



Department of Energy

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

CORPORATE

May 26, 2005

In reply refer to: KDP-7

Davison VanCleve PC
333 SW Taylor
Suite 400
Portland, Oregon 97204
(503) 241-7242

RE: FOIA 05-041

Dear Mr. VanCleve:

This letter responds to your Freedom of Information Act request dated May 11, 2005, and logged in as request #05-041.

Enclosed in their entirety are documents responsive to your request.

If you are dissatisfied with this determination, you may make an appeal within thirty (30) days of receipt of this letter to: Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW, Washington, D.C. 20585. Both the envelope and the letter must be clearly marked "Freedom of Information Act Appeal".

In your original letter you agreed to pay fees to fulfill your request. Costs to complete your request totaled \$17.89 for search, review and copy. You will be billed for this amount under separate cover by our accounting department.

Sincerely,

Annie Eissler
Freedom of Information Officer

MEMORANDUM OF AGREEMENT
for
PENDLETON-LA GRANDE BPA TRANSMISSION LINE
PRIVATE RIGHTS-OF-WAY

WHEREAS, the Bonneville Power Administration (BPA) of the United States Department of Energy, the Confederated Tribes of the Umatilla Indian Reservation (Tribes) and the Bureau of Indian Affairs (BIA) of the United States Department of Interior desire to reach agreement on the renewal of the BPA's rights-of-way for its 230 kV electric transmission line and related access roads crossing the Umatilla Indian Reservation; AND

WHEREAS, the BPA, as a Federal agency, acknowledges the Federal government's general trust responsibility in its BPA Tribal Policy; AND

WHEREAS, the BPA recognizes the Tribes' inherent authority as a sovereign Indian nation to govern the affairs of the Reservation but the Tribes recognize that they should not have greater regulatory authority over the BPA than the states due to federal preemption; AND

WHEREAS, in emergency situations third parties may pose a direct threat to the Tribes' health and welfare;

NOW THEREFORE, The Tribes, BIA, and BPA all agree as follows:

1. Scope of the Easement. The Tribes and BIA, as trustee for the allottees, will convey to BPA an easement containing all rights reasonably necessary to operate and maintain a 230 kV transmission line.

(a) Such rights shall include the right to enter and to locate, operate, maintain, repair, rebuild, reconstruct, remove and inspect one or more lines of poles or structures and appurtenances thereto and any communication lines or equipment and appurtenances thereto, including any fiber lines, owned by BPA and used in the operation of the transmission line.

(b) The right to repair, rebuild, reconstruct means the right to modify or replace any of facilities so long as such actions does not increase the voltage of the line beyond 230 kV. Such rights shall not include the right to upgrade the line to a voltage line higher than 230 kV. In the event BPA decides to increase the voltage of the line, BPA shall pay additional compensation for such upgrade.

(c) The right to inspect means the right to go on the easement and travel along the easement in any manner deemed necessary, including driving motorized vehicles on the easement.

(d) In addition, the conveyance shall give BPA the right to keep the easement clear of all trees, whether natural or cultivated, and all structure supported crops, other structures, trees, brush, vegetation, fire and electrical hazards, except non-structure supported agricultural crops less than 10 feet in height. BPA shall also have the right to cut trees off of the easement that are a hazard to the lines (danger trees).

(e) No other uses of the easement shall be allowed without first obtaining the express written consent of the Tribes.

(f) All transmission easements shall be 100 feet wide and all access road easements shall be 14 feet wide.

2. Term of the Easement. The term of the easement shall run for 20 years from July 14, 2001 to July 14, 2021 with an option to extend the term for another 20 years unless the Tribes or the BIA, acting as trustee for the allottees, request that compensation or other conditions of the easement be renegotiated. If the Tribes or BIA request a renegotiation of the easement, such request must be made at least 2 years in advance of the expiration of the 20 year term, which is July 14, 2019. If the Tribes or BIA do not request renegotiation of the easement, payment of additional compensation by BPA shall extend the term for another 20 years.

Payment for the extension shall be based on the price paid for the first 20 years increased at an annual compound rate of four percent (4%). The 4% interest rate shall be applied to \$34.00 per linear foot for easement rights, and to \$6.00 per linear foot for access road rights, and multiplied by the total linear feet for each tract. As a result, the extension payments shall be \$74.50 per linear foot for easement rights, and \$13.15 per linear foot for access roads, but in no event shall the payment for each tract be less than \$500.00.

3. Compensation. Compensation for the first 20-years shall be in the form of (a) a cash payment to BIA and the Tribes, and (b) goods and services to be provided to the Tribes in lieu of a cash payment for the Tribes' tracts T2103 and T2087.

(a) BPA shall make the following cash payments:

- (1) to BIA, as trustee for the allottees, \$408,368.99, which the BIA will distribute to the allottees; and
- (2) to the Tribes, \$26,810.84; and
- (3) to the owners of fee interests in the allotments, a total of \$3,191.57

The cash payment shall be the sum of \$299,054.20 for the easement rights, minus \$66,178.80 in exchange for the BPA's services discussed in subparagraph (b) below, for a total of \$232,883.40 and \$205,488.00 for the access roads.

(b) Consistent with applicable Federal laws, if any, BPA shall provide the Tribes with the following goods and services:

(1) fund the purchase and installation of new steel towers to raise the height of the conductors crossing over the industrial park (T2103) owned by the Tribes and/or fund the purchase and installation of equipment to allow the Tribes to take electrical service at the Roundup Substation up to a cost of \$450,000.00. Any costs over these amounts shall be the responsibility of the Tribes; and

(2) reduce the easement width from 250 feet wide to 100 feet wide on the Tribes' allotment T2103, which has an easement value at \$143,140.00; and

(3) offer to transfer the Conforth Ranch aka Wanaket Wildlife Refuge to the BIA in trust for the Tribes. BPA estimates the value of the Refuge to be \$1,019,000.00 based on its original cost of purchase.

In the event the Tribes are unable to accept any of the goods and services listed in 3(b)(1) above within 15 years of the date that the BPA acquired the easement, the BPA shall pay the Tribes \$119,169.87, which is the original easement payment for T2103 and T2087 of \$66,178.80 compounded annually at a 4% interest rate. Such payment shall be full compensation for the rights acquired.

4. Release. The Tribes and BIA agree not to seek damages or compensation for any trespass or prior acts by BPA.

5. Non-Transferability. The rights conveyed to BPA shall not be transferred, assigned, apportioned or delegated either in whole or in part to any state entity or other private entity without first obtaining the express consent of the Tribes. Such restraint on further conveyance of BPA's rights shall not prohibit or apply to BPA's use of contractors or subcontractors to access and perform work on the easement. Such non-transferability shall not preclude BPA from making any excess transmission capacity or any excess communication capability available to others.

6. Jurisdiction. This rights-of-way grant is not open to the public. This rights-of-way is granted reserving the Tribes' right to exercise dominion and control over all third party users of the rights-of-way, including the right to exclude such third parties, and all gate keeping rights not expressly relinquished or clearly incompatible with the terms of this rights-of-way, including the right to regulate the conduct of such third parties. As used in this Agreement, third parties does not include BPA employees, BPA contractors, BPA customers, or other agents of the BPA. The Tribes are not asserting any authority to regulate the BPA, its facilities, or its operation or maintenance of its transmission system. Consistent with the rights granted herein:

(a) BPA will comply with Tribal cultural resource regulations and policies as established by the Tribal Historic Preservation Office involving protection and repatriation of human remains and artifacts, historic, archaeological and traditional cultural properties.

(b) BPA acknowledges that the Tribes have responsibility for public safety on the rights-of-way. BPA employees present on the rights-of-way will cooperate fully with the Tribal police and fire departments during emergencies and investigations. The BPA also acknowledges that the

Tribal police have the responsibility for enforcing all applicable federal, state and tribal criminal laws on the reservation including the rights-of-way. However, as to this subparagraph (b) only, nothing in this subparagraph shall be construed as consent by the BPA to Tribal court criminal or civil adjudicatory jurisdiction beyond that allowed by Federal law for non-Indians.

(c) BPA acknowledges that the Tribes regulate hunting, fishing and gathering activities on the reservation including the rights-of-way.

(d) BPA may not give permission to its customers or third parties to physically enter upon the rights-of-way unless such party is a contractor or agent of the BPA present on the rights-of-way to conduct BPA activities. All other customers or third parties must get permission from the Tribes to be physically present upon the rights-of-way and may be excluded by the Tribes.

7. Services. BPA agrees to reimburse the Tribes for any essential or governmental services provided by the Tribes on BPA's easement area at rates sufficient to recover costs, including related overhead costs.

(a) If the Tribes provide fire or emergency response services in BPA's easement area such services shall be reimbursed by the BPA at the Tribes' normal rates for providing such services, which will be reasonably related to the industry standards as evidence by industry accepted national publications.

(b) If the Tribes provide emergency police services on BPA's easement area, such services shall be reimbursed by BPA at the Tribes' actual costs including reasonably related overhead or administrative costs.

However, to be reimbursable any such services must be provided in response to incidents involving a) BPA's employees or agents, b) damage or a threat of damage to BPA's property interests, or c) protection of BPA's access rights.

8. Damages. BPA shall be responsible for any damage to property or injury to persons, including death, caused by negligent acts or omission of its employees to the extent authorized under the Federal Tort Claims Act.

9. Department of Interior's Right-of-Way Records. This Agreement shall be an attachment to any Federal documents officially recording the allottees' granting of the rights-of-way. A list of the affected allotment numbers is attached to this Agreement as Attachment A.

10. Interpretation. Except for the specific terms of this Agreement, nothing in this Agreement shall be construed as a diminishment or abrogation of the Tribes' sovereignty, treaty rights, or any rights under Federal law, nor as an enlargement or waiver of BPA's sovereignty, or its statutory authorities and obligations.

11. Notices. Any notices may be delivered by hand, facsimile, or certified mail postage prepaid through the United State Postal Service or sent by commercial overnight courier such as Federal Express. Such notices, if sent by mail, will be deemed given and received five (5) days

after deposit in the United States mail. All other notices will be deemed given and received when delivered at the address set forth below, or such alternative address as a party may later designate:

Confederated Tribes of the Umatilla Indian Reservation
P.O. Box 638, 73239 Confederated Way
Pendleton, OR 97801
Attn: Office of Legal Counsel
Fax: (541) 278-7462

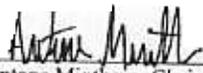
Bureau of Indian Affairs
P.O. Box 520, 46807 B St.
Pendleton, OR 97801
Attn: Superintendent
Fax: (541) 278-3791

Bonneville Power Administration
P.O. Box 61409
Vancouver, WA 98666-1409
or if sent by courier to
8100 N.E. Parkway Drive, Suite 50
Vancouver, WA 98662-7905
Attn: Manager, Real Property Services
Fax: (360)619-6995

For purposes of reimbursement for services:

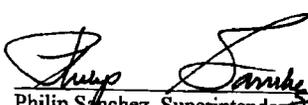
Bonneville Power Administration
6 West. Rose Street, Suite. 400
Walla Walla, WA 99362-1870
Attn: Regional Manager
Fax: (509) 527-6314

Any party may change the address or facsimile number to which notices are to be directed to it by notice to the other party in the manner specified above.



Antone Minthorn, Chair, Board of Trustees
Confederated Tribes of the Umatilla Indian Reservation

12/8/03
Date



Philip Sanchez, Superintendent
U.S. Department of the Interior
Bureau of Indian Affairs, Umatilla Indian Agency

12/8/03
Date



John Cowger, Manager Real Property Services
Bonneville Power Administration

12/8/03
Date

ATTACHMENT A
to
MEMORANDUM OF AGREEMENT
for
PENDLETON-LA GRANDE BPA TRANSMISSION LINE
PRIVATE RIGHTS-OF-WAY

This Agreement shall be attached to the document(s) recording the grants of the rights-of-way across these Allotments:

UM0041
C0026
T2103
C0015
C0149-A
C0149-B
C0149-C
C0147-D
C0201
C0401
C0393-B
A1129
A0567
A1306
A0508
A0860
A0529
A0611
A1192
A1051
A1137
A0773
A0775
A0719
A0620
A0839
A0570
T2087
A0610-B
A0842
A0889
A0890
A1314-A