



Department of Energy

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

PUBLIC AFFAIRS

January 16, 2013

In reply refer to: DK-7

Cheryl Brantley
A Better Way BPA
PO Box 704
Amboy, WA 98601

FOIA #BPA-2013-00362-F

Dear Ms. Brantley:

Thank you for your request for records that you made to the Bonneville Power Administration (BPA), under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Your letter was received in this office on Wednesday, January 9, 2013, and has been assigned a control number, BPA-2013-00362-F. Please use this number in any correspondence with the Agency about your request.

You have requested the following:

With regards to the I-5 Corridor Reinforcement Project, the mitigation agreement between BPA and DNR, including any drafts and correspondence or email regarding the mitigation agreement.

Response:

This is a final response to your request.

We have reviewed your request and have determined that it is duplicative in that the mitigation agreement, correspondence and emails between BPA and the Washington State Department of Natural Resources is covered in your previous request, BPA-2013-00361-F (enclosed). In request BPA-2013-00361-F you ask for all documents between BPA and the Washington State Department of Natural Resources.

In an email dated January 16, 2013, Mark Korsness forwarded to you a copy of the requested mitigation agreement between BPA and the Washington State Department of Natural Resources in its entirety. All other documents responsive to this request will be forwarded as a response to BPA-2013-00361-F.

Pursuant to 10 CFR 1004.8, if you are dissatisfied with this determination, or the adequacy of the search, you may appeal this FOIA response in writing within 30 calendar days of receipt of a

final response letter. The appeal should be made to the Director, Office of Hearings and Appeals, HG-1, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA Appeal is being made.

Your request for a fee waiver is granted and there are no fees associated with this request.

I appreciate the opportunity to assist you. Please contact Kim Winn, FOIA Specialist, at 503-230-5273 with any questions about this letter.

Sincerely,

/s/Christina J. Munro

Christina J. Munro

Freedom of Information Act/Privacy Act Officer

Enclosure: Email dated January 16, 2013

Winn, Kim S (BPA) - DK-7

From: Korsness, Mark A (BPA) - TEP-TPP-3
Sent: Tuesday, January 15, 2013 5:27 PM
To: 'Cheryl Brantley'
Cc: Winn, Kim S (BPA) - DK-7
Subject: DNR Mitigation Agreement

Attachments: MITIGATION AGREE.pdf

Cheryl, to expedite a little, here is the Mitigation Agreement between BPA and DNR.
Thanks.....Mark
FOIA BPA-2013-00362-F DNR mitigation agreement



MITIGATION
AGREE.pdf (4 MB)

MITIGATION AGREEMENT

FOR

MCNARY-JOHN DAY AND OTHER TRANSMISSION LINE

RIGHTS-OF-WAY

This agreement is between the Bonneville Power Administration, Department of Energy, United States of America, herein called "BPA" and the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, herein called "DNR" dated as of ~~May~~ 28, 2010.

This agreement memorializes a mutual commitment between BPA and DNR to establish mitigation measures that have been identified as items that are necessary in granting the easements for BPA's McNary - John Day Transmission line as informed by the review of the project's final EIS for compliance with the State Environmental Policy Act. Furthermore, this agreement memorializes BPA's and DNR's commitment to address transmission line operations and maintenance compatibility with trust land management for existing and future transmission right of ways whenever possible.

The BPA commitment to accomplish each of these measures is considered by the DNR as a conditional requirement to proceed with granting of necessary property easements over DNR managed trust and aquatic lands to BPA for purposes of construction and maintenance of the McNary -John Day 500 kV transmission line. In addition, several of these measures represent a commitment from BPA and DNR to develop plans and procedures for taking actions to address their mutual long-term concerns regarding the reconstruction, repair and maintenance activities of BPA right of ways on DNR managed trust lands across the State of Washington.

Based on the foregoing, the BPA and DNR agree and commit to the following:

1. McNary-John Day Maintenance and Operations Agreement

BPA and DNR will collaboratively negotiate and enter into a "McNary-John Day Maintenance and Operations Agreement" with the mutual goal of completing the agreement no later than November 30, 2010. This agreement will address the general and site specific topics listed below, and it is understood that no further easements on DNR uplands for any BPA project proposal will be granted until this agreement is finalized unless otherwise waived by DNR. Furthermore, the granting of the McNary-John Day aquatic easement (currently scheduled for August 2010) will be predicated on the progress of this agreement.

- 1) BPA and DNR will mutually agree upon right-of-way maintenance that address the following elements:
 - a) Notification protocols for maintenance, repair and reconstruction activities on DNR trust lands;

- b) Road inspection schedules and reporting requirements;
 - c) Road maintenance standards;
 - d) Road construction, reconstruction and abandonment standards;
 - e) An Integrated Pest Management Plan for roads and DNR managed trust lands; and,
 - f) Managing and controlling the short and long-term impacts of unauthorized public use of the right-of-way and adjacent DNR trust lands.
- 2) BPA shall complete identification and categorization of BPA access roads on DNR trust lands along the entire McNary–John Day corridor, and DNR and BPA shall negotiate how maintenance costs will be distributed for all activities on:
 - a) “Joint-use” roads where BPA or its contractors and DNR and its lessees both use and share road responsibilities; and
 - b) “Sole-BPA use” roads where BPA or its contractors are independently responsible for the road.
 - 3) BPA and DNR shall design a mutually agreeable fire prevention and suppression plan that addresses managing and controlling the risks associated with wildland fire due to construction, operation and maintenance of the BPA transmission line.
 - 4) Commitment by BPA to review and respond to DNR's Land Use Applications for the McNary-John Day corridor by November 30, 2010 if submitted by July 1, 2010 and either deny, defer for a good reason, or grant BPA Vegetation Agreements for each such application.
 - 5) BPA will work cooperatively with DNR to address and resolve issues to ensure the continued operation of the surrounding trellis orchard in Section 5 Township 5 North, Range 26 East, W.M. Benton County, Washington. These issues include:
 - vegetation agreement;
 - safety concerns;
 - control of undesirable plants; and,
 - compensation and damages as appropriate for orchard removed for tower footing clearing and removal of windbreak trees.
 - 6) BPA and DNR will develop and implement a vegetative management plan for DNR managed trust lands on the entire McNary – John Day corridor, roads and as they impact adjacent lands that will address:
 - a) Control of existing undesirable plant infestations, including tall growing incompatible vegetation;
 - b) Control of the spread of undesirable / incompatible plants from BPA's use of the rights-of-way to DNR managed trust lands; and,

- c) Promotion of native, low growing compatible vegetation, on areas of BPA soil disturbance within the McNary-John Day corridor.

2. Appraisal Memorandum of Understanding

BPA and DNR shall develop a mutually agreeable Appraisal Memorandum of Understanding (MOU), which will be finalized by August 1, 2010.

3. Land Exchange Agreement for the Central Ferry–Lower Monumental, Big Eddy–Knight and I-5 Corridor Reinforcement Projects

Should BPA reach a Record of Decision on its corridor reinforcement projects that selects a transmission corridor location intersecting DNR state trust lands, DNR may identify a loss of trust lands as a mitigation concern requiring replacement lands. DNR may choose to accept the consideration from BPA for the fee or easement acquisitions, or to have the BPA deposit the consideration into an escrow or similar account, based on the value as determined by the Appraisal MOU of trust lands intersected by the proposed Central Ferry-Lower Monumental, Big Eddy-Knight and I-5 Corridor Transmission Lines. DNR may identify replacement fee interest property from willing sellers for BPA to purchase in exchange for the easements and/or fee property rights acquired from DNR. If the value is greater than the money deposited in the account, DNR will contribute the difference. BPA will perform the acquisition, but it is BPA's position not to use its condemnation authority for such acquisition. This financial arrangement needs to be approved by BPA and DNR's respective financial representatives.

4. Statewide BPA and DNR Rights-of-way Memorandum of Agreement

BPA and DNR hereby commit to enter into a Rights-of-way Memorandum of Agreement (MOA) that will cover all DNR managed lands in the State of Washington that are encumbered with BPA easements for impacts within and outside the rights-of-way. It is the mutual goal of BPA and DNR to address BPA transmission line operations and maintenance compatibility with trust land management and to complete the MOA prior to 12/31/2011.

The MOA should, at a minimum, include at least the following elements and others as mutually agreed:

- a) Integration of State and Federal Requirements;
- b) Danger Trees;
- c) Vegetation management;
- d) Access road management, maintenance, repair, and cost sharing;
- e) Dispute resolution;
- f) Situations where additional right-of-way and/or mitigation is needed for transmission line operations, such as safety zones and vegetation removal for clear safe backlines;
- g) Communications/notification;
- h) Liability;

- i) 3rd party use (authorized and unauthorized);
- j) Safety; and,
- k) Other as defined by the parties.

Witness whereof, the parties hereto have caused this agreement to be executed as below subscribed.

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

Dated: May 28, 2010



Stephen J. Wright

Administrator and CEO
P.O. Box 3621
Portland, OR 97208-3621

Phone: 503-230-3000

State of Washington,
Department of Natural Resources

Dated: June 3, 2010



Peter Goldmark

Commissioner of Public Lands
1111 Washington St SE
Olympia, WA 98504-7001

Phone: 360-902-1000