

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

THE DEPARTMENT OF INTERIOR

FOR THE

~~TRANSFER, OPERATION, MAINTENANCE, REPAIR, AND REHABILITATION OF
THE COLUMBIA RIVER TREATY FISHING ACCESS SITES~~

Jun 95

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into this 23rd day of June, 1995, by and between the U.S. DEPARTMENT OF THE ARMY, acting by and through the Acting Assistant Secretary of the Army (Civil Works), and the U.S. DEPARTMENT OF THE INTERIOR, acting by and through the Assistant Secretary of the Interior (Indian Affairs);

WITNESSETH, THAT:

WHEREAS, Public Law 100-581, Title IV, Columbia River Treaty Fishing Access Sites (102 Stat. 2944 (1988)) (the Fishing Sites Act) requires that certain designated Federal lands "be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities" for members of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Indian Nation (the Tribes); and,

WHEREAS the Fishing Sites Act requires the Secretary of the Army to acquire and improve additional lands to accommodate "at least six sites . . . adjacent to the Bonneville Pool" and provides that the Army shall maintain the lands until they "are transferred to the Department of the Interior for the purpose of maintaining the sites"; and,

WHEREAS, the Department of the Army and the Department of the Interior (the parties) have agreed to seek legislation authorizing the Secretary of the Army to transfer funds to the Secretary of the Interior for Interior's use in operating and maintaining the sites after transfer; and,

WHEREAS, the parties recognize the Federal trust responsibility to Native Americans; and,

WHEREAS, nothing herein is intended to alter or affect any treaty right of any Native American Tribe or nation,

NOW THEREFORE, the parties agree as follows:

ARTICLE I - Definitions and General Provisions

a. The term "Project" shall mean lands identified in Section 401(a) of Public Law 100-581, which shall "be administered to provide access to usual and accustomed fishing areas and ancillary facilities" for the subject Tribes and additional lands acquired by the Army pursuant to Section 401(b)(1) of Public Law 101-581 plus such improvements to the lands as are described in Corps of Engineers design plans and/or construction documents jointly approved by the Army and DOI after consultation with the Tribes (See Appendix A).

b. The term "functional portion of the Project" shall mean one or more completed fishing access sites ready for beneficial occupancy as determined by the Corps of Engineers Contracting Officer to be suitable for tender to the U.S. Department of the Interior to operate and maintain in advance of completion of construction of the entire Project.

c. The term "DA" or "Army" shall mean the U.S. Department of the Army.

d. The term "COE" or "Corps" shall mean the U.S. Army Corps of Engineers, of the U.S. Department of the Army.

e. The term "DOI" or "Interior" shall mean the U.S. Department of the Interior.

f. The term "BIA" shall mean the U.S. Bureau of Indian Affairs, of the U.S. Department of the Interior.

g. The term "District Engineer" shall mean the U.S. Army Engineer for the Portland District or his or her designee.

ARTICLE II - Obligations of the Parties

a. The DA, acting by and through the COE, subject to and using funds appropriated by the Congress of the United States, shall expeditiously proceed with construction of the Project, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies and in accordance with any other agreements related thereto between the DA, DOI and/or the Tribes.

b. When the District Engineer determines that a functional portion of the Project is complete according to approved Army and DOI plans, the Army shall turn the completed portion over to the DOI, in accordance with the procedure set forth in Article III. DOI shall

accept the completed functional portion of the Project in accordance with Article III and after transfer, shall be solely responsible for operating, maintaining, repairing, and rehabilitating the Project or functional portion of the Project in accordance with Article IV hereof.

c. The DOI shall be responsible for the costs of O&M training, law enforcement, and for other maintenance needs of the fishing access sites. It is anticipated that the monetary value of the DOI contribution will exceed \$250,000 annually for the next eight years, beginning in Fiscal Year 1996.

ARTICLE III - Transfer of Administrative Jurisdiction

a. Documentation, transfer of administrative jurisdiction, and acceptance of the Project for operation, maintenance, rehabilitation, and repair by the DOI shall be accomplished in accordance with the following procedures:

1. After notification by the District Engineer of the completion of a functional portion of the Project, the DA shall sign and transmit a transfer letter (of the fishing access sites) to DOI.

2. Within sixty (60) days from receipt of the transfer letter from DA, the DOI shall evaluate the proposed transfer and, by letter to the COE, either acknowledge preliminary acceptance of the functional portion of the Project, or notify the COE that DOI believes the site(s) do not conform to the approved construction plans. The District Engineer shall, in good faith, consider DOI's assertion regarding nonconformity and shall expeditiously notify DOI, in writing, of whether he determines that the functional portion of the Project conforms or, alternatively, identify the measures that would make it conform. If the parties are unable to resolve this disagreement at the local level, the issue will be raised to the Director of Civil Works for the COE for resolution. The Director of Civil Works shall consult with the Assistant Secretary of Interior (Indian Affairs) or the Assistant Secretary's designee concerning the alleged nonconformity and shall promptly notify the DOI of the COE's final decision.

3. When DOI notifies the Corps of its preliminary acceptance or when the Director of Civil Works notifies DOI of his determination that the sites do, in fact, conform to the approved construction plans, the Portland District, COE shall prepare a Property Disposition Voucher (Engineering Form 3061) for physical transfer of administrative jurisdiction of land and improvements and send it to the Area Director of the BIA. The Area Director of the BIA shall sign the Property Disposition Voucher and within sixty (60) days from receipt of the form, shall return it to Portland District, COE to complete the transfer process. Lands and improvements constituting the fishing access sites will thereupon be under the administrative jurisdiction of the Secretary of the Interior, acting by and through the BIA.

4. The transfer process shall be conducted in accordance with COE Engineering Regulation 405-1-12, Chapter 11, paragraphs 11-100, 101 and 102, which is applicable to transfer of COE administered lands to other Federal agencies.

ARTICLE IV - Operation, Maintenance, Repair, and Rehabilitation

a. After the DA has transferred a functional portion of the Project to the DOI in accordance with the procedures described in Article III herein, the DOI shall operate, maintain, repair, and rehabilitate the completed functional portion of the Project in accordance with regulations prescribed by the Secretary of the Interior. In carrying out these responsibilities, DOI shall use its own funds and any funds provided to it from the DA for this purpose under Article VI of this Agreement.

b. The DOI shall establish use rules specifically applicable to the Tribes' future utilization of the Project after transfer of administrative jurisdiction to the DOI.

ARTICLE V - Project Operational Guidelines

After the Army transfers a functional portion of the Project to DOI, DOI shall operate and maintain the sites in a manner not inconsistent with the legislatively authorized purposes of the adjacent Bonneville and Dalles-John Day Corps Project facilities, and in accordance with Public Law 100-581.

ARTICLE VI - Funding Transfer

a. The parties agree that the Army will seek legislation necessary to authorize the Army to pay DOI capitalized O&M of the Project or any functional portion of the Project proposed for transfer to DOI. Capitalized O&M for the Project is currently estimated to be \$6,300,000.

b. Once Congress has authorized the Army to transfer funds to DOI and has provided such funding, the Army will transfer the funds as follows: Upon receipt of a signed ENG Form 3061 by the COE, the COE will, within 60 days, transfer to BIA such sum of money as has been allocated for capitalized O&M of that particular functional portion of the Project.

c. The parties acknowledge that funding and completion of the Project depend upon actions of Congress and other circumstances not within the control of the parties, and no claim shall result from delays in funding and completion of the Project or changes in the Project or funding caused by Congress, the federal courts, or other circumstances beyond the control of the parties.

ARTICLE VII - Contingency

No transfer of any functional portion of the Project will occur until the necessary authorities and appropriations are obtained or the parties agree on a substitute Article VI. If transfer still does not occur, the Army and DOI have no obligations under this MOU, except those discussed in Article III; however, the parties recognize their continuing statutory obligations under Public Law 100-581.

ARTICLE VIII - Notices

a. Notices and communications regarding implementation of this MOU shall be sent to the following personnel:

1. If to the COE:

Timothy L. Wood, Colonel, CE
District Engineer
U.S. Army Corps of Engineers
P.O. Box 2946
Portland, Oregon 97208-2946

2. If to the BIA:

Mr. Stanley Speaks
Area Director-Portland Area Office
U.S. Department of Interior
Bureau of Indian Affairs
Holladay Federal Building
911 N.E. 11th Avenue
Portland, Oregon 97232

b. A party may change the address to which such communications are to be directed by giving 30 days written notice to the other party.

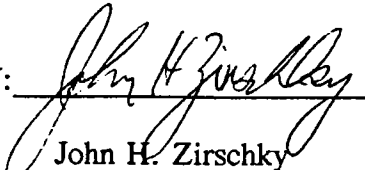
ARTICLE IX - Miscellaneous Provisions

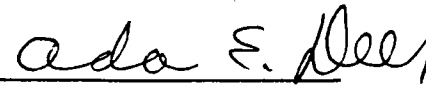
Either party may seek to modify this MOU upon 30 days written notice to the other party. The MOU will not be modified unless both parties consent in writing.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first written above.

DEPARTMENT OF THE ARMY

DEPARTMENT OF THE INTERIOR

BY: 
John H. Zirschky
Acting Assistant Secretary
(Civil Works)

BY: 
Ada E. Deer
Assistant Secretary
(Indian Affairs)

APPENDIX A

ESTIMATED FISHING ACCESS SITES AS OF JUNE 21, 1995

Alder Creek Treaty Fishing Access Site, Washington
Alderdale Treaty Fishing Access Site, Washington
Avery Treaty Fishing Access Site, Washington
Bingen Boat Channel Treaty Fishing Access Site, Washington
Bonneville Area Office Treaty Fishing Access Site, Washington
Cascade Locks In-Lieu Fishing Site, Oregon
Celilo Treaty Fishing Access Site, Oregon
Cooks In-lieu Fishing Site, Oregon
Crow Butte Treaty Fishing Access, Washington
Dallesport Treaty Fishing Access Site, Washington
Faler Road Treaty Fishing Access Site, Oregon
Goodnoe Treaty Fishing Access Site, Washington
LePage Treaty Fishing Access Site, Oregon
Lone Pine In-lieu Fishing Site, Oregon
Lyle Treaty Fishing Access Site, Washington
Maryhill Treaty Fishing Access Site, Washington
Moonay Treaty Fishing Access Site, Washington
North Shore Treaty Fishing Access Site, Washington
Pasture Point Treaty Fishing Access Site, Washington
Pine Creek Treaty Fishing Access Site, Washington
Preachers Eddy Treaty Fishing Access Site, Oregon
Rock Creek Treaty Fishing Access Site, Washington
Roosevelt Treaty Fishing Access Site, Washington
Rufus Treaty Fishing Access Site, Oregon
Stanley Rock Treaty Fishing Access Site, Oregon
Sundale Treaty Fishing Access Site, Washington