to fulfill the Tribe's obligations under this Agreement including the Conservation Easement, the Tribe may provide Bonneville with written notice that the funds are inadequate and then take action in the order as provided below.

- i. First, the Tribe may transfer the Project to Bonneville, upon receipt of Bonneville approval and acceptance; transfer shall be done by deeds recorded in the Wheeler and Wasco counties, Oregon. Bonneville shall assume full responsibility for managing the Project for the permanent protection of fish and wildlife habitats; or
- ii. Second, if Bonneville does not accept the Project, the Tribe may transfer the Project to a federal or state land management agency (“**agencies**”), upon receipt of the relevant agency's approval and acceptance. Transfer shall be done by deeds recorded in the Wheeler and Wasco counties, Oregon.
- iii. Third, if neither BPA nor the agencies accept the Project, the Tribe may promptly sell or transfer the Project to any third party at fair market value and remit to Bonneville the received value, if any, less the Tribe's costs of the sale.
- iv. After exercising either alternative (i), (ii) or (iii) above, the Tribe shall immediately transfer the proceeds for the disposal of the Project and the balance of the Fund to Bonneville. The Fund may not be used to prepare the Project, if any, for sale or transfer under this provision without Bonneville's written approval.
- v. In the event either alternative (i) or (ii) above is exercised and after the Tribe has transferred the proceeds as required by (iii) above, this Agreement shall terminate and be of no further force and effect.

b) The parties agree that the Tribe may farm, rent, or dispose of the “**Mint Farm**” parcel, a small approximately 2.62 acre parcel on the west side of the John Day River in Wasco County, Government Lot 8 Section 3, Township 8 South, Range 19 East, as shown on **Attachment A**. Net proceeds shall be deposited into the Fund described in Section 2 above and used as provided

in that section. The disposition of the Mint Farm shall not affect Bonneville’s mitigation credit under this Agreement.

6. FORCE MAJEURE. Neither party shall be liable to the other or deemed in default under this Agreement if and to the extent that the party’s performance of the Agreement is prevented by reason of “**force majeure**” as such is defined in the Conservation Easement.

7. PROTECTION OF TRIBAL RIGHTS. Fishing, hunting, gathering and Tribal cultural and religious activities on the Project according to Tribal custom and law are not prohibited by this Agreement. Tribal members shall be subject to tribal regulation of wildlife harvest. All others will be subject to applicable state and federal regulations.

8. PUBLIC ACCESS. The public shall have reasonable access to the Project. The Tribe may regulate access, provided that access and transportation regulations shall apply equally to tribal members and non-tribal members. The Tribe will not provide public access or use that will result in adverse impacts to fish and wildlife, the reduction of fish and wildlife habitat, or the destruction of other natural resource values for which the Project is managed. Nothing in this Agreement limits the authority or ability of the Tribe to manage the Project for public safety and wildlife habitat conservation, or to preserve and protect cultural, historic, and religious sites, and to carry out and protect the federally guaranteed rights of the Tribe and its members. Nothing in this Agreement limits or diminishes any treaty retained right or privilege of the Tribe or its members afforded under federal law as a result of the status of the Tribe or Tribal members, provided that treaty reserved rights will be exercised consistent with this Agreement.

9. LIMITATION OF CREDIT. The credit Bonneville obtains for the consideration paid to provide and maintain the Project as fish and wildlife habitat as required and provided in this Agreement shall not be affected or diminished by reason of force majeure or as a result of the failure of the Tribe to carry out its obligations to maintain the properties as provided in this Agreement.

10. BINDING EFFECT. This Agreement shall be binding on the parties and their assigns and successors. Either party shall have the right to enforce the terms of this Agreement as provided herein.

11. DISPUTE RESOLUTION. Bonneville and the Tribe agree to submit in good faith any disputes regarding the implementation of this Agreement or the management of the Project to non-binding mediation. This provision shall be triggered when one party makes a written request for the other party to join in mediation. Within thirty (30) days of this provision being triggered, the parties shall select a mediator, or if they are unable to select a mediator, each party shall select a mediator and the two selected will choose a third mediator who shall be the sole mediator. The parties shall use their best efforts to resolve the dispute in mediation. After a dispute has been in mediation for at least sixty (60) days and there have been at least two mediation sessions, either party may initiate legal action to resolve the dispute. Except as provided in this part, pending completion of mediation no party shall initiate any legal proceeding except in aid of mediation.

12. EFFECTIVE DATE. The original Pine Creek Agreement was effective on September 28, 1999. This Agreement shall be effective when signed by the Authorized Representative of the Tribal Council pursuant to Tribal Resolution No. 12,291 (**Attachment B**), Bonneville’s Manager Real Property Services and Bonneville’s Group Vice President of the Office of Environment, Fish and Wildlife.

13. TERMINATION. If a court of competent jurisdiction finds that the parties or either of them were not authorized to perform any obligation under this Agreement, this Agreement shall terminate, and the parties will have no further obligations to each other under this Agreement. Upon such termination and upon Bonneville's request and approval, the Tribe shall transfer title to real property acquired pursuant to Section 3 to Bonneville, convey to Bonneville any and all personal property acquired with funding provided by Bonneville, and deliver the balance of the Fund to Bonneville. Unless otherwise agreed by the parties, the parties shall use their best efforts to enter into a new and binding agreement that accomplishes the intent of this Agreement. Either party may invoke the dispute resolution provisions of this Agreement to facilitate the negotiation of a new agreement.

14. MODIFICATION. The parties by mutual agreement may modify the terms of this Agreement. Modifications may not conflict with the terms of the Conservation Easement, and any such modification shall be in writing signed by both parties.

15. APPLICABLE LAW. All activities undertaken pursuant to this Agreement must be in compliance with all applicable state and federal laws and regulations. Federal law shall govern the implementation of this Agreement and any action, whether mediated or litigated, brought or enforced.

16. SOVEREIGN IMMUNITY. THIS WAIVER OF SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. The Tribe grants a limited waiver of its sovereign immunity for Bonneville or its successors but no other person or entity if Bonneville alleges a breach of an obligation or duty by the Tribe under this Agreement and seeks to bring the Tribe into compliance with this Agreement or seeks payment of a monetary obligation arising from noncompliance; provided, any payments from the Tribe shall be payable only from monies, assets, or properties derived from the benefits of this Agreement and all other monies, assets or properties of the Tribe being unavailable to satisfy a judgment. The waivers of sovereign immunity by the United States bind Bonneville and can be found generally in the statutes establishing the jurisdiction of the United States District Courts, 28 U.S.C. § 1346, the Court of Claims, 28 U.S.C. § 1491, and the Federal Torts Claims Act, 28 U.S.C. §§ 1346, 1402, 2401, 2402, 2411, 2412, 2671 et seq.

16. ATTORNEY FEES. In the event of litigation involving this Agreement each party shall bear its own costs and attorney fees, including those incurred on appeal.

17. WAIVER. The failure of any party to require strict performance of any term of this Agreement or a party's waiver of performance shall not be a waiver of any future performance or of a party's right to require strict performance in the future.

18. ASSIGNMENT. The Tribe may not assign or transfer its rights or delegate its responsibilities under this Agreement without written approval from Bonneville, which approval shall not be unreasonably withheld.

19. IN LIEU FUNDING. Tribe may use the Fund only for acquisitions and improvements that are in addition to, not in lieu of, other expenditures it is required to make under other agreements or provisions of law. Tribe will pay, from a source other than Bonneville, payments in lieu of taxes, county weed assessments and minimum noxious or invasive weed control costs as required by state law for the Project.

20. NOTICE. Any notice permitted or required by this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail.

21. COUNTERPARTS. This Agreement may be signed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same document. Any signature page of any such counterpart, or any facsimile thereof, may be attached or appended to any other counterpart to complete a fully extended counterpart of this Agreement, and any facsimile transmission of any party's signature to any counterpart shall be deemed an original and shall bind such party.

22. 1999 AND 2001 MOA PROVISIONS. This Second Amended and Restated Pine Creek Conservation Area Agreement replaces the MOA and any prior amendments to it in its entirety.

23. NOTICES

a) Notices to the Tribe should be sent to:

Secretary-Treasurer, Tribal Council
Confederated Tribes of the Warm Springs Reservation
P.O. Box 1168
Warm Springs, OR 97761

AND

General Manager, Branch of Natural Resources

Confederated Tribes of the Warm Springs Reservation of Oregon
P.O. Box C
Warm Springs, OR 97761

b) Notices to Bonneville should be sent to:

Pine Creek Conservation Area COTR—ECW-4
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208

AND

Real Property Specialist—TERR-3
BPA Tract ID: PINC-WL-3
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208

[signature page follows]

IN WITNESS WHEREOF, each of the parties hereto has executed this Amended and Restated Pine Creek Ranch Wildlife Project Memorandum of Agreement.

BONNEVILLE POWER ADMINISTRATION

By: _____ Date: _____

Scott G. Armentrout
Group Vice President
Environment, Fish and Wildlife

By: _____ Date: _____

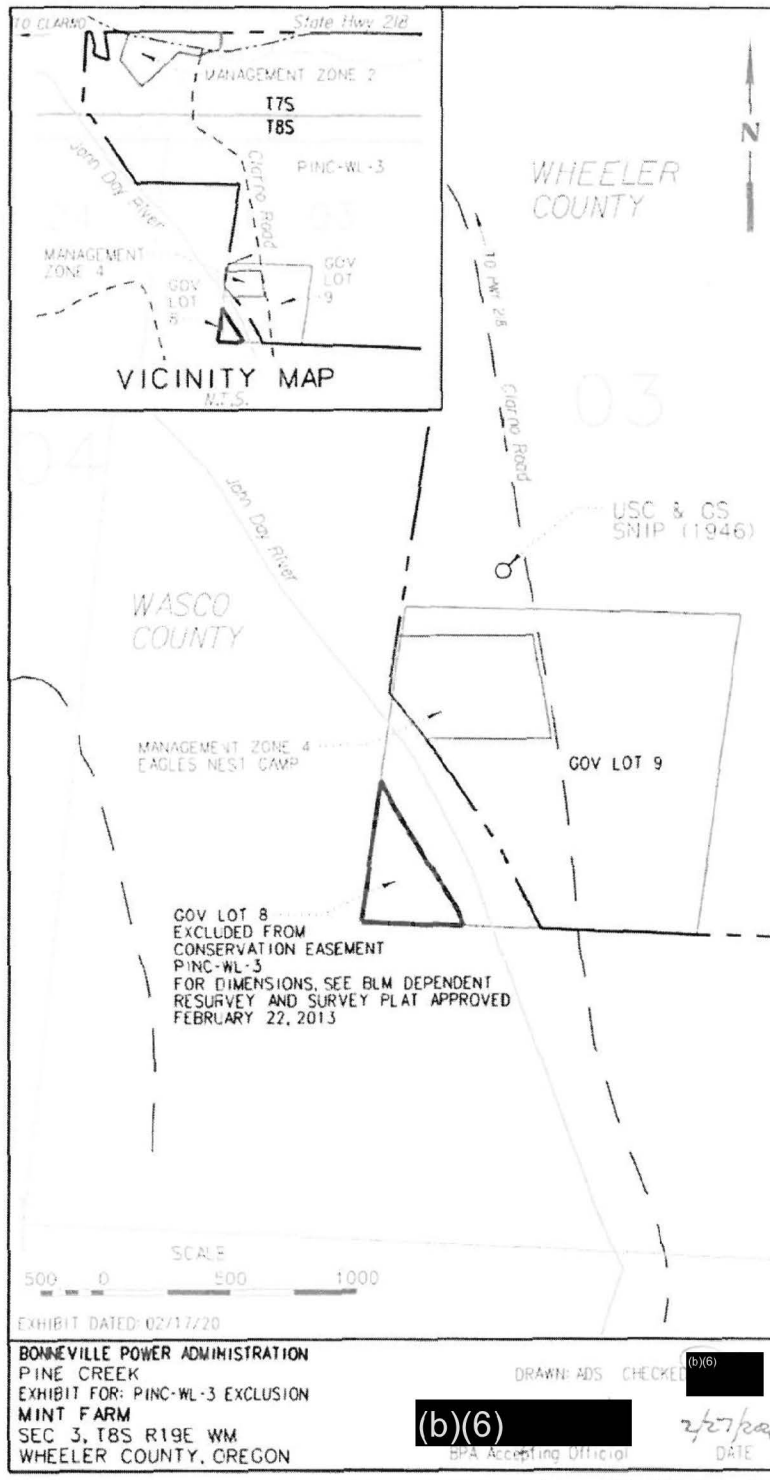
Matthew Kirkland
Manager, Real Property Services

CONFEDERATED TRIBES OF THE WARM SPRINGS INDIAN RESERVATION OF OREGON

By: **(b)(6)** _____ Date: 6/30/2021

Michele Stacona,
Secretary-Treasurer, CTWS Tribal Council

ATTACHMENT A: MINT FARM



ATTACHMENT B: TRIBAL RESOLUTION

RESOLUTION NO. 12,291

WHEREAS, Pursuant to Tribal Council Resolution number 11,298, the Tribal Council resolved to authorize a team consisting of the Secretary-Treasurer/CEO, manager of the branch of Natural Resources, and the Tribal Attorneys to take steps necessary to implement an exchange of land ("Land Exchange") in the John Day River Basin between the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe") and Bureau of Land Management ("BLM"), including by executing an Agreement to Initiate with the BLM; and,

WHEREAS, The Tribe and BLM entered into a Binding Land Exchange Agreement dated effective January 21, 2016 (the "Agreement"), which Agreement effectuated the land exchange and a copy of which is attached as Exhibit "A"; and,

WHEREAS, It is a condition of the Agreement that the Tribe convey acceptable title of the real property that it is transferring to the United States (the "Tribal Property"); and,

WHEREAS, The Tribe has engaged AmeriTitle to provide a title insurance policy with respect to the Tribal Property, and AmeriTitle is requiring that the Tribe provide a limited waiver of sovereign immunity as a condition of the issuance of a title insurance policy; and,

WHEREAS, The Tribal Council has concluded that providing a limited waiver of sovereign immunity in favor of the title company ("Company") related to any disputes or lawsuits between the Tribe and the Company arising from the title insurance policy issued by Company, in substantially similar form as the attached as Exhibit "B" ("Limited Waiver"), is necessary to convey acceptable title of the Tribal Property to the BLM; now, therefore,

BE IT RESOLVED, By the (27th) Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article V, Section 1 (a), (c), (l) and (u) of the Tribal Constitution and By-Laws and Warm Springs Tribal Code Chapter 30, that the Land Exchange authorized by Tribal Council Resolution 11,298 and Tribe's execution and performance of the Agreement and any other agreements or documents in furtherance of the Land Exchange are hereby approved and ratified, and the Tribal Council Chair, Vice Chair or Secretary-Treasurer/CEO ("Authorized Representatives") are hereby authorized to take or cause to be taken all other acts on behalf of the Tribe that the

Authorized Representative deems reasonably necessary or desirable to effectuate the Land Exchange and the Tribe's performance of the Agreement, including without limitation by paying such expenses and executing all documents that such person deems reasonably necessary; and,

BE IT FURTHER RESOLVED, By the Tribal Council that any of the Authorized Representatives are hereby authorized, on behalf of the Tribe, to sign and execute a document granting the Limited Waiver in favor of Company in substantially similar form as the attached Exhibit "B".

CERTIFICATION

The undersigned, as Secretary-Treasurer/CEO of the Confederated Tribes of the Warm Springs Reservation of Oregon hereby certifies that the Tribal Council is composed of 11 members, of whom 8 constituting a quorum were present at a meeting thereof, duly and regularly called, noticed, convened and held this 15th day of February, 2017 ; and the foregoing resolution was passed by the affirmative vote of 7 members, the Chairman not voting; and that the said resolution has not been rescinded or amended in any way.

(b)(6)

Michele Stacona 2/22/17
Secretary-Treasurer/CEO

NOTED:

(b)(6)

Floy L. Anderson 2-22-17
Acting BIA Superintendent

Attachments: Exhibit "A"
Exhibit "B"

cc: Secretary-Treasurer/CEO
Superintendent
Administrative Services Center

Exhibit A

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Prineville District Office
3050 NE Third Street
Prineville, Oregon 97754

BINDING LAND EXCHANGE AGREEMENT

CONFEDERATED TRIBES OF WARM SPRINGS
RESERVATION OF OREGON

OR-65926

THIS LAND EXCHANGE AGREEMENT is made this 21 day of January ²⁰¹⁶/~~2015~~, pursuant to Public Law 111-11, the Omnibus Public Land Management Act of 2009 (the Act), Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), and the regulations at 43 CFR 2201.7-2, between the United States of America, acting through the authorized officer of the Bureau of Land Management, hereinafter styled the BLM, and the Confederated Tribes of Warm Springs Reservation of Oregon (CTWSRO), hereinafter called the Non-Federal Party.

In consideration of the mutual agreements contained herein, the parties agree as follows:

1. The Non-Federal Party will convey to the United States of America, by general warranty deed free of lien or encumbrance, except as otherwise provided herein, the real property and all interest therein, as described in Exhibit A attached hereto and made a part hereof. The value of these lands is \$655,400.
2. In exchange, the United States of America agrees to convey to the Non-Federal Party, by patent issued by the Department of the Interior, the real property and all interest therein as described in Exhibit B attached hereto and made a part hereof. The value of these lands is \$872,600.
3. To avoid a project-related influence in the appraisal, the "Scope of Project Rule" as outlined in the "Yellow Book" has been applied to the Federal and non-Federal Wilderness Areas and Conservation Areas.

As defined on page 86 of Section D-7 of the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA): "It is important, however, for the appraiser to recognize that the appraiser must utilize the same method of valuation for both the Federal and non-Federal lands in the exchange."

Hypothetical Condition (HC) 1: The appraisal analysis for this exchange should disregard the Federal and non-Federal related project areas (Wilderness, Conservation, etc.). (See UASFLA Section B-10; Pages 45-47 – Enhancement or Diminution in Value Due to the Project.)

4. The BLM will convey the Federal lands with a restrictive covenant in the conveyance document to ensure the long-term preservation of the property's historic significance, in accordance with 36 CFR 800.5 (a) (2) (vii).
5. In applying Hypothetical Condition (HC) 1 and the "Scope of Project Rule," the valuation did not consider the protective covenant affecting certain Federal exchange lands.
6. The BLM and the CTWSRO developed escrow instructions (attached as Exhibit C) to transfer title to the non-Federal and Federal lands in a single transaction through escrow.
7. The values identified above will remain fixed until consummation of the land exchange.
8. To equalize the values of the lands involved in the exchange, the CTWSRO will deposit \$217,200 into escrow and release it to the BLM upon consummation of the exchange. This cash equalization payment is within the regulatory parameters of 25 percent of the value of the Federal land.
9. The parties agree that the Non-Federal Party will be responsible, if necessary, for removal, indemnification, or other remedial actions concerning any hazardous substances found on the non-Federal land.

Conditions

This Agreement is legally binding on both the Non-Federal Party and the BLM subject to the terms and conditions herein identified and provided:

1. The CTWSRO can convey acceptable title to the United States of America.
2. No loss or damage occurs to either property from any cause.
3. The parties do not find or disclose any hazardous substances on the Federal or non-Federal land prior to conveyance.
4. The Deciding Office upholds the decision to approve the exchange in the event of a protest or appeal.
5. The parties do not agree through mutual consent to terminate this agreement.
6. Congressional oversight raises no objections.

Failure to Perform

In the event of failure to perform or comply with terms set forth in this Agreement, the non-complying party will be liable for all costs borne by the other party as follows: NONE

Duration of Agreement

This agreement is binding for 12 months after execution or until 12 months after the resolution of any third-party protests, appeals, and litigation, whichever is greater.

Execution

IN WITNESS WHEREOF, the parties hereto have signed their names.

Confederated Tribes of the Warm
Springs Reservation of Oregon
P.O. Box C
Warm Springs, Oregon 97761

Michael Collins
Secretary-Treasurer

Date

U.S. Department of the Interior
Bureau of Land Management
P.O. Box 2965 Portland, Oregon 97208

(b)(6) _____

Jamie E. Connell
Acting State Director
Oregon/Washington

Date

1/21/16

Failure to Perform

In the event of failure to perform or comply with terms set forth in this Agreement, the non-complying party will be liable for all costs borne by the other party as follows: NONE

Duration of Agreement

This agreement is binding for 12 months after execution or until 12 months after the resolution of any third-party protests, appeals, and litigation, whichever is greater.

Execution

IN WITNESS WHEREOF, the parties hereto have signed their names.

Confederated Tribes of the Warm
Springs Reservation of Oregon
P.O. Box C
Warm Springs, Oregon 97761

(b)(6)

Glendon N. Smith
Secretary-Treasurer/CEO

12-11-15
Date

U.S. Department of the Interior
Bureau of Land Management
P.O. Box 2965 Portland, Oregon 97208

~~Jerome E. Perez
State Director
Oregon/Washington~~

~~Date~~

Received

DEC 14 2015

Principals/BLM

**EXHIBIT A
LDR CERTIFIED LEGAL DESCRIPTIONS
OF THE NON-FEDERAL LANDS**

T. 8 S., R. 19 E., W.M.

Section 2, lot 7;	32.23 acres*
Section 11, NE¼, E¼NW¼, Lot 1, Lot 2;	302.49 acres*
Section 12, N¼NE¼, NW¼;	240.00 acres*
Section 23, NE¼NE¼;	40.00 acres

T. 8 S., R. 20 E., W.M.

Section 7, W¼NE¼, SE¼SE¼;	120.00 acres*
Section 8, Lot 4, SE¼SW¼, E¼SE¼, (that portion lying 30 feet southerly and perpendicular to the centerline of the road);	115.98 acres*
Section 9, Lot 4, SE¼SW¼, SW¼SE¼, (that portion lying 30 feet southerly, westerly and perpendicular to the centerline of the road);	63.72 acres
Section 16, W¼NE¼, (that portion lying 30 feet westerly and perpendicular to the GPS line described by metes and bounds), SE¼ (that portion lying 30 feet westerly and perpendicular to the centerline of the road in Rhodes Canyon and westerly and perpendicular to the GPS line described by metes and bounds), E¼W¼, Lots 1, 2, 3 and 4;	432.87 acres**
Section 17, E¼, E¼W¼, Lot 1, Lot 2, Lot 3, Lot 4;	631.62 acres*
Section 18, E¼W¼, E¼SE¼, SW¼SE¼;	280.00 acres
Section 19, N¼NE¼, SE¼NE¼;	120.00 acres
Section 20, W¼NE¼, E¼NW¼, Lot 1, Lot 2;	235.83 acres*
Section 21, NE¼, NE¼SW¼, E¼NW¼, (that portion lying 30 feet westerly and perpendicular of the centerline of the road in Rhodes Canyon);	143.59 acres

T.9 S., R. 20 E., W.M

Section 7, S¼NE¼, E¼W¼, (that portion easterly of the John Day River), SE¼;	385.00 acres
Section 28, All;	640.00 acres*
Section 29, All;	640.00 acres
Section 30, SW¼, (that portion easterly of the John Day River);	70.07 acres
Section 31, NE¼, (that portion northerly of the John Day River);	34.77 acres

T.9 S., R. 19 E., W.M

Section 25, NE¼NE¼, (that portion easterly of the John Day River);	14.65 acres
--	-------------

Total CTWSRO Acres: 4,542.82

* All Minerals – Reserved Federal

** The Bureau of Land Management (BLM) will establish the eastern and northeastern boundary of the Spring Basin Wilderness Area by Global Positioning System (GPS) and a metes and bounds description. The BLM will take GPS points along an existing road that extends beside

Exhibit A 1

the drainage in the bottom of Rhodes Canyon. In the SE¼ of Section 16, the mapped wilderness boundary leaves this road and extends northerly up an intermittent drainage and crossing the north line of Section 16 and continuing northerly and westerly along the road through the non-Federal lands in the S½SW¼, SW¼SE¼, of Section 9. The non-Federal lands include that portion of those aliquot parts lying 30 feet southerly and perpendicular to the centerline of the road.

The road proceeds westerly crossing the section line and through the E¼SE¼ Section 8. The non-Federal land includes that portion of this aliquot part lying 30 feet southerly and perpendicular to the centerline of the road.

The wilderness boundary continues westerly and is coincident with the north line of Lot 4, SE¼SW¼ and the SW¼SE¼, Section 8, T. 8 S., R. 20 E.

Cadastral Survey will prepare a metes and bounds description that describes all non-aliquot portions of the non-Federal land to be conveyed in the exchange.

Reserved Mineral Interest:

- A. Reserved Federal minerals on non-Federal surface – 2,082.17 acres
- B. Minerals owned by the CTWS that would be conveyed – 674.35 acres
- C. Third party reserved minerals – 1,786.30 acres

1. Book/Page 30-360–Burgess to Geiler-1962 - 656.46 acres inside the wilderness boundary	
T. 8 S., R. 20 E., W.M.	
Section 7, SE¼NE¼, SE¼SE¼;	80.00 acres
Section 16, W¼NE¼, (that portion lying 30 feet westerly and perpendicular to the GPS line described by metes and bounds), SE¼ (that portion lying 30 feet westerly and perpendicular to the centerline of the road in Rhodes Canyon and westerly and perpendicular to the GPS line described by metes and bounds), E¼W¼, Lots 1, 2, 3 and 4;	432.87 acres
Section 21, NE¼, NE¼SW¼, E¼NW¼, (that portion lying 30 feet westerly and perpendicular of the centerline of the road in Rhodes Canyon);	143.59 acres
2. Book/Page 14-363 – Lee to Reilly-1917 – 1,025 acres outside the wilderness boundary	
T.9 S., R. 20 E., W.M	
Section 7, S½NE¼, E¼W¼, (that portion easterly of the John Day River), SE¼;	385.00 acres
Section 29, All;	640.00 acres

Exhibit A 2

3. Book/Page 20-205 – State of Oregon to Sullivan-1946 – 104.84 acres outside the wilderness boundary (Bottlefields Area)
T.9 S., R. 20 E., W.M
Section 30, SW¼, (that portion easterly of the John Day River);70.07 acres
Section 31, NE¼, (that portion northerly of the John Day River);34.77 acres
Total 1,786.30 acres

Exhibit A 3

**EXHIBIT B
LDR CERTIFIED LEGAL DESCRIPTIONS
OF THE FEDERAL LANDS**

T. 7 S., R. 20 E., W.M.
 Section 19, SE $\frac{1}{4}$ SW $\frac{1}{4}$;40.00 acres
 Section 20, SE $\frac{1}{4}$ SW $\frac{1}{4}$; 40.00 acres
 Section 29, NW $\frac{1}{4}$ NW $\frac{1}{4}$; 40.00 acres
 Section 32, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;160.00 acres
 Section 33, S $\frac{1}{4}$ SE $\frac{1}{4}$;80.00 acres

T. 7 S., R. 21 E., W.M.
 Section 19, SE $\frac{1}{4}$ SW $\frac{1}{4}$;40.00 acres

T. 8 S., R. 19 E., W.M.
 Section 1, SE $\frac{1}{4}$ SE $\frac{1}{4}$; 40.00 acres
 Section 3, Lots 2, 3, 8 and 9, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;222.21 acres

T. 8 S., R. 20 E., W.M.
 Section 6, Lot 7, E $\frac{1}{2}$ SW $\frac{1}{4}$;120.37 acres
 Section 11, SE $\frac{1}{4}$ NE $\frac{1}{4}$;40.00 acres
 Section 12, Lot 2, Lot 3, NE $\frac{1}{4}$ SE $\frac{1}{4}$;111.28 acres
 Section 15, Lot 1, Lot 2, Lot 4, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;264.69 acres
 Section 21, NE $\frac{1}{4}$ SE $\frac{1}{4}$;40.00 acres
 Section 22, Lot 3, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$;154.37 acres
 Section 35, Lot 2, Lot 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$;111.54 acres

T. 9 S., R. 20 E., W.M.
 Section 1, Lot 1, Lot 2, Lot 3, Lot 4;50.94 acres
 Section 2, Lot 4;11.90 acres
 Section 3, SE $\frac{1}{4}$ NE $\frac{1}{4}$;40.00 acres
 Section 8, All;640.00 acres
 Section 9, All;640.00 acres
 Section 15, N $\frac{1}{2}$ SW $\frac{1}{4}$;80.00 acres
 Section 18, NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$, SE $\frac{1}{4}$, Lots 1, 2, 3 and 4;617.06 acres
 Section 20, All;640.00 acres

Total Federal Acres: 4,224.36

Exhibit B 1

Together with the following water rights:

Township	Range	Section	Quarter / Quarter	Certificate #	Acres of Water Right
8 S.	19 E.	3	NESW	30248	1.6
8 S.	19 E.	3	SESW	25322	0.6
8 S.	19 E.	3	NESW	25322	4.1

A. The United States will convey the Federal land subject to ditches and canals and the encumbrances as listed below:

T. 7 S., R. 21 E., W.M.
 Section 19, SE¼SW¼;
 TD-030078 - Highway right-of-way

T. 8 S., R. 19 E., W.M.
 Section 3:
 OR-24421 – buried telephone cable right-of-way
 OR-34235 – aerial electric distribution line right-of-way
 Wheeler County Clarno Road 29

B. The Federal land includes the following grazing allotments:

1. Amine Peak Allotment - Confederated Tribes of the Warm Springs of Oregon
2. Rim Allotment - Confederated Tribes of Warm Springs of Oregon
3. Spring Basin Allotment - Confederated Tribes of Warm Springs of Oregon
4. Tripp Allotment – vacant
5. Byrds Point Allotment - vacant

There are no authorized improvements on ~~public~~ lands in the allotments leased by CTWSRO.

Exhibit B 2

Exhibit B

Limited Waiver of Sovereign Immunity to Satisfy Special Exception to Title Insurance Policy #48

THIS LIMITED WAIVER OF THE SOVEREIGN IMMUNITY OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON (the "Tribe") FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. The Tribe expressly, irrevocably and unequivocally agrees to waive all protections that it may be afforded by tribal sovereign immunity for the limited purpose of defending against any disputes or lawsuits between the Tribe and [Insert Title Company] ("Company") related to or arising from the title insurance policy (the "Policy") issued by the Company with respect to the real property identified on Exhibit __ (the "Property"). The Tribe and the Company may each be referred to herein as a "Party," or, together, as the "Parties." This limited waiver applies only to the Tribe and to no other Tribal party or entity, and nothing in this waiver constitutes a general or limited waiver of the sovereign immunity or consent to suit of any other body, agency, enterprise, entity, individual member, officer, employee or official of the Tribe. The Tribe consents generally to the enforcement of any judgment against it or them in connection with any dispute arising out of the Policy; provided, however, that no encumbrances on Tribal land shall be created as a result of any judgment against it. The Tribe consents to the jurisdiction of the American Arbitration Association, as provided in the Section ___ herein, as well as to the jurisdiction of any of the federal courts of the State of Oregon, for the purpose of compelling arbitration and/or enforcing a final decision of the arbitrator (in either instance, a "**Judicial Proceeding**"). The Tribe agrees that it shall not plead or raise as a defense to any action brought by the Company or its successors or assigns any right or claim of right to the requirement of exhaustion of tribal court remedies prior to the commencement of arbitration or litigation proceedings, even if any such tribal forum would have concurrent jurisdiction over any such dispute but for such waiver. The Tribe waives its rights to have any dispute heard in any tribal court or before any other tribal tribunal, forum, council or other adjudicative body whether or not such forum now exists or is hereinafter created. The Company shall be entitled to all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief, except to the extent the Company's remedies are limited herein. This limited waiver of sovereign immunity is expressly limited as follows:

1. This waiver of sovereign immunity expressed herein expressly excludes the following assets of the Tribe: trust assets, federal restricted funds, the Tribe's Minor's Trust account, any funds or assets necessary for the fulfilment of any payroll, budget expenditure, or governmental reserve balance duly adopted by the Tribe. For purposes of this section: (a) "trust asset" means the real property (and all income derived therefrom, e.g. lease or easement payments, stumpage) for which legal title is held in trust by the United States for the benefit of the Tribe, or held by the Tribe and subject to restrictions by the United States against alienation and Tribe's governmental power; and (b) "federal restricted funds" means funds obtained by the Tribe from the United States for the provision of governmental programs and services by and through federally approved contracts or agreements with the United States; and

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Exhibit B

2. The waiver of sovereign immunity expressed herein is limited to the enforcement of the Tribe's obligations under the Policy and does not include any other transactions, contracts, associated agreements or other matters; and
3. The waiver of sovereign immunity expressed herein is granted only to the Company and to no other parties or entities and may not be assigned; and
4. The waiver of sovereign immunity expressed herein is limited to the jurisdiction of the courts and dispute resolution bodies specifically identified herein.

Dispute Resolution

All disputes, controversies or claims between the Tribe and the Company arising out of or relating to the Policy ("**Dispute**") shall be resolved by binding arbitration conducted in accordance with the provisions of this Section ("**Arbitration Proceedings**") and per the Tribe's limited waiver of sovereign immunity contained in Section __. Each Party hereby agrees that this arbitration provision is valid and enforceable and therefore waives any defense or assertion to the contrary. Each Party hereby waives any right it may have to assert the doctrine of forum non conveniens or any similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph. The Policy, its interpretation, and its enforcement shall not be subject to the jurisdiction of any Tribal Court formed by the Confederated Tribes of the Warm Springs Reservation of Oregon. **THE PARTIES HERETO WAIVE THEIR RIGHT TO A JURY TRIAL IN ANY ACTIONS THAT THEY MAY BRING, OR THAT MAY BE BROUGHT AGAINST THEM, UNDER OR IN CONNECTION WITH THE POLICY.**

1. **Conduct of Arbitration.** Any arbitrator shall apply Oregon law without regard to Oregon's conflict of laws principles.
5. **Place of Arbitration.** All hearings and other proceedings in the arbitration shall be held at Bend, Oregon, unless otherwise mutually agreed in writing by the parties.
6. **Relief Available.** With respect to the matters submitted to Arbitration Proceedings, the arbitrator shall have authority to:
 - a. issue appropriate interlocutory orders to mitigate damage or prevent irreparable injury to a Party; and
 - b. render a final decision which:
 - i. determines or declares the rights, duties, adequacy of performance, breach or liabilities of a Party under the Policy;
 - ii. awards appropriate injunctive, declaratory or compensatory monetary relief for the benefit of a Party; and/or

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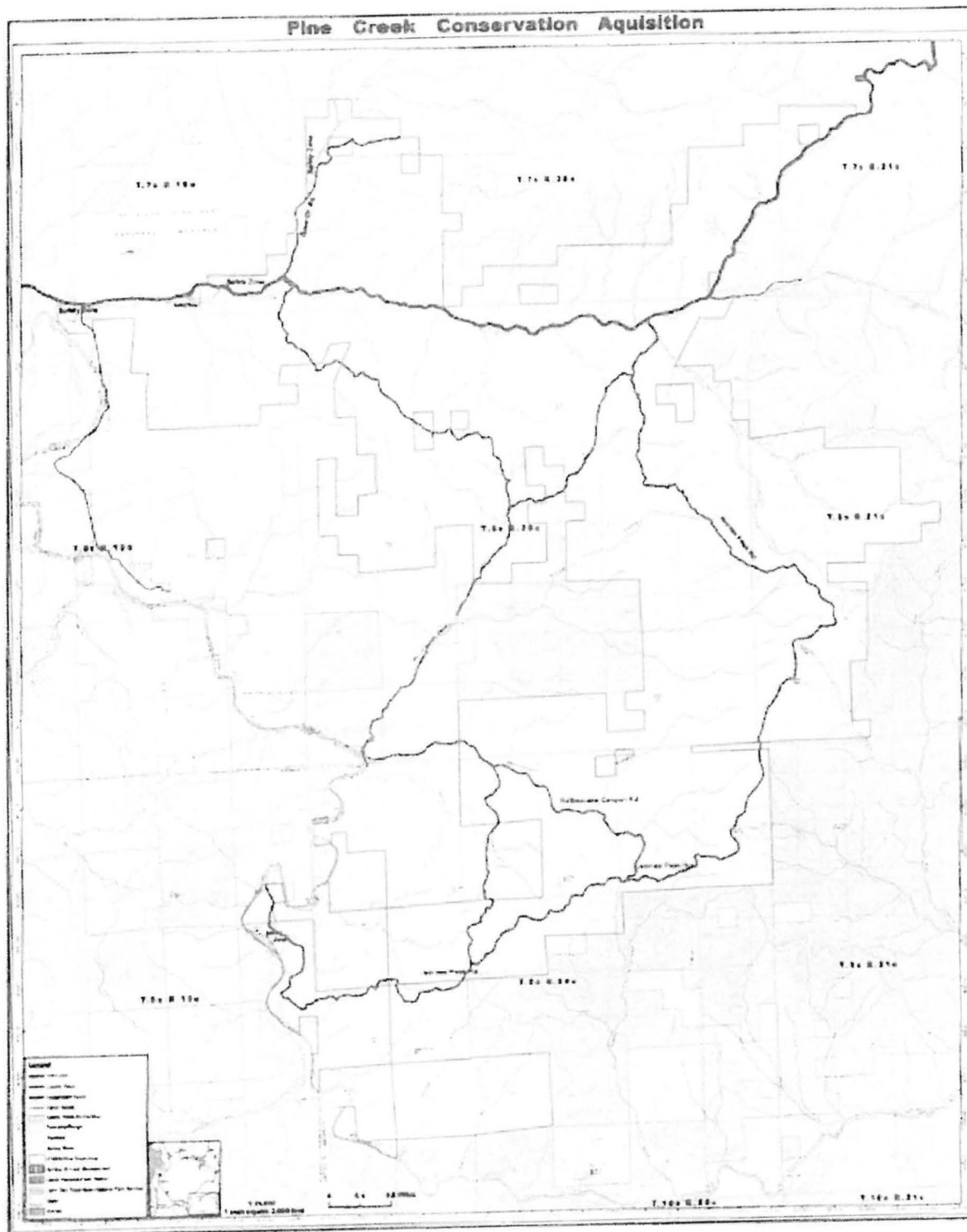
Exhibit B

- iii. contains such further relief and provisions as the arbitrator has jurisdiction and authority to grant.

No arbitrator shall have jurisdiction or authority to assess special, consequential or punitive damages against either Party. Except as inconsistent with the provisions of this dispute resolution provision, the arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association then in effect.

- 7. **Decision Binding; Enforcement.** The Decision of the arbitrator shall become a "Final Decision" at the time rendered. All Final Decisions shall be conclusive and binding on the Parties with respect to the matters decided, and shall be complied with by the Parties. A Party may enter a Final Decision and institute Judicial Proceedings for the sole purpose of enforcing a Final Decision in any tribunal specified in the limited waiver of sovereign immunity. In such Judicial Proceedings, neither Party, without consent of the other Party, shall be entitled to contend that the Final Decision should be vacated, modified or corrected and the parties hereby expressly waive all other rights and remedies that might otherwise be available in the Judicial Proceeding. The limited waiver of sovereign immunity set forth in Section __ shall apply to the enforcement of a Final Decision.

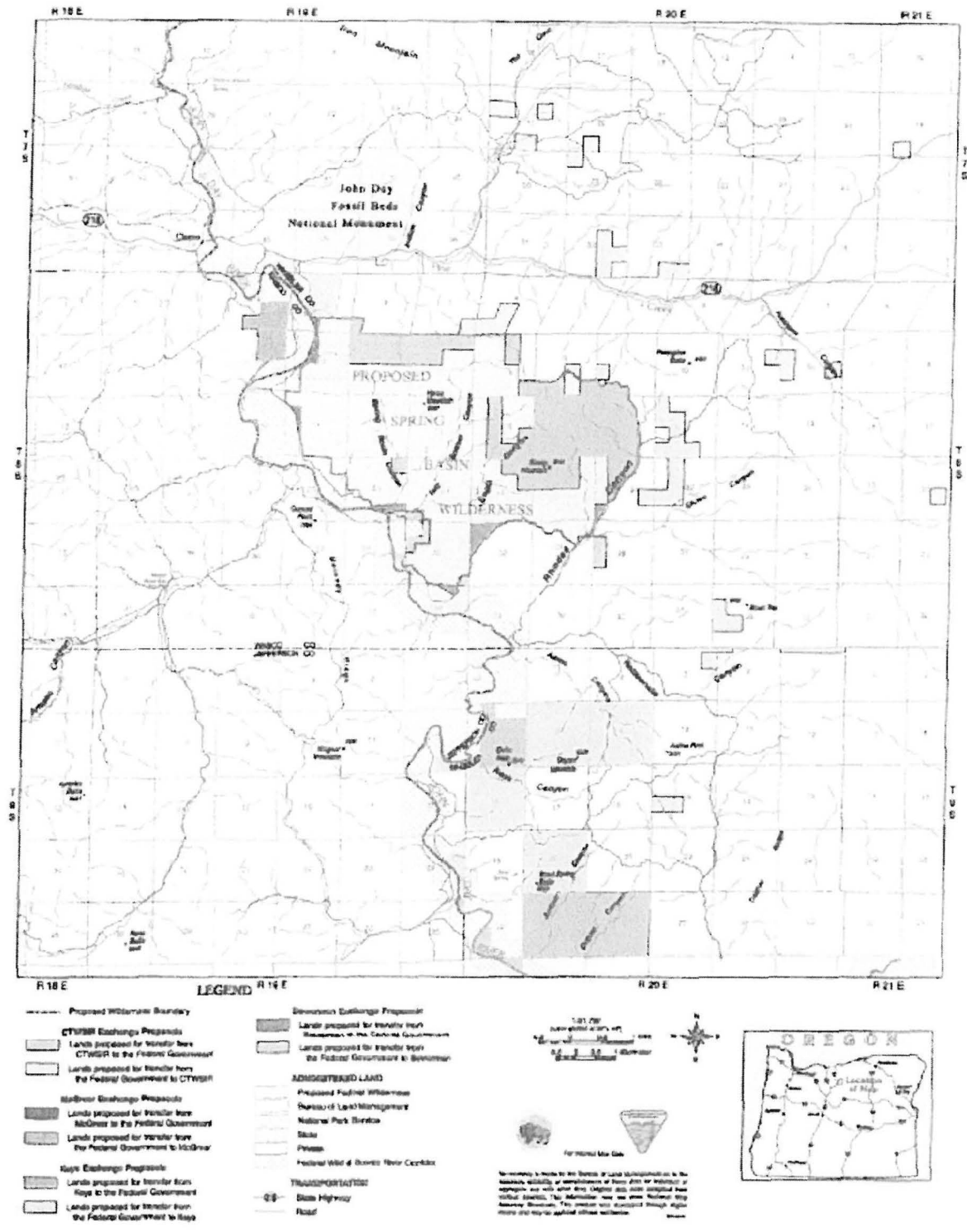
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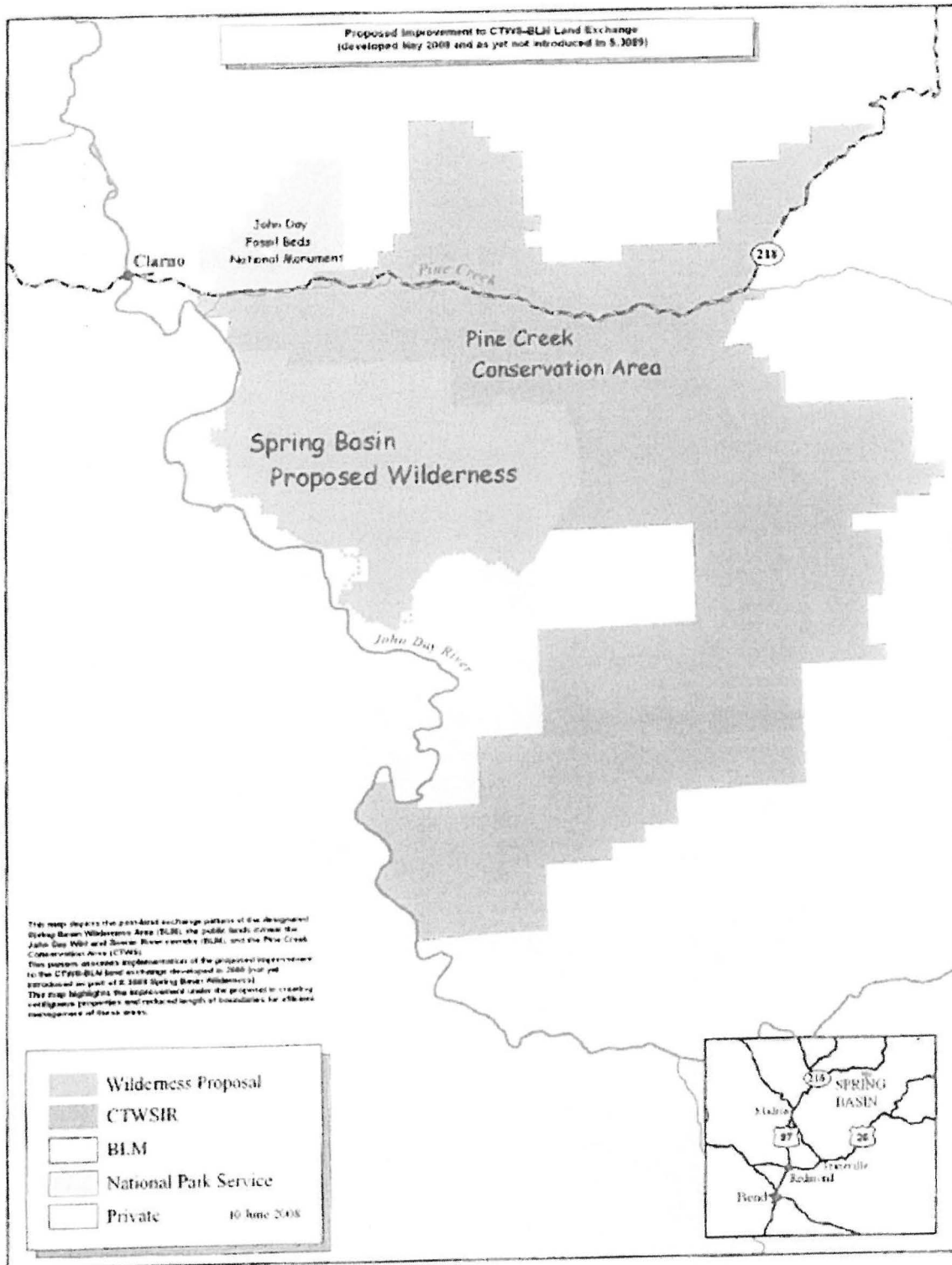


SPRING BASIN WILDERNESS WITH LAND EXCHANGE PROPOSALS

September 3, 2008

This map prepared at the request of Senator Ron Wyden





**THE SECOND AMENDED AND RESTATED PINE CREEK RANCH FISH AND
WILDLIFE PROJECT**

MEMORANDUM OF AGREEMENT

This Second Amended and Restated Pine Creek Ranch Wildlife Project Memorandum of Agreement (“**Agreement**”) is made by and between **THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON** (“**Tribe**”) and **THE UNITED STATES OF AMERICA**, acting through the Department of Energy, Bonneville Power Administration (“**Bonneville**”). Together the Tribe and Bonneville are the “**parties**” to this Agreement.

RECITALS

WHEREAS, the Tribe and Bonneville are parties to the Pine Creek Ranch Wildlife Project Memorandum of Agreement dated September 28, 1999 and the Amended and Restated Pine Creek Ranch Wildlife Project Memorandum of Agreement dated April 28, 2001 (together the “**MOA**”) and now desire to amend and restate that agreement as set forth herein.

WHEREAS, The Tribe is a sovereign entity with rights reserved in the Treaty with the Tribes of Middle Oregon of June 25, 1855 (12 Stat. 963). These rights include the authority to co-manage fish and wildlife and their habitats in the area ceded by the Tribe to the United States.

WHEREAS, Bonneville is a power marketing agency within the United States Department of Energy. The Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501 (“**Act**”) directs Bonneville to protect, mitigate, and enhance fish and wildlife affected by the development and operation of federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Act, the fish and wildlife program adopted by the Pacific Northwest Electric Power and Conservation Planning Council (“**Council**”) under subsection 4(h) of the Act, and other environmental laws.

WHEREAS, in 1999 Bonneville began funding the Tribe to acquire and manage real property near Clarno, Oregon, along the John Day River. The acquisitions became the “**Pine Creek Conservation Area**,” or the “**Project**,” which helped Bonneville fulfill its obligations to protect fish and wildlife and their habitats affected by the construction, inundation, and operation of John Day Dam as required under the Northwest Power Act and to help Bonneville comply with its duties under the Endangered Species Act. Over several years Bonneville funded the Tribe to make additional acquisitions, and these parcels were combined with the Project, which is now managed by the Tribe under Bonneville project #1998-022-00. To ensure the properties acquired under the Project continued to be managed to protect fish and wildlife and their habitats, the Tribe granted to the United States, by and through Bonneville, multiple conservation easements or other deed restrictions. These conservation easements and deed restrictions will be consolidated into one single conservation easement, the 2021 Pine Creek Restated and Amended

Conservation Easement, as part of the land exchange defined below.

WHEREAS, Congress included provisions in the Omnibus Public Land Management Act of 2009, P.L. 111-11, sections 1751-55, for the United States, acting by and through the Department of Interior, Bureau of Land Management (“**BLM**”), to establish the Spring Basin Wilderness near Clarno, Oregon. The BLM has custody and control over certain real property inholdings surrounded by the Project. The Tribe has fee title to real property within the boundaries of the Spring Basin Wilderness, and the BLM has fee title real property adjacent to the Project. The 2009 Omnibus Lands Act authorizes the BLM to “**exchange**” real property with the Tribe to consolidate each entity’s respective holdings.

WHEREAS, Bonneville funding under this Agreement has been and will be provided in a manner consistent with section 4(h)(10)(A) of the Act.

WHEREAS, The parties are therefore amending and restating The Pine Creek Ranch Wildlife Project Memorandum of Agreement (September 1999), together with the Amended and Restated Pine Creek Ranch Memorandum of Agreement (April 28, 2001) to facilitate the land exchange and consolidate the land rights and management of the Project. The Tribe has and will continue to dedicate the Project to wildlife habitat protection permanently and will manage it according to the terms of this Agreement, one consolidated conservation easement (the “**2021 Amended and Restated Pine Creek Conservation Area Conservation Easement**” or “**Conservation Easement**”) and the Tribe’s site-specific Pine Creek Conservation Area Management Plan (“**Management Plan**”).

WHEREAS, capitalized terms not defined herein shall have the meaning as defined in the conservation easement.

AGREEMENT

1. BONNEVILLE OBLIGATIONS

(a) In consideration of the promises and covenants made and set out herein, Bonneville shall make a monetary transfer into escrow on behalf of the Tribe not to exceed \$217,200.00 for an equalization payment for the land exchange. The BLM property was determined to have a higher value than the Tribal property and this payment shall equalize the land values. The Tribe shall provide Bonneville escrow information ten (10) business days prior to the planned closing of the exchanged properties. Bonneville shall then provide its escrow instructions promptly to the closing agent.

(b) Bonneville shall continue to provide a reasonable amount of funds for operation and maintenance of the Project to help the Tribe ensure the habitat's natural characteristics and conservation values are developed and, if feasible, self-sustaining. The parties expect those amounts to include allowances for items and activities necessary for Project management. Representative operation and maintenance activities include, but are not limited to, the following:

- Write, maintain, and append, as needed, a land management plan as approved by Bonneville;
- Maintain and defend boundaries and other legal property interests;
- Monitor and address surrounding land uses or activities that could adversely affect conservation values;
- Maintain Pine Creek Conservation Area files, including photos, maps, tax and ownership information;
- Update site management plans;
- Maintain property equipment, buildings, public toilets, corrals, roads, bridges, trails, gates, fences, locks, and signage;
- Prevent unauthorized public or livestock trespass or user impacts;
- Provide managed public use, including facilities at camps, outreach information on the property, and a permit and reservation system for access, hunting and camping
- Prevent encroachment and mitigate risk of catastrophic wildfire;
- Suppress wildfires that could damage neighboring properties or tribal facilities;
- Inventory, map, and evaluate wildlife and habitat conditions;
- Provide outreach to neighbors, stakeholders, local governments, and volunteers;
- Detect, map, and treat invasive species;
- Plan, conduct, and monitor effects from prescribed fire;
- Manage vegetation around facilities and Exclusion Zones through mowing and other activities;
- Prepare monitoring, management, and annual reports;
- Participate in watershed resource management groups, advisory committees, and activities with various partners, agencies, and concerned stakeholders which could affect the Project;
- Patrol and monitor activities on the Project including hiking, camping, educational and research programs, volunteer programs, and hunting and fishing activities;
- Plan, develop, implement, and assess natural resource maintenance and improvement projects for agencies, NGO's, educational and volunteer groups;
- Train key personnel and leadership to conduct successful ecological projects for Project management objectives.

All operations and maintenance funding will be subject to negotiation and where appropriate consider the views of the Council, its assigns or successors, and are subject to available funds.

(c) Where this Agreement grants Bonneville approval authority (*i.e.* ensure amendments to the Management Plan comply with the terms of this Agreement and the Conservation Easement), then unless provided otherwise, Bonneville shall complete its review and announce its decision within a reasonable time, typically within 180 days.

2. PROJECT FUND

(a) The monies provided pursuant to Section 1 above, any interest earned from them, and net income earned from the Project shall constitute the Pine Creek Ranch Mitigation Fund (“**Fund**”). The Tribe may use the Fund to fulfill its obligations under this Agreement and any subsequent Cooperative Agreement executed by the parties for Bonneville project #1998-022-00 “Pine Creek Conservation Area.” The Tribe shall maintain the Fund in a discreet account similar to other accounts managed by the Tribe. The Tribe shall maintain accounting for the Fund sufficient to allow tracking of all income and expenditures for the Fund in accordance with generally accepted accounting principles.

(b) In addition to monies provided pursuant to section 1 above, the Tribe may use net revenue received from managing the Project, including but not limited to conservation reserve program payments or other similar payments, to pay costs associated with managing the Project or to implement the Management Plan. Such revenues generated that are in excess of amounts needed to pay property taxes may be subtracted from annual operation and maintenance funds that would otherwise have been provided by Bonneville, unless otherwise agreed by the parties.

(c) In the event the Tribe determines that the operation and maintenance funds provided by Bonneville are or may become inadequate to fulfill the Tribe’s obligations under this Agreement including the Conservation Easement, the Tribe may provide Bonneville with written notice of its determination, and Bonneville agrees to participate within sixty (60) days of the receipt of the notice in a government-to-government consultation with the Tribe regarding funding levels, conservation burdens related to the ongoing management of the Protected Property, the Tribe’s support for Bonneville mitigation credits, and potential disposition by the Tribe of the Protected Property, among other matters.

3. MANAGEMENT PLAN

(a) The Tribe will update and amend the Management Plan to include the post-exchange properties. After signing this Agreement, the Tribe shall within eighteen (18) months submit to Bonneville for its review and formal acknowledgement proposed amendments to the Management Plan for the Project. BPA shall review the proposed updates and amendments to the Management Plan and provide its written concurrence of consistency of the Management Plan with the Pine Creek Conservation Easement prior to Grantor implementing any amendment of the Management Plan. Once it is completed by the Tribe and approved by Bonneville, the amended Management Plan shall be incorporated into and made a part of this Agreement. The Management Plan will continue to focus on habitat management designed to promote and maintain native habitat that is naturally self-sustaining.

(b) The Management Plan shall integrate management planning for historic and cultural resources, as applicable, as defined by the National Historic Preservation Act, with the fish and wildlife management practices as a means of avoiding impacts to cultural and historic resources. The Tribe will also avoid sensitive sites if at all possible in implementing habitat

improvement actions. Ground-disturbing activities may only occur if they have been included in the Management Plan or covered by a separate land use agreement with Bonneville.

(c) The Tribe shall assist Bonneville in complying with the National Environmental Policy Act (“NEPA”) and other applicable laws, as provided in an annual Cooperative Agreement for Bonneville project #1998-022-00 “Pine Creek Conservation Area”, for operation and maintenance or habitat improvement actions that require federal environmental compliance.

(d) The Tribe will continue to have all management and operation control of the Project and will therefore be responsible for all incidents of ownership of the Project. Provided Bonneville retains liability for its actions as provided for under the Federal Torts Claims Act, the Tribe shall hold harmless and indemnify Bonneville from any liability from any incident of ownership that may arise in the implementation of the Management Plan. Such incidents of ownership include, but are not limited to, taxes; hazardous waste, and noxious or invasive weed response; cultural resource mitigation; and tort liability. Should a catastrophic event, a “**force majeure**,” such as a wildfire, destroy or diminish the fish and wildlife habitat, the Tribe shall have no obligation to reproduce the pre-existing wildlife values any faster than natural regeneration reproduces them and Bonneville shall have no obligation to provide additional funding to the Tribe to address the effects of such catastrophic events.

(e) The Tribe will ensure the Project is permanently protected and managed for fish and wildlife on behalf of Bonneville, preventing any and all uses of the Project that are inconsistent with this Agreement, the Conservation Easement, the Act, and the Management Plan and its amendments. Prohibited uses of the property acquired, improved, or managed under this Agreement are enumerated in the Conservation Easement, executed and recorded simultaneously with the exchange.

4. BONNEVILLE CREDIT.

a) In the MOA, the Tribe supported Bonneville’s claim of protection, mitigation, and enhancement credit in the form of Habitat Units. The parties now lack the capacity to produce reliable, accurate, habitat evaluations using Habitat Units or to update or review past habitat evaluations that used Habitat Units. Consequently, notwithstanding anything to the contrary in the MOA, the parties will no longer require a wildlife habitat inventory that utilizes the Habitat Evaluation Procedure methodology nor track mitigation accomplishments and obligations in terms of Habitat Units. Instead, the parties agree to use acres as the crediting metrics for the Project.

b) The Tribe will support Bonneville taking credit for the Project against its fish and wildlife protection, mitigation, and enhancement obligations under the Act and the Endangered Species Act, 16 U.S.C. section 1531 et seq., (“ESA”), provided Bonneville is not in default of any obligation under this Agreement, including but not limited to Section 1(b) of the Agreement. Bonneville may credit the 34,012 acres of habitat in a method legally permissible against its

responsibility to mitigate for the development of any of the lower four Columbia River dams: Bonneville, The Dalles, John Day, or McNary.

c) The Tribe agrees that Bonneville's expenditure of money is consistent with sections 4(h) and 10(e) of the Act. The Tribe shall support Bonneville obtaining full credit for its expenditures with respect to protecting and managing existing habitat on the Project and for habitat improvements when implemented on the Project, so long as Bonneville complies with the terms of this Agreement, including but not limited to Bonneville's obligations as provided in Section 1(b).

5. TRIBAL POWER OF TERMINATION

a) If, after following the procedure in 2.c., the Tribe determines that the operation and maintenance funds provided by Bonneville are inadequate to fulfill the Tribe's obligations under this Agreement including the Conservation Easement, the Tribe may provide Bonneville with written notice that the funds are inadequate and then take action in the order as provided below.

- i. First, the Tribe may transfer the Project to Bonneville, upon receipt of Bonneville approval and acceptance; transfer shall be done by deeds recorded in the Wheeler and Wasco counties, Oregon. Bonneville shall assume full responsibility for managing the Project for the permanent protection of fish and wildlife habitats; or
- ii. Second, if Bonneville does not accept the Project, the Tribe may transfer the Project to a federal or state land management agency (“**agencies**”), upon receipt of the relevant agency's approval and acceptance. Transfer shall be done by deeds recorded in the Wheeler and Wasco counties, Oregon.
- iii. Third, if neither BPA nor the agencies accept the Project, the Tribe may promptly sell or transfer the Project to any third party at fair market value and remit to Bonneville the received value, if any, less the Tribe's costs of the sale.
- iv. After exercising either alternative (i), (ii) or (iii) above, the Tribe shall immediately transfer the proceeds for the disposal of the Project and the balance of the Fund to Bonneville. The Fund may not be used to prepare the Project, if any, for sale or transfer under this provision without Bonneville's written approval.
- v. In the event either alternative (i) or (ii) above is exercised and after the Tribe has transferred the proceeds as required by (iii) above, this Agreement shall terminate and be of no further force and effect.

b) The parties agree that the Tribe may farm, rent, or dispose of the “**Mint Farm**” parcel, a small approximately 2.62 acre parcel on the west side of the John Day River in Wasco County, Government Lot 8 Section 3, Township 8 South, Range 19 East, as shown on **Attachment A**. Net proceeds shall be deposited into the Fund described in Section 2 above and used as provided

in that section. The disposition of the Mint Farm shall not affect Bonneville’s mitigation credit under this Agreement.

6. FORCE MAJEURE. Neither party shall be liable to the other or deemed in default under this Agreement if and to the extent that the party’s performance of the Agreement is prevented by reason of “**force majeure**” as such is defined in the Conservation Easement.

7. PROTECTION OF TRIBAL RIGHTS. Fishing, hunting, gathering and Tribal cultural and religious activities on the Project according to Tribal custom and law are not prohibited by this Agreement. Tribal members shall be subject to tribal regulation of wildlife harvest. All others will be subject to applicable state and federal regulations.

8. PUBLIC ACCESS. The public shall have reasonable access to the Project. The Tribe may regulate access, provided that access and transportation regulations shall apply equally to tribal members and non-tribal members. The Tribe will not provide public access or use that will result in adverse impacts to fish and wildlife, the reduction of fish and wildlife habitat, or the destruction of other natural resource values for which the Project is managed. Nothing in this Agreement limits the authority or ability of the Tribe to manage the Project for public safety and wildlife habitat conservation, or to preserve and protect cultural, historic, and religious sites, and to carry out and protect the federally guaranteed rights of the Tribe and its members. Nothing in this Agreement limits or diminishes any treaty retained right or privilege of the Tribe or its members afforded under federal law as a result of the status of the Tribe or Tribal members, provided that treaty reserved rights will be exercised consistent with this Agreement.

9. LIMITATION OF CREDIT. The credit Bonneville obtains for the consideration paid to provide and maintain the Project as fish and wildlife habitat as required and provided in this Agreement shall not be affected or diminished by reason of force majeure or as a result of the failure of the Tribe to carry out its obligations to maintain the properties as provided in this Agreement.

10. BINDING EFFECT. This Agreement shall be binding on the parties and their assigns and successors. Either party shall have the right to enforce the terms of this Agreement as provided herein.

11. DISPUTE RESOLUTION. Bonneville and the Tribe agree to submit in good faith any disputes regarding the implementation of this Agreement or the management of the Project to non-binding mediation. This provision shall be triggered when one party makes a written request for the other party to join in mediation. Within thirty (30) days of this provision being triggered, the parties shall select a mediator, or if they are unable to select a mediator, each party shall select a mediator and the two selected will choose a third mediator who shall be the sole mediator. The parties shall use their best efforts to resolve the dispute in mediation. After a dispute has been in mediation for at least sixty (60) days and there have been at least two mediation sessions, either party may initiate legal action to resolve the dispute. Except as provided in this part, pending completion of mediation no party shall initiate any legal proceeding except in aid of mediation.

12. EFFECTIVE DATE. The original Pine Creek Agreement was effective on September 28, 1999. This Agreement shall be effective when signed by the Authorized Representative of the Tribal Council pursuant to Tribal Resolution No. 12,291 (**Attachment B**), Bonneville’s Manager Real Property Services and Bonneville’s Group Vice President of the Office of Environment, Fish and Wildlife.

13. TERMINATION. If a court of competent jurisdiction finds that the parties or either of them were not authorized to perform any obligation under this Agreement, this Agreement shall terminate, and the parties will have no further obligations to each other under this Agreement. Upon such termination and upon Bonneville's request and approval, the Tribe shall transfer title to real property acquired pursuant to Section 3 to Bonneville, convey to Bonneville any and all personal property acquired with funding provided by Bonneville, and deliver the balance of the Fund to Bonneville. Unless otherwise agreed by the parties, the parties shall use their best efforts to enter into a new and binding agreement that accomplishes the intent of this Agreement. Either party may invoke the dispute resolution provisions of this Agreement to facilitate the negotiation of a new agreement.

14. MODIFICATION. The parties by mutual agreement may modify the terms of this Agreement. Modifications may not conflict with the terms of the Conservation Easement, and any such modification shall be in writing signed by both parties.

15. APPLICABLE LAW. All activities undertaken pursuant to this Agreement must be in compliance with all applicable state and federal laws and regulations. Federal law shall govern the implementation of this Agreement and any action, whether mediated or litigated, brought or enforced.

16. SOVEREIGN IMMUNITY. THIS WAIVER OF SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. The Tribe grants a limited waiver of its sovereign immunity for Bonneville or its successors but no other person or entity if Bonneville alleges a breach of an obligation or duty by the Tribe under this Agreement and seeks to bring the Tribe into compliance with this Agreement or seeks payment of a monetary obligation arising from noncompliance; provided, any payments from the Tribe shall be payable only from monies, assets, or properties derived from the benefits of this Agreement and all other monies, assets or properties of the Tribe being unavailable to satisfy a judgment. The waivers of sovereign immunity by the United States bind Bonneville and can be found generally in the statutes establishing the jurisdiction of the United States District Courts, 28 U.S.C. § 1346, the Court of Claims, 28 U.S.C. § 1491, and the Federal Torts Claims Act, 28 U.S.C. §§ 1346, 1402, 2401, 2402, 2411, 2412, 2671 et seq.

16. ATTORNEY FEES. In the event of litigation involving this Agreement each party shall bear its own costs and attorney fees, including those incurred on appeal.

17. WAIVER. The failure of any party to require strict performance of any term of this Agreement or a party's waiver of performance shall not be a waiver of any future performance or of a party's right to require strict performance in the future.

18. ASSIGNMENT. The Tribe may not assign or transfer its rights or delegate its responsibilities under this Agreement without written approval from Bonneville, which approval shall not be unreasonably withheld.

19. IN LIEU FUNDING. Tribe may use the Fund only for acquisitions and improvements that are in addition to, not in lieu of, other expenditures it is required to make under other agreements or provisions of law. Tribe will pay, from a source other than Bonneville, payments in lieu of taxes, county weed assessments and minimum noxious or invasive weed control costs as required by state law for the Project.

20. NOTICE. Any notice permitted or required by this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail.

21. COUNTERPARTS. This Agreement may be signed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same document. Any signature page of any such counterpart, or any facsimile thereof, may be attached or appended to any other counterpart to complete a fully extended counterpart of this Agreement, and any facsimile transmission of any party's signature to any counterpart shall be deemed an original and shall bind such party.

22. 1999 AND 2001 MOA PROVISIONS. This Second Amended and Restated Pine Creek Conservation Area Agreement replaces the MOA and any prior amendments to it in its entirety.

23. NOTICES

a) Notices to the Tribe should be sent to:

Secretary-Treasurer, Tribal Council
Confederated Tribes of the Warm Springs Reservation
P.O. Box 1168
Warm Springs, OR 97761

AND

FINAL – Execution Version

General Manager, Branch of Natural Resources
Confederated Tribes of the Warm Springs Reservation of Oregon
P.O. Box C
Warm Springs, OR 97761

b) Notices to Bonneville should be sent to:

Pine Creek Conservation Area COTR—ECW-4
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208

AND

Real Property Specialist—TERR-3
BPA Tract ID: PINC-WL-3
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208

[signature page follows]

IN WITNESS WHEREOF, each of the parties hereto has executed this Amended and Restated Pine Creek Ranch Wildlife Project Memorandum of Agreement.

BONNEVILLE POWER ADMINISTRATION

By: **SCOTT ARMENTROUT** Digitally signed by SCOTT ARMENTROUT
Date: 2021.06.25 06:29:38 -07'00' Date: _____

Scott G. Armentrout
Vice President
Environment, Fish and Wildlife

By: **MATTHEW KIRKLAND** Digitally signed by MATTHEW KIRKLAND
Date: 2021.06.25 14:47:34 -07'00' Date: _____

Matthew Kirkland
Manager, Real Property Services

CONFEDERATED TRIBES OF THE WARM SPRINGS INDIAN RESERVATION OF OREGON

By: _____ Date: _____

Michele Stacona,
Secretary-Treasurer, CTWS Tribal Council

IN WITNESS WHEREOF, each of the parties hereto has executed this Amended and Restated Pine Creek Ranch Wildlife Project Memorandum of Agreement.

BONNEVILLE POWER ADMINISTRATION

By: _____ Date: _____

Scott G. Armentrout
Group Vice President
Environment, Fish and Wildlife

By: _____ Date: _____

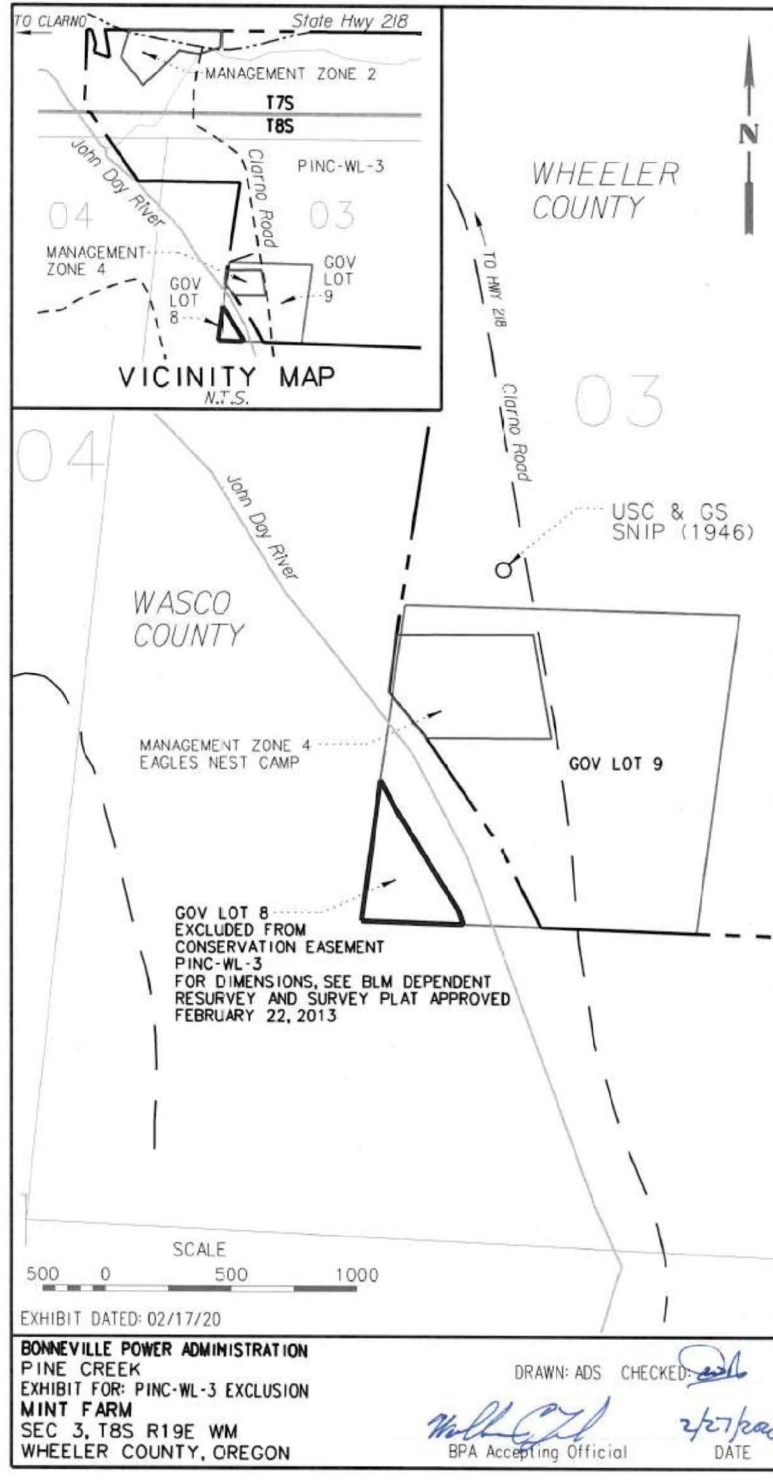
Matthew Kirkland
Manager, Real Property Services

CONFEDERATED TRIBES OF THE WARM SPRINGS INDIAN RESERVATION OF OREGON

By: **(b)(6)** _____ Date: 6/30/2021

Michele Stacona,
Secretary-Treasurer, CTWS Tribal Council

ATTACHMENT A: MINT FARM



ATTACHMENT B: TRIBAL RESOLUTION

RESOLUTION NO. 12,291

WHEREAS, Pursuant to Tribal Council Resolution number 11,298, the Tribal Council resolved to authorize a team consisting of the Secretary-Treasurer/CEO, manager of the branch of Natural Resources, and the Tribal Attorneys to take steps necessary to implement an exchange of land ("Land Exchange") in the John Day River Basin between the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe") and Bureau of Land Management ("BLM"), including by executing an Agreement to Initiate with the BLM; and,

WHEREAS, The Tribe and BLM entered into a Binding Land Exchange Agreement dated effective January 21, 2016 (the "Agreement"), which Agreement effectuated the land exchange and a copy of which is attached as Exhibit "A"; and,

WHEREAS, It is a condition of the Agreement that the Tribe convey acceptable title of the real property that it is transferring to the United States (the "Tribal Property"); and,

WHEREAS, The Tribe has engaged AmeriTitle to provide a title insurance policy with respect to the Tribal Property, and AmeriTitle is requiring that the Tribe provide a limited waiver of sovereign immunity as a condition of the issuance of a title insurance policy; and,

WHEREAS, The Tribal Council has concluded that providing a limited waiver of sovereign immunity in favor of the title company ("Company") related to any disputes or lawsuits between the Tribe and the Company arising from the title insurance policy issued by Company, in substantially similar form as the attached as Exhibit "B" ("Limited Waiver"), is necessary to convey acceptable title of the Tribal Property to the BLM; now, therefore,

BE IT RESOLVED, By the (27th) Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article V, Section 1 (a), (c), (l) and (u) of the Tribal Constitution and By-Laws and Warm Springs Tribal Code Chapter 30, that the Land Exchange authorized by Tribal Council Resolution 11,298 and Tribe's execution and performance of the Agreement and any other agreements or documents in furtherance of the Land Exchange are hereby approved and ratified, and the Tribal Council Chair, Vice Chair or Secretary-Treasurer/CEO ("Authorized Representatives") are hereby authorized to take or cause to be taken all other acts on behalf of the Tribe that the

Authorized Representative deems reasonably necessary or desirable to effectuate the Land Exchange and the Tribe's performance of the Agreement, including without limitation by paying such expenses and executing all documents that such person deems reasonably necessary; and,

BE IT FURTHER RESOLVED, By the Tribal Council that any of the Authorized Representatives are hereby authorized, on behalf of the Tribe, to sign and execute a document granting the Limited Waiver in favor of Company in substantially similar form as the attached Exhibit "B".

CERTIFICATION

The undersigned, as Secretary-Treasurer/CEO of the Confederated Tribes of the Warm Springs Reservation of Oregon hereby certifies that the Tribal Council is composed of 11 members, of whom 8 constituting a quorum were present at a meeting thereof, duly and regularly called, noticed, convened and held this 15th day of February, 2017 ; and the foregoing resolution was passed by the affirmative vote of 7 members, the Chairman not voting; and that the said resolution has not been rescinded or amended in any way.

(b)(6) (b)(6)
Michele Stacona 2/22/17
Secretary-Treasurer/CEO

NOTED:

(b)(6)
Floy L. Anderson 2-22-17
Acting BIA Superintendent

Attachments: Exhibit "A"
Exhibit "B"

cc: Secretary-Treasurer/CEO
Superintendent
Administrative Services Center

Exhibit A

**UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Prineville District Office
3050 NE Third Street
Prineville, Oregon 97754**

BINDING LAND EXCHANGE AGREEMENT

**CONFEDERATED TRIBES OF WARM SPRINGS
RESERVATION OF OREGON**

OR-65926

THIS LAND EXCHANGE AGREEMENT is made this 21 day of January ²⁰¹⁶/₂₀₁₅, pursuant to Public Law 111-11, the Omnibus Public Land Management Act of 2009 (the Act), Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), and the regulations at 43 CFR 2201.7-2, between the United States of America, acting through the authorized officer of the Bureau of Land Management, hereinafter styled the BLM, and the Confederated Tribes of Warm Springs Reservation of Oregon (CTWSRO), hereinafter called the Non-Federal Party.

In consideration of the mutual agreements contained herein, the parties agree as follows:

1. The Non-Federal Party will convey to the United States of America, by general warranty deed free of lien or encumbrance, except as otherwise provided herein, the real property and all interest therein, as described in Exhibit A attached hereto and made a part hereof. The value of these lands is \$655,400.
2. In exchange, the United States of America agrees to convey to the Non-Federal Party, by patent issued by the Department of the Interior, the real property and all interest therein as described in Exhibit B attached hereto and made a part hereof. The value of these lands is \$872,600.
3. To avoid a project-related influence in the appraisal, the "Scope of Project Rule" as outlined in the "Yellow Book" has been applied to the Federal and non-Federal Wilderness Areas and Conservation Areas.

As defined on page 86 of Section D-7 of the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA): "It is important, however, for the appraiser to recognize that the appraiser must utilize the same method of valuation for both the Federal and non-Federal lands in the exchange."

Hypothetical Condition (HC) 1: The appraisal analysis for this exchange should disregard the Federal and non-Federal related project areas (Wilderness, Conservation, etc.). (See UASFLA Section B-10; Pages 45-47 – Enhancement or Diminution in Value Due to the Project.)

4. The BLM will convey the Federal lands with a restrictive covenant in the conveyance document to ensure the long-term preservation of the property's historic significance, in accordance with 36 CFR 800.5 (a) (2) (vii).
5. In applying **Hypothetical Condition (HC) 1** and the "Scope of Project Rule," the valuation did not consider the protective covenant affecting certain Federal exchange lands.
6. The BLM and the CTWSRO developed escrow instructions (attached as Exhibit C) to transfer title to the non-Federal and Federal lands in a single transaction through escrow.
7. The values identified above will remain fixed until consummation of the land exchange.
8. To equalize the values of the lands involved in the exchange, the CTWSRO will deposit \$217,200 into escrow and release it to the BLM upon consummation of the exchange. This cash equalization payment is within the regulatory parameters of 25 percent of the value of the Federal land.
9. The parties agree that the Non-Federal Party will be responsible, if necessary, for removal, indemnification, or other remedial actions concerning any hazardous substances found on the non-Federal land.

Conditions

This Agreement is legally binding on both the Non-Federal Party and the BLM subject to the terms and conditions herein identified and provided;

1. The CTWSRO can convey acceptable title to the United States of America.
2. No loss or damage occurs to either property from any cause.
3. The parties do not find or disclose any hazardous substances on the Federal or non-Federal land prior to conveyance.
4. The Deciding Office upholds the decision to approve the exchange in the event of a protest or appeal.
5. The parties do not agree through mutual consent to terminate this agreement.
6. Congressional oversight raises no objections.

Failure to Perform

In the event of failure to perform or comply with terms set forth in this Agreement, the non-complying party will be liable for all costs borne by the other party as follows: NONE

Duration of Agreement

This agreement is binding for 12 months after execution or until 12 months after the resolution of any third-party protests, appeals, and litigation, whichever is greater.

Execution

IN WITNESS WHEREOF, the parties hereto have signed their names.

Confederated Tribes of the Warm
Springs Reservation of Oregon
P.O. Box C
Warm Springs, Oregon 97761

(b)(6)

12-11-15

Glendon N. Smith
Secretary-Treasurer/CEO

Date

U.S. Department of the Interior
Bureau of Land Management
P.O. Box 2965 Portland, Oregon 97208

Jerome E. Perez
State Director
Oregon/Washington

Date

Received
DEC 14 2015
Pricilla

**EXHIBIT A
LDR CERTIFIED LEGAL DESCRIPTIONS
OF THE NON-FEDERAL LANDS**

T. 8 S., R. 19 E., W.M.

Section 2, lot 7;	32.23 acres*
Section 11, NE¼, E½NW¼, Lot 1, Lot 2;	302.49 acres*
Section 12, N½NE¼, NW¼;	240.00 acres*
Section 23, NE¼NE¼;	40.00 acres

T. 8 S., R. 20 E., W.M.

Section 7, W½NE¼, SE¼SE¼;	120.00 acres*
Section 8, Lot 4, SE¼SW¼, E¼SE¼, (that portion lying 30 feet southerly and perpendicular to the centerline of the road);	115.98 acres*
Section 9, Lot 4, SE¼SW¼, SW¼SE¼, (that portion lying 30 feet southerly, westerly and perpendicular to the centerline of the road);	63.72 acres
Section 16, W½NE¼, (that portion lying 30 feet westerly and perpendicular to the GPS line described by metes and bounds), SE¼ (that portion lying 30 feet westerly and perpendicular to the centerline of the road in Rhodes Canyon and westerly and perpendicular to the GPS line described by metes and bounds), E½W½, Lots 1, 2, 3 and 4;	432.87 acres**
Section 17, E½, E½W½, Lot 1, Lot 2, Lot 3, Lot 4;	631.62 acres*
Section 18, E½W½, E¼SE¼, SW¼SE¼;	280.00 acres
Section 19, N½NE¼, SE¼NE¼;	120.00 acres
Section 20, W½NE¼, E½NW¼, Lot 1, Lot 2;	235.83 acres*
Section 21, NE¼, NE¼SW¼, E½NW¼, (that portion lying 30 feet westerly and perpendicular of the centerline of the road in Rhodes Canyon);	143.59 acres

T.9 S., R. 20 E., W.M

Section 7, S½NE¼, E½W½, (that portion easterly of the John Day River), SE¼;...	385.00 acres
Section 28, All;	640.00 acres*
Section 29, All;	640.00 acres
Section 30, SW¼, (that portion easterly of the John Day River);	70.07 acres
Section 31, NE¼, (that portion northerly of the John Day River);	34.77 acres

T.9 S., R. 19 E., W.M

Section 25, NE¼NE¼, (that portion easterly of the John Day River);	14.65 acres
--	-------------

Total CTWSRO Acres: 4,542.82

* All Minerals – Reserved Federal

** The Bureau of Land Management (BLM) will establish the eastern and northeastern boundary of the Spring Basin Wilderness Area by Global Positioning System (GPS) and a metes and bounds description. The BLM will take GPS points along an existing road that extends beside

the drainage in the bottom of Rhodes Canyon. In the SE¼ of Section 16, the mapped wilderness boundary leaves this road and extends northerly up an intermittent drainage and crossing the north line of Section 16 and continuing northerly and westerly along the road through the non-Federal lands in the S½SW¼, SW¼SE¼, of Section 9. The non-Federal lands include that portion of those aliquot parts lying 30 feet southerly and perpendicular to the centerline of the road.

The road proceeds westerly crossing the section line and through the E¼SE¼ Section 8. The non-Federal land includes that portion of this aliquot part lying 30 feet southerly and perpendicular to the centerline of the road.

The wilderness boundary continues westerly and is coincident with the north line of Lot 4, SE¼SW¼ and the SW¼SE¼, Section 8, T. 8 S., R. 20 E.

Cadastral Survey will prepare a metes and bounds description that describes all non-aliquot portions of the non-Federal land to be conveyed in the exchange.

Reserved Mineral Interest:

- A. Reserved Federal minerals on non-Federal surface – 2,082.17 acres
- B. Minerals owned by the CTWS that would be conveyed – 674.35 acres
- C. Third party reserved minerals – 1,786.30 acres

1.Book/Page 30-360–Burgess to Geiler-1962 - 656.46 acres inside the wilderness boundary

T. 8 S., R. 20 E., W.M.
 Section 7, SE¼NE¼, SE¼SE¼; 80.00 acres
 Section 16, W½NE¼, (that portion lying 30 feet westerly and perpendicular to the GPS line described by metes and bounds), SE¼ (that portion lying 30 feet westerly and perpendicular to the centerline of the road in Rhodes Canyon and westerly and perpendicular to the GPS line described by metes and bounds), E¼W½, Lots 1, 2, 3 and 4;432.87 acres
 Section 21, NE¼, NE¼SW¼, E¼NW¼, (that portion lying 30 feet westerly and perpendicular of the centerline of the road in Rhodes Canyon);143.59 acres

2.Book/Page 14-363 – Lee to Reilly-1917 – 1,025 acres outside the wilderness boundary

T.9 S., R. 20 E., W.M
 Section 7, S½NE¼, E¼W½, (that portion easterly of the John Day River), SE¼;..... 385.00 acres
 Section 29, All;640.00 acres

Exhibit A 2

3. Book/Page 20-205 – State of Oregon to Sullivan-1946 – 104.84 acres outside the wilderness boundary (Bottlefields Area)

T.9 S., R. 20 E., W.M

Section 30, SW¼, (that portion easterly of the John Day River);.....70.07 acres

Section 31, NE¼, (that portion northerly of the John Day River);.....34.77 acres

Total 1,786.30 acres

Exhibit A 3

**EXHIBIT B
LDR CERTIFIED LEGAL DESCRIPTIONS
OF THE FEDERAL LANDS**

T. 7 S., R. 20 E., W.M.

Section 19, SE $\frac{1}{4}$ SW $\frac{1}{4}$;	40.00 acres
Section 20, SE $\frac{1}{4}$ SW $\frac{1}{4}$;	40.00 acres
Section 29, NW $\frac{1}{4}$ NW $\frac{1}{4}$;	40.00 acres
Section 32, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;	160.00 acres
Section 33, S $\frac{1}{2}$ SE $\frac{1}{4}$;	80.00 acres

T. 7 S., R. 21 E., W.M.

Section 19, SE $\frac{1}{4}$ SW $\frac{1}{4}$;	40.00 acres
---	-------------

T. 8 S., R. 19 E., W.M.

Section 1, SE $\frac{1}{4}$ SE $\frac{1}{4}$;	40.00 acres
Section 3, Lots 2, 3, 8 and 9, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;	222.21 acres

T. 8 S., R. 20 E., W.M.

Section 6, Lot 7, E $\frac{1}{2}$ SW $\frac{1}{2}$;	120.37 acres
Section 11, SE $\frac{1}{4}$ NE $\frac{1}{4}$;	40.00 acres
Section 12, Lot 2, Lot 3, NE $\frac{1}{4}$ SE $\frac{1}{4}$;	111.28 acres
Section 15, Lot 1, Lot 2, Lot 4, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;	264.69 acres
Section 21, NE $\frac{1}{4}$ SE $\frac{1}{4}$;	40.00 acres
Section 22, Lot 3, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$;	154.37 acres
Section 35, Lot 2, Lot 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$;	111.54 acres

T. 9 S., R. 20 E., W.M.

Section 1, Lot 1, Lot 2, Lot 3, Lot 4;	50.94 acres
Section 2, Lot 4;	11.90 acres
Section 3, SE $\frac{1}{4}$ NE $\frac{1}{4}$;	40.00 acres
Section 8, All;	640.00 acres
Section 9, All;	640.00 acres
Section 15, N $\frac{1}{2}$ SW $\frac{1}{4}$;	80.00 acres
Section 18, NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$, SE $\frac{1}{4}$, Lots 1, 2, 3 and 4;	617.06 acres
Section 20, All;	640.00 acres

Total Federal Acres: 4,224.36

Exhibit R 1

Together with the following water rights:

Township	Range	Section	Quarter / Quarter	Certificate #	Acres of Water Right
8 S.	19 E.	3	NESW	30248	1.6
8 S.	19 E.	3	SE1/4	25322	0.6
8 S.	19 E.	3	NESW	25322	4.1

A. The United States will convey the Federal land subject to ditches and canals and the encumbrances as listed below:

T. 7 S., R. 21 E., W.M.
 Section 19, SE1/4SW1/4;
 TD-030078 – Highway right-of-way

T. 8 S., R. 19 E., W.M.
 Section 3:
 OR-24421 – buried telephone cable right-of-way
 OR-34235 – aerial electric distribution line right-of-way
 Wheeler County Clarno Road 29

B. The Federal land includes the following grazing allotments:

1. Amine Peak Allotment - Confederated Tribes of the Warm Springs of Oregon
2. Rim Allotment - Confederated Tribes of Warm Springs of Oregon
3. Spring Basin Allotment - Confederated Tribes of Warm Springs of Oregon
4. Tripp Allotment – vacant
5. Byrds Point Allotment - vacant

There are no authorized improvements on ~~public~~ lands in the allotments leased by CTWSRO.

Exhibit B 2

Exhibit B

Limited Waiver of Sovereign Immunity to Satisfy Special Exception to Title Insurance Policy #48

THIS LIMITED WAIVER OF THE SOVEREIGN IMMUNITY OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON (the “Tribe”) FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. The Tribe expressly, irrevocably and unequivocally agrees to waive all protections that it may be afforded by tribal sovereign immunity for the limited purpose of defending against any disputes or lawsuits between the Tribe and [Insert Title Company] (“Company”) related to or arising from the title insurance policy (the “Policy”) issued by the Company with respect to the real property identified on Exhibit [redacted] (the “Property”). The Tribe and the Company may each be referred to herein as a “Party,” or, together, as the “Parties.” This limited waiver applies only to the Tribe and to no other Tribal party or entity, and nothing in this waiver constitutes a general or limited waiver of the sovereign immunity or consent to suit of any other body, agency, enterprise, entity, individual member, officer, employee or official of the Tribe. The Tribe consents generally to the enforcement of any judgment against it or them in connection with any dispute arising out of the Policy; provided, however, that no encumbrances on Tribal land shall be created as a result of any judgment against it. The Tribe consents to the jurisdiction of the American Arbitration Association, as provided in the Section [redacted] herein, as well as to the jurisdiction of any of the federal courts of the State of Oregon, for the purpose of compelling arbitration and/or enforcing a final decision of the arbitrator (in either instance, a “**Judicial Proceeding**”). The Tribe agrees that it shall not plead or raise as a defense to any action brought by the Company or its successors or assigns any right or claim of right to the requirement of exhaustion of tribal court remedies prior to the commencement of arbitration or litigation proceedings, even if any such tribal forum would have concurrent jurisdiction over any such dispute but for such waiver. The Tribe waives its rights to have any dispute heard in any tribal court or before any other tribal tribunal, forum, council or other adjudicative body whether or not such forum now exists or is hereinafter created. The Company shall be entitled to all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief, except to the extent the Company’s remedies are limited herein. This limited waiver of sovereign immunity is expressly limited as follows:

1. This waiver of sovereign immunity expressed herein expressly excludes the following assets of the Tribe: trust assets, federal restricted funds, the Tribe’s Minor’s Trust account, any funds or assets necessary for the fulfilment of any payroll, budget expenditure, or governmental reserve balance duly adopted by the Tribe. For purposes of this section: (a) “trust asset” means the real property (and all income derived therefrom, e.g. lease or easement payments, stumpage) for which legal title is held in trust by the United States for the benefit of the Tribe, or held by the Tribe and subject to restrictions by the United States against alienation and Tribe’s governmental power; and (b) “federal restricted funds” means funds obtained by the Tribe from the United States for the provision of governmental programs and services by and through federally approved contracts or agreements with the United States; and

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Exhibit B

2. The waiver of sovereign immunity expressed herein is limited to the enforcement of the Tribe's obligations under the Policy and does not include any other transactions, contracts, associated agreements or other matters; and
3. The waiver of sovereign immunity expressed herein is granted only to the Company and to no other parties or entities and may not be assigned; and
4. The waiver of sovereign immunity expressed herein is limited to the jurisdiction of the courts and dispute resolution bodies specifically identified herein.

Dispute Resolution

All disputes, controversies or claims between the Tribe and the Company arising out of or relating to the Policy ("**Dispute**") shall be resolved by binding arbitration conducted in accordance with the provisions of this Section ("**Arbitration Proceedings**") and per the Tribe's limited waiver of sovereign immunity contained in **Section ___**. Each Party hereby agrees that this arbitration provision is valid and enforceable and therefore waives any defense or assertion to the contrary. Each Party hereby waives any right it may have to assert the doctrine of forum non conveniens or any similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph. The Policy, its interpretation, and its enforcement shall not be subject to the jurisdiction of any Tribal Court formed by the Confederated Tribes of the Warm Springs Reservation of Oregon. THE PARTIES HERETO WAIVE THEIR RIGHT TO A JURY TRIAL IN ANY ACTIONS THAT THEY MAY BRING, OR THAT MAY BE BROUGHT AGAINST THEM, UNDER OR IN CONNECTION WITH THE POLICY.

1. **Conduct of Arbitration.** Any arbitrator shall apply Oregon law without regard to Oregon's conflict of laws principles.
5. **Place of Arbitration.** All hearings and other proceedings in the arbitration shall be held at Bend, Oregon, unless otherwise mutually agreed in writing by the parties.
6. **Relief Available.** With respect to the matters submitted to Arbitration Proceedings, the arbitrator shall have authority to:
 - a. issue appropriate interlocutory orders to mitigate damage or prevent irreparable injury to a Party; and
 - b. render a final decision which:
 - i. determines or declares the rights, duties, adequacy of performance, breach or liabilities of a Party under the Policy;
 - ii. awards appropriate injunctive, declaratory or compensatory monetary relief for the benefit of a Party; and/or

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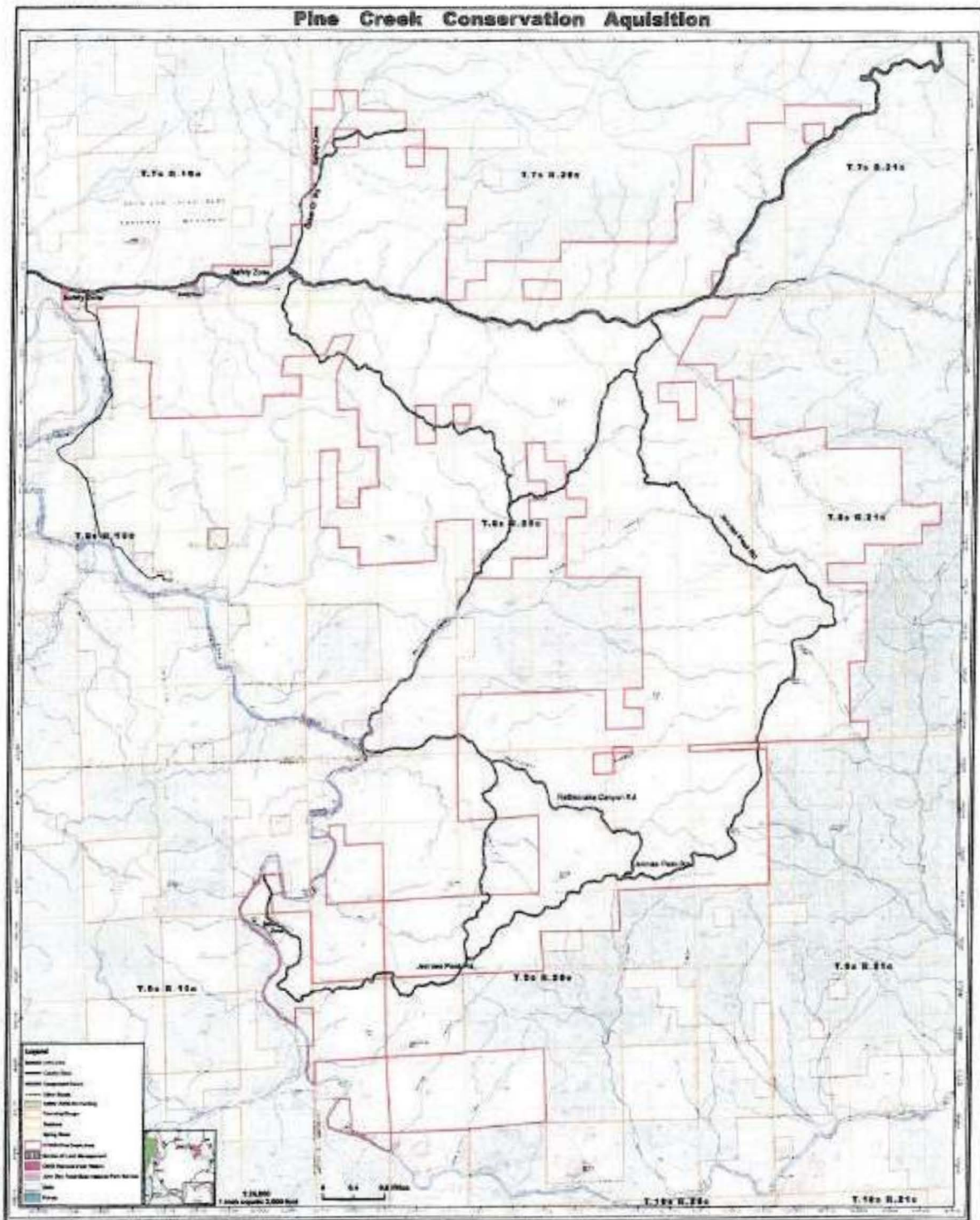
Exhibit B

- iii. contains such further relief and provisions as the arbitrator has jurisdiction and authority to grant.

No arbitrator shall have jurisdiction or authority to assess special, consequential or punitive damages against either Party. Except as inconsistent with the provisions of this dispute resolution provision, the arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association then in effect.

- 7. **Decision Binding; Enforcement.** The Decision of the arbitrator shall become a “Final Decision” at the time rendered. All Final Decisions shall be conclusive and binding on the Parties with respect to the matters decided, and shall be complied with by the Parties. A Party may enter a Final Decision and institute Judicial Proceedings for the sole purpose of enforcing a Final Decision in any tribunal specified in the limited waiver of sovereign immunity. In such Judicial Proceedings, neither Party, without consent of the other Party, shall be entitled to contend that the Final Decision should be vacated, modified or corrected and the parties hereby expressly waive all other rights and remedies that might otherwise be available in the Judicial Proceeding. The limited waiver of sovereign immunity set forth in Section [redacted] shall apply to the enforcement of a Final Decision.

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SPRING BASIN WILDERNESS WITH LAND EXCHANGE PROPOSALS

September 3, 2008

This map prepared at the request of Senator Ron Wyden

