

MEMORANDUM OF AGREEMENT
BETWEEN
THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
AND
BONNEVILLE POWER ADMINISTRATION

Whereas, the Conforth Ranch property in Umatilla County, Oregon, was proposed as a wildlife mitigation area,

Whereas, the Conforth Ranch's current owner, Trust for Public Land (TPL), and an adjacent landowner, the Port of Umatilla (Port), intend to reconfigure the Ranch through land exchanges and water rights transfers,

Whereas, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and the Port have entered into an agreement regarding use of the Conforth Ranch and adjacent Port and CTUIR lands,

Whereas, Bonneville Power Administration (BPA) plans to purchase the reconfigured Conforth Ranch property (hereinafter Conforth Ranch),

Whereas, the Conforth Ranch is located within the ceded territory of the CTUIR as provided in Article I of its Treaty of 1855, 12 Stat. 945,

Whereas, BPA proposes to create a wildlife protection, mitigation, and enhancement area on the Conforth Ranch as partial mitigation for wildlife affected by the development of federal hydroelectric facilities of the Columbia River, in accordance with BPA's responsibilities and authorities under section 4(h)(10)(A) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. §§ 839-839h, its authorities under section 2(f) of the Bonneville Project Act, 16 U.S.C. §§ 832-832l, and its authorities under section 11(b)(12) of the Federal Columbia River Transmission System Act, 16 U.S.C. §§ 838-838k,

Whereas, BPA proposes to create a wildlife protection, mitigation, and enhancement area on the Conforth Ranch in a manner consistent with the Northwest Power Act, the Northwest Power Planning Council's (Council) Fish and Wildlife Program as amended to help fulfill its biological objectives,

Whereas, the CTUIR want to obtain the Conforth Ranch in fee and manage it as a wildlife protection, mitigation, and enhancement area in accord with the Northwest Power Act, the Fish and Wildlife Program as amended, and a management plan that BPA may adopt at the conclusion of its National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370(c), analysis of the Conforth Ranch,

NOW, THEREFORE, BPA and the CTUIR agree as follows:

1. The purpose of this Agreement is to prepare for transfer in fee of the Conforth Ranch in Umatilla County, Oregon, to the CTUIR, to be managed by the CTUIR as a wildlife protection, mitigation, and enhancement area in accord with a plan BPA may adopt pursuant to the Northwest Power Act and NEPA, to protect, mitigate, and enhance wildlife affected by the development of federal hydroelectric projects on the Columbia River.

2. BPA will purchase the Conforth Ranch and will retain title to the property until such time that BPA has fulfilled its responsibilities under NEPA related to transfer of the property and creation of a wildlife resource protection, mitigation, and enhancement area thereon. BPA expects to complete its NEPA process within two years and will make every reasonable effort to do so.

3. If at the conclusion of its NEPA analysis the BPA Administrator adopts a management plan that uses the Conforth Ranch as a wildlife protection, mitigation, and enhancement area,

(a) BPA will transfer title to the CTUIR, and

(b) the CTUIR will agree to and support BPA's receipt of full credit for habitat value existing at the time of BPA's purchase of the Conforth Ranch and for enhanced habitat value of that property. Full credit for both existing and enhanced habitat value will be in either acreage or Habitat Units. Credit will be toward BPA's Northwest Power Act wildlife mitigation obligation at McNary or other federal hydroelectric projects on the lower Columbia River.

4. If at the conclusion of BPA's NEPA analysis the BPA Administrator decides the Conforth Ranch should not be used as a wildlife protection, mitigation, and enhancement area, the parties agree BPA shall

(a) allow the CTUIR to undo its land and water rights transfers already completed by the Port, TPL, and the CTUIR, including those transfers affecting Section 7; and

(b) dispose of the property at its earliest convenience to a buyer who will use the property as it was used before BPA's purchase.

5. Until BPA determines to manage the Conforth Ranch as a wildlife mitigation area and transfers the property to the CTUIR, BPA will retain fee title to the property. However, CTUIR will manage the property during that interim period under an Intergovernmental Agreement with BPA that will

(a) incorporate this Agreement by reference, and

(b) be effective simultaneously with BPA taking possession of the Conforth Ranch or as soon thereafter as is possible.

6. To the extent applicable, the terms of this agreement will be incorporated into any Conforth Ranch management plan adopted by BPA and implemented by the CTUIR.

7. The CTUIR will make the Conforth Ranch reasonably available for access and use by the Pacific Northwest Region, as defined in section 3(14)(A) of the Northwest Power Act, in perpetuity or until BPA and the CTUIR mutually agree that the Conforth Ranch is no longer needed for wildlife mitigation purposes.

8. BPA and the CTUIR agree that BPA's acquisition of the Conforth Ranch and the creation of a wildlife protection, mitigation, and enhancement area complies with section 10(e) of the Northwest Power Act.

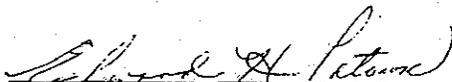
9. This Agreement shall be effective when signed by the Administrator of BPA and the Chairman of the CTUIR Board of Trustees. The Agreement may be modified only by mutual written agreement of BPA and the CTUIR.

10. To the extent that Tribal law is applicable, this Agreement shall be interpreted according to CTUIR Tribal law. Otherwise, Federal law shall govern.

11. BPA and the CTUIR hereby waive their sovereign immunity from suit and consent to be sued solely to permit enforcement of their obligations under this agreement. Such waiver and consent is limited to action brought by the other party seeking enforcement of this agreement, and the relief available under said action shall be limited to equitable relief. For this limited purpose, the parties consent to suit in any federal court of competent jurisdiction. In no event shall any money damages be assessed against either party, nor shall any trust lands of the CTUIR be subjected to attachment, execution, or other similar process for purposes of enforcement of this agreement. Each party agrees to bear its own costs and fees in the event of litigation. Prior to either party bringing suit hereunder, that party shall give the other party notice of any failure to comply with this Agreement or any subsidiary agreement between BPA and the CTUIR and at least 60 days to cure any failure to comply.

12. In the event any part, term, or provision of this Agreement is determined by a court of competent jurisdiction to be void, voidable, unenforceable, illegal, or in conflict with any applicable law, then such determination shall not affect the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this 17 day of April 1993.


Chairman, CTUIR


ACTING Administrator, BPA