

**MEMORANDUM OF AGREEMENT
BETWEEN THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN
RESERVATION AND
THE BONNEVILLE POWER ADMINISTRATION FOR DISBURSAL
OF WILDLIFE MITIGATION FUNDS
AND WILDLIFE MITIGATION CREDITING**

This agreement is made by the Confederated Tribes of the Umatilla Indian Reservation (hereinafter CTUIR) and the United States of America, acting through the Department of Energy, Bonneville Power Administration (hereinafter BPA).

RECITALS

A. The CTUIR is a sovereign entity with rights reserved in the Treaty of Walla Walla (1855). These rights include the authority to co-manage wildlife and wildlife habitat in the area ceded by the CTUIR 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. BPA has the authority pursuant to sections 2 (e) and (f) of the Bonneville Project Act, 16 U.S.C. § 832a (e), (f), to transfer real properties to the CTUIR.

C. The CTUIR is a wildlife manager within the states of Washington and Oregon and will implement this Agreement on the real property described in Attachments A, B, C, and D by acquiring and improving habitat on real property identified in Attachment A, or improving habitat on real property owned by other entities and described in Attachments B and C. This Agreement refers to the real property interests identified in Attachments A, B, C, and D collectively as "the Properties."

1. Attachment A: Area in which CTUIR may acquire real property using funds provided under this Agreement.
2. Attachment B: Public lands managed by CTUIR that may be improved using funds provided under this Agreement.
3. Attachment C: Lands leased by CTUIR that may be improved using funds provided under this Agreement.
4. Attachment D: Real Properties acquired previously by BPA for wildlife mitigation and to be transferred to the CTUIR for wildlife protection permanently.

D. (i) BPA and other entities, including the CTUIR, have entered into a Washington Wildlife Mitigation Agreement and its amendments (Interim Agreement) which obligates BPA to make available to the CTUIR \$5,141,500 over a five year period which the CTUIR will use for the protection, mitigation, and enhancement of wildlife and wildlife habitat that has been adversely affected by the construction of federal hydroelectric dams on the Columbia River or its tributaries, so as to assist BPA in partially meeting its responsibilities under the Act. For the portions of this Agreement addressing satisfaction of the parties' Interim Agreement obligations, the terms and definitions from the Interim Agreement are incorporated by reference and all of the rights and duties established in the Interim Agreement remain binding on the parties until its expiration or termination, unless otherwise stated in this Agreement.

(ii) BPA and the CTUIR both participate in Umatilla River Basin watershed improvement activities and participate in the Umatilla River Riparian Corridor Project. Under this project, BPA intends to fund additional wildlife habitat acquisitions, leases, and easements through the CTUIR. The CTUIR will own the acquisitions and manage them for wildlife permanently on BPA's behalf. The lands protected by lease or easement will be protected for the longest terms possible.

(iii) BPA has acquired the Conforth Ranch near Umatilla, Oregon, for wildlife habitat mitigation. The CTUIR manages this property for BPA, and BPA intends to transfer this property to the CTUIR for use as permanently protected wildlife habitat. The CTUIR has named this property Wanaket Wildlife Mitigation Area (Wanaket).

(iv) The U.S. Army Corps of Engineers owns lands in the McNary Project in Oregon and Washington that have significant wildlife values. To the extent allowed by applicable law, BPA supports the inclusion of these properties through lease or transfer of title to the CTUIR as mitigation for hydrosystem impacts under this Agreement. The parties will review each parcel of available Corps land to determine its eligibility for inclusion in this Agreement.

Where a provision of this Agreement does not specify otherwise, it applies to all three of these kinds of projects: Interim Agreement, Umatilla River Riparian Corridor Project, and Wanaket and Corps of Engineers lands.

E. The CTUIR has developed a plan for implementation of mitigation measures on lands in Northeast Oregon and Southeast Washington within the CTUIR ceded territory and Umatilla Indian Reservation (hereafter the Plan). The Plan includes specific mitigation projects as well as more generalized priority mitigation areas and strategies (Attachment F), but has not yet been approved by BPA. BPA has completed the Wildlife Mitigation Programmatic Environmental Impact Statement (March 1997) under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370c, and issued a record of decision (ROD) (June 18, 1997). BPA has also completed the Conforth Ranch Environmental Assessment and Finding of No Significant Impact (October 25, 1995).

Additional NEPA compliance may be necessary for site-specific mitigation projects implemented under the Plan.

F. The CTUIR has begun to select and will continue to select Properties for acquisition, lease, and easement, and management under the Plan as wildlife habitat. CTUIR will dedicate the Properties purchased and owned in fee by the CTUIR to, and manage them as, wildlife habitat permanently.

G. The underlying purpose of this Agreement is to protect, mitigate, and enhance wildlife and wildlife habitat permanently.

H. Except for the amounts specified in section 1A, BPA funding under this Agreement will be provided only in a manner consistent with section 4(h)(10)(D) of the Act and only after BPA receives a recommendation from the Council that the measure be funded at a particular level, and BPA accepts that recommendation. This process is referred to as prioritization.

NOW THEREFORE IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Consideration:

A. In consideration of the promises and covenants made and set out herein, BPA shall transfer to the CTUIR:

(i) A total of \$5,141,500.00 for implementation of mitigation efforts in Washington State pursuant to the Interim Agreement.

(ii) A total of \$2,100,000.00 for initial implementation of the Umatilla River Riparian Corridor Project in Oregon.

(iii) Title to Wanaket pursuant to a Memorandum of Agreement (April 1993) at a time mutually agreed upon by the parties.

B. In addition, for non-Interim Agreement Properties, BPA shall reimburse CTUIR'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; provided, for any acquisition involving potential relocation and other costs of \$5,000 or more, the CTUIR shall enlist the assistance of BPA's Manager of Real Estate Services, before taking any action or making any commitments that will necessitate reimbursement by BPA under this paragraph. Acquisition costs for Interim Agreement Properties shall be paid from Interim Agreement funds.

2. The Fund:

A. Any monies transferred to the CTUIR under this Agreement will be based on Intergovernmental Contracts negotiated by the parties. BPA will typically require an invoice from the CTUIR and make payment within 10 days of accepting the invoice.

B. The monies provided by BPA under this Agreement, any interest earned from them, and income earned from the Properties, shall constitute the "Fund". The CTUIR shall use the Fund to implement the Plan through purchase, lease, and improvement of the Properties, and to accomplish reasonable operation and maintenance and monitoring and evaluation.

3. Operation and Maintenance:

A. For Properties acquired to fulfill the Interim Agreement, BPA shall provide reasonable amounts for operation and maintenance of the Properties during the term of the Interim Agreement. After the term of the Interim Agreement, BPA shall provide additional funding for continued operation and maintenance that is determined to be necessary to maintain or provide positive wildlife and/or wildlife habitat benefits, subject to prioritization.

B. For all Properties, the parties shall make their best efforts to negotiate long term operation and maintenance funding arrangements by January 1, 2002, for payment on an annual basis, through establishment of a trust fund, or by any other means agreed to by the parties. Funding negotiated for future operations and maintenance beyond what is described herein will be subject to prioritization.

4. Monitoring and Evaluation of Improved Habitat: For Properties and projects under the Interim Agreement, the Fund includes reasonable amounts for monitoring and evaluation (M&E) of the Properties during the term of the Interim Agreement. For all other Properties and projects, and for Interim Agreement Properties and projects after the Interim Agreement expires, M&E may be provided subject to prioritization.

5. Land Preacquisition Activities and Costs: Implementation of approved Projects under the Plan includes acquiring the Properties by purchase, lease, or easement. Once the Fund is established, the CTUIR may utilize its own processes in conducting any and all preacquisition activities, that include, by way of example, appraisals, drafting and presenting to sellers earnest money agreements, and conducting surveys; provided, the CTUIR 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. The costs of these preacquisition activities shall be paid as described in section 1B. The CTUIR and BPA recognize that this provision deviates from section 5(d) of the Interim Agreement.

6. **Historic Properties:** Prior to acquisition or transfer of any Real Property interests, BPA and CTUIR shall work with the appropriate tribal, state, and federal agencies to ensure protection of sites listed or eligible under the National Historic Preservation Act, 16 U.S.C. §§ 470-470x-6q. Such protection for federally owned properties transferred to the CTUIR will typically include deed restrictions that preserve the site's significant historic features. The parties may fulfill this obligation by entering into a programmatic agreement with appropriate entities for compliance with section 106 of the National Historic Preservation Act. BPA and CTUIR shall also work with the appropriate agencies to ensure protection of tribal archaeological, cultural and grave sites pursuant to applicable laws, including, but not limited to, the Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013, and the Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa-470mm.

7. **The Site-Specific Plans:** The CTUIR will manage the Properties as outlined generally in the Plan, when approved, and specifically in this Agreement. The CTUIR will dedicate acquisition and conservation easement Properties to wildlife habitat protection permanently; leased Properties shall have the longest lease terms possible. The CTUIR will develop site-specific management plans (hereinafter Management Plans). The CTUIR may not use the Fund except to purchase Property until BPA has approved the Management Plan. BPA has 60 days after receipt of a Management Plan from the CTUIR to approve it, and BPA may not withhold its approval unreasonably. All Management Plans will be developed pursuant to and in conformity with the terms of the Plan, and the Council's Resident Fish and Wildlife Amendments to the Columbia River Basin Fish and Wildlife Program (hereinafter the Program), and any NEPA documentation prepared for them. Management Plans under the Interim Agreement shall follow the preceding authorities in addition to the conditions of the Interim Agreement. All Management Plans should attempt to create self-sustaining habitat that minimizes O&M needs. Upon completion all Management Plans shall be incorporated herein and thereby made a part of this Agreement

8. **CTUIR obligations:**

A. The CTUIR shall protect, mitigate, and enhance the Properties acquired in fee and conservation easement Properties as wildlife habitat on behalf of BPA permanently, and the leased Properties for as long a term as possible, preventing any and all uses of the Properties that are inconsistent with the Interim Agreement, this Agreement, the Program, and the Management Plan.

B. CTUIR may use the funds provided by BPA for leases or conservation easements that protect, mitigate, and enhance wildlife and wildlife habitat. CTUIR shall secure leases with the longest lease or easement terms possible given this Agreement's objectives. If a lease or easement is terminated or CTUIR is unable to renew it, CTUIR may secure an equal number of HUs through new leases, easements, acquisitions, or improvements. CTUIR guarantees an equal or greater amount of credit to BPA as was available under the preceding lease or easement agreement(s), including credit realized or projected from

habitat maintenance and improvements made with BPA financial assistance, including the Fund.

C. The CTUIR may not use the Fund for any activities related to or regarding management of Corps of Engineers property until BPA approves the use of the Fund for such purposes. BPA shall have ninety days from the date of receiving a written proposal from the CTUIR to approve or reject the use of the Fund on a Corps of Engineers site, and BPA shall not withhold its approval unreasonably.

D. Net revenue received from managing the Properties, including conservation reserve program payments or other similar payments, shall be included in the Fund and may be used for wildlife management purposes, including the payment of property taxes, and such revenues may be subtracted from O&M funds that would otherwise have been provided by BPA, unless otherwise agreed by the parties. Revenues received by the CTUIR for granting Reservation-wide hunting privileges to the public are not part of the Fund.

E. CTUIR shall place the Fund in an interest bearing account. CTUIR shall separately account for Interim Agreement monies to enable BPA auditing to determine CTUIR's compliance with the Interim Agreement and this Agreement.

9. **O&M Contingencies:** In the event CTUIR determines that the operation and maintenance funds provided by BPA are inadequate to fulfill CTUIR's obligations under this Agreement, and the Interim Agreement for Interim Agreement Properties, CTUIR may provide BPA with written notice that the O&M funds are inadequate and then take action as provided by 9(A) or 9(B) 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. BPA shall assume full responsibility for managing the transferred Properties for the permanent protection of wildlife and wildlife habitat;

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

(iii) immediately transfer any remaining goods, materials or equipment acquired with the Fund for the leased Properties to the BPA; and

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

B. CTUIR may conduct a HEP on the Properties 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. Reporting:

A. Beginning August 30, 1998, and every August 30 thereafter, CTUIR shall provide BPA an annual report generally describing the Real Property interests in the Project, the terms and conditions of any acquisitions, and the scope or status of improvement measures implemented.

B. CTUIR shall provide an accounting of the balance of the Fund, including expenditures made, interest earned, and income derived from the Properties. Upon 30 days written notice and at its own expense, BPA may audit CTUIR's Project records.

11. Recording of Deeds and Covenants:

A. Property acquired pursuant to this Agreement is subject to the condition that it be managed for wildlife permanently. To help ensure this condition is met, the CTUIR will not take action to have a Property placed in trust with the United States, Bureau of Indian Affairs, for a period of twenty years from the date of this agreement without (1) the express written approval of BPA's Vice President of Environment, Fish and Wildlife, and (2) recording a deed with an executory limitation and a covenant for each Property. The deed should follow the form and substance of Attachment G. BPA's interest under the executory limitation shall vest in fee simple absolute if the Property is not being managed for wildlife, as evidenced by a thirty percent drop in the highest documented HEP values based on HEP studies conducted jointly by the parties -- unless BPA provides written consent to such cessation of use or lack of compliance. This provision is inapplicable if the thirty percent drop in HEP values is proximately caused by force majeure as described in section 30 or BPA's failure to provide additional funds for operation and maintenance as described in section 3.

B. For all real property interests the CTUIR purchases using the Fund, the CTUIR shall have this Agreement and a covenant, Attachment E, recorded with all appropriate authorities, at the time the CTUIR assumes control of such interests. For purchases of conservation easements, the easement or covenant recorded with it must include third party enforcement language approved by BPA. Within 25 days of recording(s), the CTUIR shall submit to the BPA contracting officer a copy of the recorded documents showing the recording information.

C. The provisions of 11(A) and (B) do not apply to Wanaket because at the time of transfer of title from BPA, BPA will include in the deed restrictions ~~protecting~~ ^{permanently} protecting its rights under this Agreement. The CTUIR may initiate action to have Wanaket taken into trust upon acceptance of title to Wanaket from BPA.

D. After this Agreement has been recorded with an appropriate authority once, subsequent deeds and covenants recorded with the same authority may refer to the recording data for the Agreement instead of re-recording it.

12. **Protection of Tribal Rights:** Hunting, gathering and Tribal cultural and religious activities on the Properties according to Tribal custom and law are not prohibited by this Agreement. Nothing in this Agreement shall be construed to limit or diminish any right or privilege of CTUIR or its members provided by federal law.

13. **Right to Enter:** BPA shall have the right to enter upon the Properties at reasonable times to monitor the CTUIR's compliance with this Agreement and to enforce its terms.

14. **Public Access:** The general public shall have reasonable access to the Properties. The CTUIR may regulate access consistent with its laws, customs and Management Plan objectives; provided, that road and trail access and transportation restrictions shall apply equally to tribal members and non-tribal members. If any of the Properties are located on-reservation, public access shall be to the same extent as non-tribal members have access to the reservation generally. Nothing in this Agreement limits the right or ability of the CTUIR to manage the Properties to preserve and protect cultural, historic, and religious sites.

15. **BPA credit:**

A. For all Properties except Wanaket, BPA shall receive at a minimum HUs credited as stated in Intergovernmental Contracts, and as a maximum the HUs achieved or acquired.

B. To calculate credit, CTUIR will conduct a baseline HEP study, within 180 days of securing management control of a Property, for all target species used in the Wildlife Habitat Impact Assessments for John Day and McNary dams. Should the actual HEP study of the Properties result in a greater number of HUs than stated in the Intergovernmental Contracts, BPA shall receive full credit for the actual HUs acquired. BPA shall also receive credit for habitat improvements as determined by HEP.

C. Pursuant to the MOA between the CTUIR and BPA signed April 14, 1993, BPA shall receive credit to wildlife mitigation of 2334 HUs for habitat protected on the Wanaket Wildlife Area. BPA shall receive full credit for actual improvement HUs as measured following improvement efforts.

D. If BPA's wildlife mitigation responsibility is measured in acres, then BPA's responsibility to mitigate for wildlife shall be reduced by one acre for each acre protected using Interim Agreement funds under this Agreement when the habitat improvements agreed upon by BPA and the CTUIR for the acre protected are implemented.

E. Properties fulfilling Interim Agreement obligations shall be credited according to the Interim Agreement. For all other Properties, BPA may credit the HUs (1) toward its mitigation duty for wildlife habitat losses at John Day or McNary dams, or (2) following a procedure adopted by BPA rule making and not overturned by any court of competent jurisdiction. Provided, that if another crediting methodology is imposed by applicable law or by judicial decision, or agreed to between BPA and the CTUIR, 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.

F. The CTUIR shall support BPA's taking of protection, mitigation, and enhancement credit, (whether measured in acres, Habitat Units, or otherwise) as provided in section 5(c) of the Interim Agreement, so long as both parties comply with the terms of this Agreement. The CTUIR will support BPA's obtaining full credit so long as BPA complies with the terms of this Agreement and, for Interim Agreement Properties, the Interim Agreement.

G. For Squaw Creek leases, BPA shall receive full credit for protecting HUs of rangeland species affected by grazing, and full credit for habitat improvements to all habitats in the leased area. For all other non-Interim Agreement leases, BPA shall receive full credit for improvement HUs. If an acre by acre crediting method is used, BPA shall receive 1 acre of credit for every 3 acres of improvements when the activities needed to bring about the improvements are complete.

16. **In-Lieu:** CTUIR may use the Fund only for activities that are in addition to, not in lieu of, other expenditures it or other entities are authorized or required to make under other agreements or provisions of law.

17. **Incidents of Ownership:** CTUIR will have complete management control over the real property interests addressed by this Agreement and will be responsible for all incidents of ownership of Properties acquired, improved, or managed with the Fund. CTUIR shall hold BPA harmless and indemnify BPA from any liability arising from any incident of ownership that it may have in administration of the Plan.

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

20. **Dispute Resolution:** BPA and the CTUIR agree to submit in good faith any disputes regarding the implementation of this Agreement or the management of the Properties 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 select 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, any 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. Each party shall pay its own mediation costs and fees, including those incurred in selecting the mediator; the parties shall share the costs and fees of the mediator equally.

21. **Effective date:** This Agreement shall be effective when signed by the Chair of the CTUIR Board of Trustees as consistent with the CTUIR Constitution and By Laws, Art. VI § 3(a), and CTUIR Resolution # 97-54 (Attachment H); 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.

22. **Contract approval:** If a court of competent jurisdiction finds CTUIR's responsibilities, the use of the Properties, or the ability of BPA to exercise any of its substantive rights with respect to the Properties are unenforceable, this Agreement shall be terminated and the CTUIR shall return the affected Properties, associated Project personal property, and any balance in the Fund to BPA using the process specified in section 9. Provided, that unless agreed to by the parties, the parties shall use their best efforts to enter into a new and binding agreement that carries out the intent of this Agreement. Any party may invoke the dispute resolution provisions of this Agreement to facilitate the negotiation of a new agreement or to determine what, if any, additional restitution may be appropriate.

23. **Modification:** The parties by mutual agreement may modify the terms of this Agreement. Any such modification shall be in writing signed by the parties.

24. **Sovereign Immunity:** The CTUIR grants a limited waiver of its sovereign immunity if the claim 1) is made by the BPA or its successors, but no other party, 2) alleges a breach of a specific obligation or duty expressly assumed by the CTUIR under this Agreement, 3) seeks specific action to bring the CTUIR into compliance with this Agreement and/or payment of a monetary obligation arising from noncompliance only -- and payable only from funds or assets derived from the benefits of this Agreement, but no other source, asset or property of the CTUIR, and 4) is brought in any court of competent jurisdiction.

25. **Applicable law:** Federal law shall govern the implementation of this Agreement and any action, whether mediated or litigated, brought or enforced. The parties agree

that at the time this Agreement became effective, the only court of competent jurisdiction would be a Federal court.

26. **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.

27. **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 continuing or future performance or of a party's right to require strict performance in the future.

28. **Unexpended Funds:** If the portion of the Fund attributable to the Interim Agreement is not depleted after acquisition of the Properties and fulfillment of section 5(b)(xi) of the Interim Agreement, the CTUIR may expend the remainder of that portion of the Fund for additional wildlife mitigation projects pursuant to the Interim Agreement after obtaining BPA's written concurrence. BPA shall not unreasonably withhold its concurrence. BPA shall respond in writing within 60 days of receipt of a proposal from CTUIR.

29. **Property Exchange or Sale:** If an exchange of real property interests would provide a net gain in HUs or aid in the fulfillment of the management objectives as stated in this Agreement and the Plan, then the CTUIR may exchange any real property interest acquired with the Fund for other real property interests after ensuring the following conditions will be met:

- (a) written consent of BPA's Director, Fish and Wildlife Division;
- (b) the new real property interests are of equal or greater wildlife habitat value, as measured by a habitat evaluation procedure, to the species targeted in the Plan; or the sale or exchange aids in the fulfillment of management objectives of the Plan; and
- (c) CTUIR shall record a signed copy of Attachment E, ensuring that the real property interest acquired in the purchase or exchange is protected for wildlife and wildlife habitat permanently.

The Fund may be used for the exchange and to conduct HEP studies. BPA may provide additional funding if the Fund has been exhausted.

30. **Force Majure:** Neither party is liable to the other or deemed in fault under this Agreement if and to the extent that the party's performance of this 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 shall include all acts of God, riot, war, strike, flood, fire, epidemic, act of government other than CTUIR or BPA, embargo, wreck, or unavoidable delay in materials or manufacturing facilities from generally recognized

sources in the applicable industry. The parties shall make all reasonable efforts to resume performance promptly once the force majeure is eliminated.

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

Donald L. Sapp 10/2/97
Chair, Confederated Tribes of the Umatilla Indian Reservation Date

John R. Censer 10/20/97
Manager, Real Property Services Date

Acquiescence B. Smith 10/21/97
Group Vice President, Environment, Fish and Wildlife Date

Umatilla Agency Superintendent, Bureau of Indian Affairs Date