

Appendices
Fish & Wildlife Lands Deskbook

Appendix I

Definitions

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| Asset Monitoring | Site monitoring to ensure the property, a mitigation program asset, remains in the condition called for in any applicable agreements, easements, covenants, etc. |
| Baseline Documentation Report | A report prepared by the easement grantee detailing the condition and features of a property at or near the time of acquisition or the completion of a restoration project. |
| Bonneville Purchasing Instructions | Procurement guidelines controlling BPA's acquisition of goods and services. |
| Capitalization Policy | The financial policy that allows BPA to capitalize land acquisitions where the acquisition retires a known portion of an established fish or wildlife mitigation debt. |
| Conservation Easement | A less-than-fee real property interest that places restrictions or affirmative obligations on an owner's use of the underlying property to further fish and wildlife purposes and protect fish and wildlife conservation values of the property, typically in perpetuity. Because a conservation easement is a real property interest and a recorded deed, the restrictions remain on the property even if there is a change in ownership. |
| Conservation Values | The natural features and characteristics of a property, including the flora and fauna, warranting its protection. |
| Corporate Finance Review | Review of the proposed funding characterization—i.e., capital or expense—by BPA's Financial Services for a project. |
| Covenant | An agreement or promise in a deed which is recorded. Covenants usually create a less-than-fee interest that places certain restrictions or affirmative obligations on an owner's use of the underlying property. Covenants can run with the land and bind both the original land owner and his or her successors in ownership. |

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| DOJ (Department of Justice) Title Review | The review performed by BPA Office of General Counsel, under authorization by the U.S. Department of Justice, to ensure the proposed acquisition meets all requirements for the Federal government acquiring an interest in real property. Formerly known as a “945 review.” |
| Ecosystem Services Credit | Credit BPA, a sponsor, or funding entity may take for marketable environmental attributes, such as wetlands reserved or carbon sequestered, through a project. |
| Environmental Compliance | A catch-all phrase encompassing the environmental issues that must be addressed prior to an acquisition (e.g., NEPA, NHPA, etc.). |
| Escrow Instructions | The instructions provided by the sponsor and BPA to the escrow company to direct closing. |
| Executory Interest | A future real property interest, sometimes included within a covenant, that vests ownership in BPA if certain conditions arise. |
| Fair Market Value | The value of a property as documented in an appraisal, after analysis of comparables. |
| Federal Columbia River Power System | The federal dams on the Columbia River and its tributaries that BPA sells surplus power from. |
| Fee Ownership | Complete ownership of a piece of land. |
| Fish and Wildlife Program | The Columbia Basin Fish and Wildlife Program, established under the Northwest Power Act, to guide BPA’s efforts to protect, mitigate, and enhance fish and wildlife affected by the development and operation of the FCRPS. The program integrates the Endangered Species Act biological opinions covering the operation and maintenance of the Federal Columbia River Power System, as implemented by BPA. |
| In Lieu Policy | Policy to ensure that acquisitions comply with the prohibition in Northwest Power Act section 4(h)(10)(A), 16 U.S.C. § 839b(h)(10)(A) that prevents BPA from funding mitigation that other entities are responsible for. |
| Indian Allotments | Lands once allotted to individual Indians and now held in trust for the original allottee’s heirs and assigns which can number in the dozens or more for a single tract. |

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| Initial Intake Call | A formal, structured meeting between the project sponsor and BPA staff held as early as possible in the acquisition process to discuss the project and identify issues related to the proposed acquisition. |
| Land Management Plan | Plan prepared by site managers and approved by BPA which provides detailed description of how the property will be managed. |
| Life Estate | A temporary right retained by a seller or others to remain for the rest of his or her life on the land even though fee has been conveyed to others. |
| Memorandum of Agreement | A contract with BPA to perform mitigation actions. |
| Merger | Where a greater estate and a lesser estate coincide and meet in one person, without any intermediate estate, the lesser is merged in the greater. |
| Mineral Rights | Interests in oil, gas, gravels, and hard rock minerals which are often severed from the surface estate and held by a third party. |
| Mitigation Credit | Credit BPA takes against its legal obligations under various Federal laws such as the Endangered Species Act or the Northwest Power Act. |
| Permanent Habitat Protection | Ensuring a real property interest is protected primarily for fish and wildlife on a long-term basis, typically for 99 years or longer. |
| Pre-Acquisition Steps | The steps BPA and a project sponsor must complete to acquire a property. |
| Preliminary Title Report | An offer of insurance from a title company which includes the legal description and all recorded encumbrances. |
| Project Sponsor | The entity proposing and performing the duties of securing a real property interest for the Fish and Wildlife Program. |
| Public Access | Use of a program mitigation property by the general public |
| Public Involvement | The opportunity for the public to participate in the development of a project or components of a project such as a management plan. |
| Public Notice | Notice to the general public of a pending acquisition. |

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| Real Property Interests | Means a right in real property held by a certain person or entity. |
| Review Appraisal | The review BPA's appraisers conduct of appraisals performed outside the agency. |
| Uniform Act | The Uniform Relocation and Assistance and Real Property Acquisition Policy Act, 42 U.S.C. section 61 et. seq, is the law governing certain responsibilities and policies of Federal agencies using Federal funds to acquire property from private owners. |
| Water Rights | The rights to use water for purposes authorized by law. |
| Water Rights Survey Form | BPA's form for project sponsors to complete to inform decisions related to water on a property during the acquisition process. |
| Wildlife Crediting Policy | BPA's 1:1 credit requirement applied program-wide for wildlife projects not covered by a settlement agreement. |
| Working Landscape Project | A mitigation project managed to permit ongoing commercial use, such as grazing or logging, in a manner compatible with improving and maintaining the fish and wildlife habitat and conservation values. |
| Yellow Book | Federal appraisal standards. |

Appendix II

BPA F&W Land Acquisition

Steps to Complete Environmental Requirements and Public Notice

Updated October 2015

1. *Gathering background information on the property*
 - a. The KEW COTR will notify the KEC environmental compliance lead (ECL), public affairs and lands about an upcoming land acquisition at the initial intake call (approximately 6 months prior to closing date), but no later than when the purchase and sale agreement is signed, the appraisal is complete, or **at least two months prior to closing**. *It is important to note that ECLs do not receive SOW review requests for land acquisitions, so the ECL is responsible for checking with their KEW COTR about potential acquisitions under a new contract.*
 - b. The KEW COTR will provide a copy of the property baseline inventory report to the EC lead to review as appropriate.
 - c. When the Public Affairs lead is notified about a potential land acquisition, they will inform Tribal Affairs of the project. Tribal Affairs will be provided with the general description of the proposal, understanding that more accurate information will be made available to them in the form of a land owner notification letter and map, and possibly a fact sheet when they are complete.
 - d. As soon as feasible, the ECL should obtain the following information from the project manager or project proponent much of which is captured in the land acquisition intake form:
 - Desired closing date
 - Property location information, including:
 - a shapefile or map with the property boundaries clearly indicated,
 - parcel tract ID number
 - the Township, Range and Section(s),
 - county and state,
 - name of the USGS Quad map, and
 - an aerial photograph or image with property boundaries clearly indicated.
 - Property description including size, habitat types, species present (including threatened, endangered, or other sensitive species and

- critical habitat), nearby rivers or streams, structures on-site, prior land use, nearest city or landmark, and any other notable features.
 - o Determine whether there is an existing land management plan this property will be added to or a new land management plan will be developed.
 - o Confirm if stewardship funding will be provided as part of the acquisition, and addressed in the NEPA document.
 - o Interim management activities that may occur before a new land management plan is finalized.
 - e. The ECL should coordinate with the COTR and Lands for any visits to the property.
 - f. The ECL will initiate the GIS Map Request process:
 - o Obtain a shapefile of the property boundary from the project proponent.
 - o Email this shapefile to survey staff at TERM-TPP. They will make necessary edits, and will email shapefile back to the ECL.
 - o ECL will submit the shapefile within the [Public Notification](#) GIS Map Request on Share Point.
 - o KEC GIS Analyst will create and send the public notification map to the ECL.
 - g. The ECL is responsible for obtaining and verifying a list of landowners and addresses within a ¼ mile radius of the proposed acquisition. **Use the same form in 1(e)** to request a list of landowner names and addresses within ¼ mile radius of the land acquisition. If the parcel information is not in eGIS, then the eGIS staff will contact the appropriate person in the lands office and request this information. Once received the EC shall verify that the landowner list was developed from recently obtained data and request the data be updated if it is older than 2 years. NOTE: If there is an irrigation diversion on the property serving other landowners downstream, notify downstream landowners as well.
2. *Cultural Resource Compliance*
- a. The ECL will submit a [Cultural Resource Request Form](#) on Share Point, and an Archaeologist will be assigned to your project. The Archaeologist will conduct a background literature search for the property. Based on the results of the literature search and analysis of the maps, the Archaeologist will make a recommendation on whether a survey is required. An intensive survey will generally not be required if the Archaeologist determines that the land acquisition and any identified management actions have no potential to cause effects to historic/cultural resources,

assuming such historic properties were present. However, in some cases a reconnaissance-level survey may be required. The ECL, Archaeologist, and COTR coordinate to determine whether surveys will be conducted and the timing of the surveys.

- b. If a survey is required, the ECL will coordinate with the COTR and Archaeologist to determine if a cultural resource survey will be completed by BPA or contracted out. The ECL and Archaeologist will coordinate and prepare an initial consultation letter with the APE map to be sent to the SHPO and applicable Tribes and/or the THPO. The SHPO and/or THPO and the Tribes have 30 days to respond. Once the survey and survey report are completed, the ECL and Archeologist will send the report and final determination letter to the SHPO and applicable Tribes and/or the THPO. The SHPO, THPO and/or the Tribes have 30 days to respond. SHPO concurrence should be received prior to purchase.
- c. If a survey is not required, a notification letter will be sent to the SHPO for states where BPA has executed a programmatic agreement (PA) for fish and wildlife projects. For states where there is no PA, no further action is required and compliance with the NHPA is considered complete.

3. *Write a Categorical Exclusion (CX) for purchase of the property*

The ECL will write the CX and fill out the CX checklist (a template for these documents may be found by opening MSWord and selecting: *File>New>My Templates>08 Land Acquisition Templates>Land Acquisition Memo CX Checklist*). Please remember to save this document as a separate file name after opening. To ensure consistency among the different documents created as part of this process, use the following naming convention when titling this CX: "property name CX". If the acquisition is for fee title, the ECL will consult with the COTR to identify any anticipated ground-disturbing activities that may occur on the property before the development and approval of a management plan. These activities should be included in the CX. Save this file to SharePoint and email the SharePoint file path to KEC Administrative staff to process for review. They will submit it to the NEPA compliance Officer (NCO) for review and signature. (If a CX is not sufficient for the particular acquisition, consult with NCO).

After the NCO and ECL (if CFTE ECL, then KEC Supervisor, BFTE ECL, or KEC Manager must also review, see [guidance](#)) sign the CX, KEC Administrative staff will update the CX in Share Point and post the CX on the NEPA documents website. The CX must be signed prior to finalizing public notice ad, and public letter (Step 4 below), including posting it to the web site.

4. *Public Notification Process*

- a. The ECL will draft the public letter based on information provided by the project proponent about 5-8 weeks before closing (the template for this letter may be found by opening MSWord and selecting: *File>New>My Templates>08 Land Acquisition Templates>Land Acquisition Public Letter*). KEC Admin staff can provide a hyperlink to the web site.
- b. The ECL will email the draft public letter to the project team (COTR, project sponsor, Public Affairs lead, and, General Counsel, for review). The ECL should request that edits be returned within one week.
- c. The ECL will revise the public letter based on edits provided by the project team.
- d. The ECL will coordinate creation of the mailing list with the COTR, project sponsor, KEC staff, and Public Affairs lead. Each mailing should at a minimum go to landowners within ¼ mile of the property, county commissioners, and affected tribes, in addition to any other interested parties identified by the project team. The Public Affairs lead will provide names obtained from Constituent, Tribal, Power and Transmission Account Executives. The ECL shall provide the project sponsor the opportunity to review the mailing list so the sponsor may conduct outreach to entities that have a strong interest in the acquisition prior to the formal public notification process.
- e. The ECL will send revised public letter and map to the Public Affairs lead who will use this information to draft the public notice newspaper ad, coordinate the ad publication notice and consider whether this acquisition warrants the development of a fact sheet. The Public Affairs Lead will send the draft newspaper ad to the ECL for final review four weeks prior to closing.
- f. The Public Affairs lead will coordinate fact sheet design/production (if needed) and posting of information on the BPA public website, and send a PDF of the final fact sheet to the ECL. The ECL will work with KEC Administrative staff to include the fact sheet in the mail out.
- g. The Public Affairs lead will coordinate the ad design and placement, and will place ads in local newspapers at least 15 days before the proposed closing. The Public Affairs lead will email ad placement plan to ECL, COTR, and project sponsor.
- h. The ECL will coordinate with KEC Admin Staff to mail the public letters (including the map and fact sheet, if applicable) to all mail list contacts gathered. The EC lead will upload the final mail list to share point prior to mail out. **Public letters should be mailed three weeks prior to closing and at least three days before the public notice is published in the paper**

(this date should be provided by the PA lead) and the CX must be posted to the website prior to mail out..

- i. Prior to the closing date, the ECL will contact the COTR, project proponent, and the PA lead to determine if any issues or concerns regarding the land acquisition were raised. The ECL will share this information with all potentially interested BPA staff. If issues that could affect the closing have been raised, discuss how they will be addressed. ECL will document consideration of these issues in Pisces under the EC tab in the Public Involvement box.
- j. Lands lead will notify the ECL, COTR, and the Public Affairs lead when the transaction closes.
- k. The Public Affairs lead will prepare a short write-up on the transaction for the BPA Journal. The Public Affairs lead will work with media and project team to determine if the transaction should be publicized further.

5. *Final Steps*

- a. The ECL will complete the Pisces tab for NEPA, ESA, Sec 106, and public involvement. Land acquisitions are tracked via internal contracts in Pisces (at the project level, these are listed under the “internal work” tab in the “Project Work” window; reference number format is BPA-XXXXXX). Include any pertinent information in the notes column. For example cite the appropriate CX category – “B1.25 Real property transfers for cultural resources protection, habitat preservation, and wildlife management”; for public involvement list the names of newspapers where ads were placed and dates they ran; etc.
- b. The ECL will save administrative record documents into appropriate SharePoint site including the mail list, public letter, location map, newspaper ad, etc.

Appendix III Land Acquisition Intake Form

This form aids BPA in understanding and tracking new acquisitions. Please complete and return to your BPA F&W Project Manager. Upon receipt, the BPA F&W Project Manager will schedule an Intake Phone Call to discuss the details of the acquisition and next steps.

| Sponsor's Contact Information | |
|--------------------------------------|------------------------------------|
| 1. | Date form completed: |
| 2. | Sponsor organization: |
| 3. | Contact name: |
| 4. | Email: |
| 5. | Address: |
| 6. | Phone number (land line and cell): |
| 7. | Preferred closing date: |

| BPA Project Information (this section to be completed by BPA) | |
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| 8. | BPA COTR/Land PM: |
| 9. | Project Number: |
| 10. | TBL Task Order: |
| 11. | BiOp association: |
| 12. | Accord/Settlement: |
| 13. | Capital/Expense: |
| 14. | Stewardship funding request: |
| 15. | Main mitigation for Wildlife / Anadromous fish / Resident Fish |
| 16. | Hydro project: |

| General Project Information | | NOTES |
|---|-----------------------|--------------|
| 17. Functional name/alias for property (do not use the landowner's name): | | |
| 18. Type of transaction | Fee title Easement | |
| 19. If fee title acquisition, who will own the property after purchase? | | |
| 20. If easement acquisition, who will hold easement after purchase? | | |
| 21. Short description of acquisition purpose and benefit: | | |

| Mitigation Type & Species Information | |
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| 22. List key wildlife species currently using the property: | |
| 23. List key fish species currently using habitat on or adjacent to the property: | |
| 24. List any federal or State ESA-listed species (plants included) that use the habitat on the property: | |
| 25. List key habitat types on the property: | |
| Property Information | |
| 26. Property Size (total acres): | |
| 27. Physical Address of Property: | |
| 28. Property County (main): | |
| 29. Property Location - State: | |
| 30. Property Lat/Long (Centric point of the property) | |
| 31. Nearest Population Center: | |
| 32. Date Appraisal was ordered: | |
| 33. Projected date appraisal to be received by BPA: | |

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| 34. Are there any concerns in the appraisal (i.e. hypothetical conditions or extraordinary assumptions)? | |
| 35. Are there carve-out management areas? | |
| 36. Will the property need to be divided, or will an area need to be excluded? Or will the entire property be acquired? | |
| 37. For fee title purchases: Does the owner desire to keep any of the property in a life estate or retain another form of rights to the property (i.e. continued access for recreation)? | |
| 38. If there is a section of the parcel being retained by the owner, has a legal boundary adjustment/partition plat been done, if necessary? | |
| 39. For conservation easements, what rights/activities does landowner want to retain (e.g., building envelope, grazing, farming, and mining)? | |
| 40. Will a subdivision, partition plat, boundary adjustment, etc. be needed for this transaction? | |
| 41. Is there a threat of this property going to auction or foreclosure? | |
| <i>Please include a property map(s) with the vicinity as well as the specific parcel</i> | |
| Acquisition Funding | |
| 42. Estimated Acquisition Cost: | |
| 43. Is BPA providing 100% of the acquisition funding? If no, provide cost share partners' proportions and status of funding (i.e., secured or requested). | |
| 44. Are there any conditions (requirements for funds received) to funding from the cost-share partner? | |
| Other Property Considerations | |
| 45. Does legal access to the property exist? | |
| 46. What have been the historic uses of the land? | |

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| 47. Does the property have any buildings you estimate to be 50 years or older, regardless of their condition? | |
| 48. What are planned actions that may occur within 24-months after closing (restoration, property management, building alterations/demo)? | |
| 49. Does anyone live on or occupy the property besides the owner and immediate family? | |
| 50. Does anyone use the property (either paid or gratis – e.g., grazing/leasing/crop share)? | |
| 51. Is this property already protected, or in another process to be protected with a conservation easement, or other form of property protection, such as deed restrictions, or through programs such as Wetlands Reserve, Conservation Reserve, or Forest Stewardship Trust? | |
| 52. Do any known environmental encumbrances exist, such as toxic contaminants, underground storage tanks, or other related issues? | |
| 53. Do all mineral rights accompany the property? | |
| 54. If the landowner does not currently hold all of the mineral rights, what steps are being taken to extinguish the severed rights? | |
| 55. Are there any above or below-ground utility rights-of-way on the property and will these interfere with the contemplated use of the property (i.e. restoration, etc.)? | |
| 56. Are there levee rights or other types of flood protection rights held by a third party? Do these rights include the ability to use materials from the property? | |
| Water Rights | |
| 57. Are water rights associated with the property? Pick all that apply: None Surface Well | |

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| 58. Will the water rights be excluded from the acquisition? If so, please explain why. | |
| 59. If water rights will be secured with the property acquisition, what is the amount of water (acre-feet/year and periodicity)? | |
| 60. What are the historic use(s) of these water rights? (e.g., instream, aquaculture, domestic, municipal use, irrigation, stock watering, manufacturing, mining, hydropower, recreation, other) | |
| 61. What are the planned water rights use(s) after acquisition? | |
| 62. Have the water rights been used within the last 5 years? How? | |
| 63. Please provide all water right certificate/permit numbers, acre-feet and associated periodicity. | |
| 64. If the water rights will be transferred instream, how much flow will return to the stream (in cubic feet per second | |

Other

65. Any other parcel-specific issue that might affect the property value or the ability to close by the requested date?

Appendix IV

Definitions, References and Requirements For All Appraisals Submitted For Funding to the Bonneville Power Administration (BPA) Fish and Wildlife Program

I. COMPLIANCE DATE FOR THE ENCLOSED REQUIREMENTS AND GUIDELINES:

The requirements and guidelines set forth in this transmittal take effect on April 1, 2010. Appraisal reports under contract before April 1, 2010 will be accepted for review by the BPA under the contract terms agreed to with the appraiser.

II. COMPLIANCE WITH FEDERAL REQUIREMENTS AND GUIDELINES:

All definitions and requirements to be included in the appraisal must be consistent with the following publications:

1) Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)
"YellowBook"

(<http://www.justice.gov/sites/default/files/enrd/legacy/2015/04/13/Uniform-Appraisal-Standards.pdf>).

2) Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs (49 CFR Part 24), revised in January 4, 2005 (Public Law 91-646)

(http://www.fhwa.dot.gov/real_estate/uniform_act/index.cfm).

3) The Uniform Standards of Professional Appraisal Practice (USPAP)

(<http://www.uspap.org/>)

III. SPECIFIC MINIMUM APPRAISAL REPORT COMPLIANCE ITEMS REQUIRED IN ALL REPORTS PREPARED FOR BPA USE:

1. Proper documentation of the landowner contact and an invitation to the landowner to accompany the appraiser on the property inspection must be included in each appraisal report. Verification of the contact information can be included as a separate section/heading in the body of the report or in the appraiser's Certification. Public Law 91-646 [49 CFR Part 24.102(f) Basic Acquisition Policies] and UASFLA "The Yellow Book", Section D-14 Pages 100-101.

2. Definition of "Market Value": UASFLA "The Yellow Book", Section A-9 Page 13.
3. Highest and Best Use must be based on an *economic use*: UASFLA "The Yellow Book", Section A-14 Page 18.
4. The appraisal valuation conclusion must be based on an *economic use* and not a Public or Special Interest Use Value premise.
5. A ten-year sales history of the subject property(is) together with the last sale of the property irrespective of the date and any listings or prior offers within said time period are required: UASFLA "The Yellow Book," Section A-13e Page 15.
6. Note: "Comparison of USPAP and the Uniform Appraisal Standards for Federal Land Acquisitions:" UASFLA "The Yellow Book," Section D-1 Pages 77-79.
7. Reference linking the "Estimate of Value to a Specific Exposure Time" shall not be included in the appraisal report: UASFLA "The Yellow Book," Section A-9 Page 13, Section D-1(b) Page 78.
8. Scope of Work: The applicability of all standard approaches to value shall be discussed and the exclusion of any approach to value shall be explained: UASFLA "The Yellow Book," Section A-8 Page 12.
9. All comparable sale data shall comply with the UASFLA "The Yellow Book" requirements cited under B-4 pages 37-40 and Section A-17 pages 20 to 22.
10. Comparable sales (to and/or for other government agencies) requiring Extraordinary Verification and Treatment must be addressed in an appropriate manner: UASFLA "The Yellow Book," Section D-9 Page 84.
11. The Date of Value shall be the Date of Physical Inspection of the subject property by the appraiser.
12. Submit appraisal report (s) to The BPA for review and approval through The BPA Project Manager.
13. The larger parcel shall be identified and the impact of the acquisition on the larger parcel needs to be analyzed: UASFLA "The Yellow Book," Section B-11, Pages 47 through 41 and Section B-13 Pages 53 through 55.
14. Color photographs of the subject and all comparable properties, together with a location map clearly exhibiting all sales in relation to the subject, must be included in all copies of the appraisal report. The photo caption should identify the subject of the

photo, name of person taking the photo and date taken: UASFLA "The Yellow Book," Section A-17 Pages 21-22. The location map must have appropriate distinguishing landmarks to assist the appraiser during a field inspection.

15. A GPS coordinate or Quarter Section, Township, Range, legal description is required for the subject property(s) as well as for all comparable sales used in the report. The BPA will be using these coordinates and/or legal descriptions in completing a field review of the report.
16. Discussion relative to the comparable properties used in the appraisal report shall include individual narrative comments and adjustment conclusions as to the value each comparable property indicates for the subject, together with an overall summary conclusion. **If** an adjustment grid tabulation is used, it shall be clearly presented containing all adjustments and supported through market sources: UASFLA "The Yellow Book," Section A-17 Pages 21-22.
17. The Appraisal Certification shall include a statement indicating the contract appraiser has personally inspected the appraised property and all comparable sale properties used in arriving at the estimate of value.
18. The Appraisal Certification shall include the appraiser's opinion of the market value of the property appraised and the date of valuation. The appraisal will be rejected if these items are not present: UASFLA "The Yellow Book," Section A-4 Pages 9-10.
19. The enclosed checklist must be filled out and located in the addenda of the appraisal report. Failure to include this completed checklist will cause immediate rejection of this report.

IV. DOCUMENTATION

The appraiser(s) will provide an appraisal report both in hard copy and PDF electronic format to comply with the rules and regulations described by reference in this transmittal. BPA needs to be listed as either the client or an intended user of the report. It is further recommended that the phrase "For the United States Government Agencies and Bureaus (attention: The Bonneville Power Administration) use." The appraisal employment contract including the appraisal instructions and fee for appraisal services must be included in the addenda of the appraisal report. The BPA Appraisal Department will accept appraisals with dates of value within six months of the time of receipt in the department. Reports with dates of value exceeding six months may or may not be accepted without an update.

V. APPRAISER REQUIREMENTS

The principle appraiser must be a Certified General Appraiser in the State where the subject property is located or hold a Certified General Appraiser license in another state that will be granted reciprocity by the state licensing agency governing the location of the subject property (s).

As of October 1, 2010: All appraisers providing easement related appraisals for The BPA Fish and Wildlife program will be required to show proof of attendance and passing either the Appraisal Institute's or American Society of Farm Managers and Rural Appraiser's Valuation of Conservation Easement Certificate Program course. In addition, All appraisers are required to have taken a UASFLA "The Yellow Book" course/seminar sponsored by an Appraisal Sponsor of the Appraisal Foundation and passed the appropriate examinations. Reports received after this date will be rejected if evidence of the Valuation of Conservation Easement Certification and the UASFLA "Yellow Book" course of study are not present by reference or exhibit in the report.

VI. VALUATION METHODS TO BE USED

Valuation Methods to be used are to be determined by the appraiser(s) and must be consistent with the prior referenced Federal Requirements in Section I. If conflicts arise between the requirements of UASFLA "The Yellow Book," Public Law 91-646 (49 CFR Part 24), revised in January 4, 2005 and USPAP, the BPA Appraisal Staff assigned to the project will instruct the appraiser(s) regarding which requirements are to be followed. The BPA Appraisal Staff are available to respond to questions by the appraiser(s) regarding appraisal methodology and procedures.

APPRAISAL REQUIREMENT CHECKLIST

| BPA REQ. # | APPRAISAL REPORT PAGE(S) # | MINIMUM / SPECIFIC APPRAISAL REQUIREMENTS |
|------------|----------------------------------|--|
| III-01 | | Documentation of the landowner contact |
| III-02 | | Market Value Definition |
| III-03 | | Highest and Best Use |
| III-05 | | Subject Sales History |
| III-07 | | Exposure Time is not to be included in the report |
| III-08 | | Scope of Work |
| III-10 | | Use of Extraordinary Verification of Sales |
| III-13 | | Larger Parcel Identification |
| III-14/15 | | Subject Photos |
| III-14/15 | | Comparable Photos |
| III-14 | | Sale Map |
| III-16 | | Sales Data Compliance with UASFLA |
| III-16 | | Sales Analysis |
| III-16 | | Adjustment Grid |
| III-16 | | Adjustment Analysis |
| III-11 | | Date of Value |
| III-17 | | Appraisal Certification with UASFLA Requirements |
| III-15 | | BPA GPS Requirements |
| V | | Valuation Conservation Easement Certificate |

Appendix V

Template Conservation Easement (Washington) Where the Sponsor Acquires in Fee and BPA Receives an Easement

[State law governs most aspects of real property transactions, so
easement language will vary somewhat depending on the state in
which the property is located.]

AFTER RECORDING, RETURN TO:

Bonneville Power Administration
Real Property Services, TERR
Re: [Insert BPA Tract No.]
P.O. Box 3621
Portland, OR 97208-3621

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is executed by [*Insert name of sponsor, description of sponsor, and address of sponsor*](“Grantor”), in favor of the United States of America (“United States” or “Grantee”), acting by and through the Department of Energy, Bonneville Power Administration (“BPA”), headquartered in Portland, Oregon, at P.O. Box 3621, Portland, OR 97208-3621. The Grantor and Grantee together are referred to as the “Parties.”

I. RECITALS

A. BPA is a power-marketing agency having legal obligations under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h (“Northwest Power Act”) to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, 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 Northwest Power Act, the Fish and Wildlife Program adopted by the Pacific Northwest Electric Power and Conservation Planning Council under subsection 4(h) of the Northwest Power Act (16 U.S.C. § 839b(h)), and other environmental laws, including the Endangered Species Act, 16 U.S.C. §§ 1531-1544 (“ESA”). BPA has the authority pursuant to the Northwest Power Act,

16 U.S.C. §§ 839b(h) and 839f(a), the Federal Columbia River Transmission System Act, 16 U.S.C. § 838i(b), or the Bonneville Project Act, 16 U.S.C. §§ 832a(c) through (f), to acquire real estate or to assist in the acquisition and transfer of real property interests.

- B. Grantor is [insert grantor description]
- C. BPA and the Grantor entered into [*insert name and date of governing MOA*] (“**MOA**”), in which BPA agreed to fund the acquisition of real property interests to permanently protect and enhance important fish and wildlife habitat, where it either currently exists or at one time existed, in exchange for supporting BPA’s partial fulfillment of Northwest Power Act and ESA obligations, and in exchange for rights of enforcement, entry, and inspection to the United States and its assigns.
- D. BPA in accordance with the mutual commitments of the **MOA**, a copy of which is available from the BPA Manager, Real Property Services, P.O. Box 3621, Portland, OR 97208-3621, provided funding to the Grantor to acquire fee title ownership of certain real property, the [*Insert the name of the property as used in the acquisition process – not including the landowner’s name, e.g., “West Creek Ranch Property”*] (“**Protected Property**”) in [*County, State*]. The Protected Property has important features that help BPA meet its statutory obligations to the public under the Northwest Power Act and other environmental laws.

II. AGREEMENT

- A. **Conveyance and Consideration.** The Grantor, for and in consideration of the funding in the amount of ([*Insert the dollar amount provided by BPA for the purchase of the property*]) in U.S. dollars which BPA provided to acquire fee title ownership of the Protected Property, hereby voluntarily conveys and warrants ¹ to the United States of America and its assigns a perpetual easement for conservation purposes (“**Conservation Easement**”) in, over, under, upon and across the Protected Property, legally described in **Exhibit A** (Legal Description)[*Note: the legal description must include a description of any water rights accompanying the property in the transaction*], together with access to the same, and shown in **Exhibit B** (Map), created and implemented under applicable state and federal law, and creating an interest in property intended to be a conservation easement under [*cite applicable state law*]. The Parties

¹ Language of conveyance will vary by state.

intend this Conservation Easement to be a perpetual and irrevocable easement in gross, and further intend that its terms and conditions, set forth below, create equitable servitudes and covenants running with the land, binding the Grantor and the Grantor's successors and assigns for the benefit of the United States.

B. Purpose. The purpose ("**Purpose**") of this Conservation Easement is to protect and conserve, and as appropriate, to allow for the restoration or enhancement of the **Conservation Values** (Section C, below) of the Protected Property. As such, the Purpose of this Conservation Easement includes the prevention of any use of the Protected Property that will materially harm or materially interfere with any of the Conservation Values of the Protected Property. The Grantor intends that this Conservation Easement will confine the use of the Protected Property to activities that comply with the Conservation Easement, including the final Management Plan. BPA shall have the right, but not the obligation, to enforce any and all terms of this Conservation Easement. The Grantor shall only conduct activities on the Protected Property which are consistent with the Purpose of this Conservation Easement. In the event that there is a conflict between the Grantor's uses or activities and the Purpose of Conservation Easement, the Purpose of the Conservation Easement shall be construed broadly and shall prevail over any conflicting uses or activities of the Grantor.

C. Conservation Values. The Protected Property, in its present state, comprises approximately [*insert number of acres*] including [*insert summary of important habitat or other features, e.g., "riparian forest, floodplain, and side channel habitat important to ESA-listed fish species"*]. The Parties agree that the Protected Property includes other important species, habitat, and other important ecosystem attributes. The Conservation Values of the Protected Property that currently exist specifically include the following, recognizing that such Conservation Values may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, floods, interdecadal climate events, and long-term climate change, as well as human-initiated enhancement or restoration actions:

1. [*Insert important species on or targeted for the property—specifically identify the ESU for any BiOp or Accord-funded projects*]
2. [*Insert important habitat types—f restoration or enhancement work is expected, briefly mention the opportunity this property provides to do that work*]
3. [*Insert as applicable other features that made the property important to acquire*]

for BPA's Fish/Wildlife program purposes, e.g., if it's adjacent to other protected habitats, association with other planned restoration work, public benefit, etc.]

- D. Water Rights.** *[If water/water rights accompany the purchase, then note the nature and extent of the water rights at the time of acquisition and how the Grantor will preserve and use those rights to benefit the protected property.]* To the extent Grantor has or after-acquires water rights, Grantee shall ensure that the Grantor shall not abandon any of the water rights appurtenant to the Protected Property by virtue of non-use and that the Grantor may not transfer, change the point of diversion, change the purpose of use, or otherwise significantly change any Protected Property water right without receiving prior written approval from BPA.
- E. Baseline Documentation.** The Grantor and BPA agree that the characteristics and conditions of the Protected Property at the time of this grant are documented in a **Baseline Documentation Report**, signed and acknowledged by the Parties; the acknowledgment is **Exhibit C**.
- F. Reserved Uses.** The Grantor reserves, for itself and its successors and assigns, the right to use the Protected Property in any and all ways which are consistent with the Purpose of this Conservation Easement and which are not otherwise prohibited by this Conservation Easement, including but not limited to: the right to record title, the right to convey, transfer, and otherwise alienate title to these reserved rights in accordance with Sections K(14) and Q; the right of quiet enjoyment of the rights reserved in Protected Property; and the right to prevent trespass and control access.
- G. Management Plan.** Within 18 months of the Effective Date, the Grantor shall develop a Management Plan for the Protected Property to describe the uses and activities that the Grantor expects to undertake or allow to be undertaken on the Protected Property, including any restoration, enhancement, operation and maintenance, or any other activities or uses. The Grantor shall include in the Management Plan any limitations or prescriptions for these uses and activities necessary to ensure the Purpose of this Conservation Easement. The Grantor shall also identify in the Management Plan the allowable use and access by the public of the Protected Property if public access is appropriate.

In developing the draft Management Plan, Grantor will solicit and incorporate as Grantor deems appropriate the views of interested natural resource management agencies, local governments, and parties. Grantor will submit documentation showing the nature and extent of such coordination with any draft plan to BPA. BPA shall review that Management Plan and any

proposed amendments for consistency with the Purpose of the acquisition, this Conservation Easement, any other agreement between the Parties and applicable law. BPA must complete its review and the Parties must agree on a final Management Plan or any amendments prior to its implementation. Prior to review of the Management Plan by BPA, the Grantor shall not undertake any ground-disturbing activities on the Protected Property without prior notice to and written consent from BPA. The Grantor shall make the final Management Plan, and any final amendments, available to the public.

H. Public Access. The Grantor shall provide reasonable access to the Protected Property (for example, for undeveloped recreational uses, such as hiking, bird watching, hunting and fishing) to the general public, unless the Grantor and BPA determine such access may materially impair one or more of the Conservation Values of the Protected Property. The Grantor will address access to the Protected Property in the Management Plan.

I. Annual Report. The Grantor shall annually submit a report to BPA that describes, at a minimum any: changes in real property interests (including water rights) in the Protected Property; uses or activities undertaken, in progress, or planned; violations or threatened violations of the Conservation Easement; and enforcement action taken. The Grantor shall provide the initial annual report in the fifteenth month after the closing date of the acquisition of the Protected Property, and then annually on that initial report date anniversary thereafter, unless otherwise agreed by BPA.

J. Rights Conveyed to Grantee

1. General Rights. The Grantor has conveyed this Conservation Easement to the United States. BPA is the acquiring federal agency having jurisdiction and control over this Conservation Easement. Subject to valid existing rights of record and those rights specifically reserved to the Grantor at the time of this conveyance, all development rights associated with the Protected Property are vested in Grantee. In addition to any other rights granted to the Grantee pursuant to this Conservation Easement, Grantee has the right to:

- a) Access and inspect the Protected Property at all reasonable times upon reasonable notice (which may be by phone or electronic mail) to assure compliance with this Conservation Easement;
- b) To access the Protected Property upon reasonable notice (which may be by phone or electronic mail) to survey the fish and wildlife

- habitat and evaluate the status of the Conservation Values;
- c) Prevent any activity on the Protected Property inconsistent with this Conservation Easement, and to require the restoration of areas or features of the Protected Property that are damaged by any inconsistent activity; and
 - d) Should the Grantor fail to do so, to retain and maintain the right to use any and all of the water rights associated with the Protected Property, and to protect those rights from threat of abandonment or forfeiture under relevant law; Grantee may, after providing 90 days advance written notice to the Grantor enter upon the Protected Property and take actions reasonably necessary to maintain the validity of the water rights.

2. Transmission Facilities. The Grantor conveys the following rights to the United States: to construct, locate, operate, maintain, repair, reconstruct, upgrade, keep clear, access and patrol future transmission facilities including ancillary transmission communications facilities within the Conservation Easement at no additional cost for securing the transmission easement for these purposes. Should such a perpetual transmission easement be needed, the Parties shall negotiate the final terms and conditions of the transmission easement in a form substantially similar to **Exhibit D**, Form Transmission Easement. Such transmission easement shall not be presumptively precluded by the terms of this Conservation Easement. The Parties shall seek to negotiate terms and conditions of the transmission easement that reflect the Purpose of this Conservation Easement, and may include mitigation measures in accordance with the MOA or as otherwise identified as part of an environmental analysis for the transmission easement under the National Environmental Policy Act, ESA, or any other applicable laws. Transmission easements shall be for the sole purpose of transmission of electrical power and ancillary communications.

K. Prohibited Uses. The Grantor shall manage the Protected Property to protect its fish and wildlife habitat on behalf of BPA, preventing any and all uses of the Protected Property that are inconsistent with the Purpose of this Conservation Easement. The Grantor may also manage the Protected Property to restore or enhance fish and wildlife habitat, provided BPA consents to the restoration or enhancement activities, either in a final Management Plan or by prior written agreement. Prohibited uses of the Protected Property include those specifically listed below. The Parties intend that any activity that may materially harm or materially interfere with one or more of the Conservation Values is prohibited, and therefore the list

identified below is not exhaustive.

1. *Residential, Commercial or Industrial Uses.* Any residential, commercial, or industrial uses of the Protected Property are prohibited, including timber harvesting, grazing of livestock, and agricultural production.
2. *Construction of Buildings, Facilities, Fences or Other Structures.* Construction of new buildings, facilities, fences or other structures is prohibited. Repair, maintenance, or replacement of existing buildings, facilities, fences or other structures identified in the Baseline Documentation Report are permitted at the same location and within the existing footprint of such structures.
3. *Utilities.* Except as provided for in Section J.2, the installation or relocation of new public or private utilities, including electric, telephone, or other communications services is prohibited. Existing utilities on, over, or under the Protected Property may be maintained, repaired, removed or replaced at their current location as that location is documented in the Baseline Documentation Report.
4. *Signs.* Except for no trespassing signs, for sale signs, signs identifying the owner of the Protected Property, and signs that may be erected by the Grantee identifying the Purpose of the Protected Property, all other signs, advertisements, and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet in size.
5. *Waste.* Dumping, collecting, recycling, accumulating, or storing of trash, refuse, waste, sewage, bio-solids, or other debris is prohibited.
6. *Mining.* The exploration, development, mining or extraction of soil, sand, loam, gravel, mineral, oil, gas, or other substance from the surface or subsurface of the Protected Property is prohibited.
7. *Topography.* Altering the existing topography of the Protected Property by digging, plowing, disking, or otherwise disturbing the surface or subsurface is prohibited.
8. *Watercourses/Wetlands.* Draining, dredging, channeling, filling, leveling, pumping, diking, impounding or any other alteration of any watercourses, ponds, seeps, bogs, springs, wetlands, or any seasonally wet area is prohibited, as is altering or tampering with existing water control structures or devices.

9. *Vegetation.* The cutting, trimming, shaping, killing, or removal of any vegetation from the Protected Property, except for noxious weeds, is prohibited.
10. *Exotic Species.* The introduction, cultivation, or use of exotic plant or animal species on the Protected Property is prohibited. Exotic plants include non-native invasive plant species.
11. *Roads and Impervious Surfaces.* Construction of new roads and paving of any existing road not paved or otherwise covered in an impervious material as of the Effective Date is prohibited. Existing roads identified in the Baseline Documentation Report may be maintained and repaired in their current condition and within their existing footprint as identified in the Report.
12. *Vehicle Use.* The use of motorized vehicles is prohibited, except as necessary to carry out activities agreed to by the Grantee, or for limited, de-minimus, non-commercial recreational uses such as hunting or bird watching if those activities are agreed-upon uses in the Management Plan.
13. *Subdivision.* The legal or “de facto” division, subdivision or partitioning of the Protected Property is prohibited.
14. *Grant of Rights.* The granting of any property interest or rights in the Protected Property, including easements, permits, licenses, and leases, liens, without the prior written consent of the Grantee is prohibited.

L. Permitted Uses. Uses or activities otherwise prohibited under Section K above may be allowed but only if: (1) the use or activity is, in Grantee’s sole discretion, consistent with the Purpose of this Conservation Easement; and (2) the use or activity and any necessary limits or prescriptions are agreed to by BPA in advance, either in a final Management Plan, or by written consent of BPA.

M. Enforcement

1. *Notice of Violation, Corrective Action.* If Grantee determines that the Grantor or its representatives, contractors, successors, or assigns violates or threatens to violate this Conservation Easement, and if such determination or dispute is not resolved by negotiation as set forth in Section N, Grantee will give written notice to the Grantor and demand

- corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose, sufficient to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.
2. *Grantor's Failure to Respond.* The Grantee may bring an action as provided in Section M.3 if the Grantor fails to cure the violation within thirty (30) calendar days after receipt of a notice of violation, or under circumstances where the violation cannot reasonably be cured within such thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.
 3. *Grantee's Action.* Grantee may pursue an action in a court having jurisdiction to enforce the terms of this Conservation Easement: (1) to enjoin the violation, ex parte as necessary, by temporary or permanent injunction; (2) to require the restoration of the Protected Property to the condition that existed prior to any such injury; and (3) to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement. The remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing.
 4. *Grantor's Action.* In the event that the Grantor seeks a determination as to the legal meaning or effect of this Conservation Easement, or as to any alleged violation hereof by Grantee, and if such determination or dispute is not resolved by negotiation set forth in Section N below, then the Grantor shall be entitled to bring judicial action in a court of competent jurisdiction.
 5. *Emergency Enforcement.* Notwithstanding the provisions of M.1 and M.2, if Grantee determines on the basis of substantial evidence that circumstances require immediate action to prevent or mitigate significant damage to one or more of the Conservation Values, Grantee may undertake reasonable actions to remove, eliminate or mitigate damages to the Protected Property. Grantee shall provide prior notice to the Grantor of such actions to the extent reasonably practicable and may seek Grantor participation in such actions, but may proceed with such actions without permission from the Grantor or without waiting for the Grantor to take any action.

- N. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Conservation Easement by negotiation between executives or officials who have authority to settle the controversy.
- O. Acts of God/Force Majeure.** Nothing contained in this Conservation Easement entitles the Grantee to bring any action against the Grantor for any injury to or change in the Protected Property resulting from causes beyond the Grantor's control, including, without limitation, naturally caused fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Such excuse from performance will be allowed only if such catastrophic event or other event beyond the Grantor's control has caused a substantial degradation of the Conservation Values. The Parties shall make all reasonable efforts to resume performance promptly once the force majeure is eliminated.
- P. Waiver.** The failure of any Party to require strict performance of any term of this Conservation Easement or a Party's waiver of performance shall not be a waiver of any future performance or of a Party's right to require strict performance in the future.
- Q. Conveyance and Assignment.** The Grantor may not convey the Protected Property nor assign or transfer its rights or delegate its responsibilities under this Conservation Easement without receiving prior written approval from BPA, which shall not be unreasonably withheld.

[If Grantor is a tribe, insert the following:]

Should the Grantor seek to have the United States acting through the Bureau of Indian Affairs take the Protected Property into trust for the benefit of the Grantor, BPA agrees to approve the conveyance in a timely manner, contingent on the following: (a) that Grantor notifies BPA of its intent to transfer the Protected Property into trust; (b) Grantor provides BPA with any notices from the Bureau of Indian Affairs regarding the proposal; (c) that the Grantor is abiding by the terms of this Conservation Easement; (d) the Bureau of Indian Affairs approves any transmission facility rights BPA has in the Protected Property and the permanent protection of the Conservation Values in accordance with this Conservation Easement as a condition of any fee to trust decision; and (e) the conveyance deed in which the BIA takes the property into trust contains a reference to and is taken subject to this Conservation Easement terms and provisions.

R. Proceeds from Activities on the Protected Property. The Grantor shall use any proceeds generated from activities on the Protected Property (e.g., leases) towards the operations, maintenance and restoration of the Protected Property. If proceeds exceed the operations, maintenance and restoration needs of the Protected Property, the Grantor may use the proceeds on other BPA-funded properties in the [*insert appropriate region – e.g., “Willamette River Basin” – covered by MOA*] owned by Grantor, or the Grantor may place the proceeds in its stewardship account for the property and roll the funds over to the next fiscal year until an operations or maintenance need arises.

S. Termination or Amendment

- 1. Termination Standard.** This Conservation Easement may be voluntarily terminated by agreement of the Parties only if:
 - a) a subsequent, unexpected change in the conditions of the Protected Property or the surrounding area makes impossible the continued use of the Protected Property for the Purpose of this Conservation Easement (except that changed environmental conditions related to climate change, or other natural events, for example, wildfire, river channel migration, erosion or avulsion, shall not be grounds for termination); or
 - b) BPA agrees to exchange this Protected Property for another property proposed by the Grantor; factors that BPA will consider in determining whether to agree to an exchange include whether the new property is at the time of the proposed exchange determined by BPA to supply equal or better Conservation Values to meet BPA’s mitigation needs as compared with the Protected Property; whether the property will be permanently protected pursuant to a conservation easement granted to BPA on terms substantially similar to this Conservation Easement; and the costs to BPA of undertaking the acquisition of the new property, if any.
- 2. Termination Process.** If the Parties agree to voluntarily terminate this Conservation Easement and have met the above termination standard, the Parties shall terminate this Conservation Easement by executing and recording an instrument appropriate for the purpose. In the event of termination through an exchange for another property, the Parties must agree on the new property and its conservation easement before this Conservation Easement will be terminated.

3. Proceeds after any Termination. If this Conservation Easement is terminated either voluntarily by the Parties, or by involuntary extinguishment by a court of competent jurisdiction and the termination results in proceeds, BPA is entitled to either (1) a share of such proceeds in proportion to the amount BPA contributed to the fee title acquisition, which is [*Insert here the percentage BPA contributed to the purchase price, e.g., 100 percent of some lesser amount if there was cost share*] or (2) at BPA's election, to review and approve use of the proceeds by the Grantor to acquire new fish and wildlife habitat for BPA mitigation.

4. Amendment. This Conservation Easement may only be amended by agreement of the Parties, and any such amendment shall be properly documented, executed, and recorded. Amendments based on changed conditions may be made only when the effect of the amendment is to benefit the Conservation Values (for example, amending the Conservation Easement to place further restrictions on the use of or activities on the Protected Property). The Parties may not use amendments to impliedly terminate the Conservation Easement or remove any portion of the Protected Property from its terms, except to the extent consistent with the Purpose of the Conservation Easement.

T. Control. The Grantor has ownership and control of the Protected Property and is responsible for all incidents of ownership. Such incidents of ownership include, but are not limited to, maintenance and repair of existing structures, hazardous waste response, endangered species protection, noxious weed and invasive species response, tort liability, compliance with applicable laws, and payment of applicable taxes and assessments.

U. Cultural Resources. The Grantor is responsible for cultural or historic resource mitigation or preservation on the Protected Property in accordance with applicable cultural resource laws.

V. Hazardous Substances. To the best of the Grantor's knowledge, there are no hazardous substances present in, on, or under the Protected Property, including without limitation, in the soil, air, or groundwater, and there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of hazardous substances or the violation of any environmental law on the Protected Property, and that there are no underground storage tanks located on the Protected Property. If, at any time, there occurs, or has occurred a release in, on, or about the Protected Property of any hazardous substances, the Grantor agrees to take all steps necessary to assure its containment and remediation without cost to Grantee, including

any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee will be responsible for remediation in accordance with applicable law. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Grantor's activities on the Protected Property, or otherwise become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"). The Grantor specifically agrees to release and hold harmless Grantee from and against all liabilities for violations or alleged violations of, or other failure to comply with, any federal state or local environmental law or regulation relating to hazardous substances, including, without limitation, CERCLA, by the Grantor in any way affecting, involving, or relating to the Protected Property, except to the extent such violations or alleged violations are caused by the acts or omissions of Grantee.

W. Notice. Any notice permitted or required by this Conservation Easement, unless otherwise specified, must be in writing, delivered personally to the persons listed below, or will be deemed given on the date deposited in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. The addresses listed below can be modified at any time through written notification to the other Party.

Notices to BPA should be sent to:

Director, Fish & Wildlife Program
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

Notices to the Grantor should be sent to:

[Insert sponsor info]

and to BPA's Real Property Services:

Manager, Real Property Services
RE: [INSERT BPA TRACT NO]
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

- X. Effective Date.** This Conservation Easement vests when signed by the Grantor, and accepted by the Grantee.
- Y. Schedule of Exhibits.** All exhibits are incorporated and made part of this Conservation Easement.

Exhibit A – Legal Description

Exhibit B – Map

Exhibit C – Acknowledgement of Baseline Documentation Report

Exhibit D – Form Transmission Easement

Exhibit E – Acceptable Encumbrances

- Z. Signature in Counterpart.** This Conservation Easement may be executed in counterparts each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

AA. GRANT, COVENANTS AND WARRANTIES, SIGNATURE AND ACKNOWLEDGMENTS

To have and to hold the Conservation Easement herein granted unto the United States and its assigns.

The Grantor warrants and covenants to and with the United States that the Grantor is lawfully seized and possessed of the Protected Property in fee simple, with a good and lawful right to grant the same, including a good and lawful right to grant this Conservation Easement; that the Protected Property is free and clear of all encumbrances and restrictions except the encumbrances and restrictions specifically set forth in **Exhibit E**, that the United States and its assigns shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement; that the Grantor shall at the request of the United States execute or obtain any reasonable further assurances of the title to the Property; and that the Grantor will forever warrant the title to the Property and defend the United States against all persons who claim a lawful interest in the Property, except for persons who

claim interests under which this Conservation Easement has been taken
subject to as described in Exhibit E.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument
this ____ day of _____, 201__.

GRANTOR

[INSERT NAME AND TITLE]

ACCEPTANCE BY THE UNITED STATES

[INSERT NAME AND TITLE]
Bonneville Power Administration

Date

ACKNOWLEDGMENT

STATE OF)
) ss.
County of)

On this _____ day of _____, 20____, before me
personally
appeared _____
____, known to me or proved to me on the basis of satisfactory evidence to be the
person who executed the within instrument as the _____

acknowledged to me that ___ he executed the same freely and voluntarily in such
capacity; and on oath stated that ___ he was authorized to execute said
instrument in such official or representative capacity.

Notary Public in and for the

State of _____

(SEAL) Residing at _____

My commission expires_____.

ACKNOWLEDGMENT

STATE OF)
) ss.
County of)

On this _____ day of _____, 20_____, before me personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the _____

_____ acknowledged to me that ___he executed the same freely and voluntarily in such capacity; and on oath stated that ___ he was authorized to execute said instrument in such official or representative capacity.

Notary Public in and for the

State of _____

(SEAL) Residing at _____

My commission expires_____.

**Template Conservation Easement
EXHIBIT A**

LEGAL DESCRIPTION

**Template Conservation Easement
EXHIBIT B**

MAP

**Template Conservation Easement
EXHIBIT C**

**ACCEPTANCE AND ACKNOWLEDGEMENT
OF
BASELINE DOCUMENTATION**

The undersigned hereby acknowledge and agree that the Baseline Documentation for the [*Name of Protected Property*] in [*County, State*], prepared by _____ of _____ and dated _____, is an accurate representation of the biological, physical and historical conditions of the subject property as of the date of grant of the Conservation Easement. All of the undersigned parties have received copies of the Baseline Documentation and is on file with the Bonneville Power Administration.

Grantor:

[INSERT NAME AND TITLE]

Date

Bonneville Power Administration:

[INSERT NAME AND TITLE]

Date

Bonneville Power Administration

**Template Conservation Easement
EXHIBIT D**

FORM TRANSMISSION EASEMENT

USE THE MOST CURRENT VERSION INCLUDED IN THIS DESKBOOK AS AN APPENDIX OR AS PROVIDED BY REAL PROPERTY SERVICES OR GENERAL COUNSEL

**Template Conservation Easement
EXHIBIT E**

ACCEPTABLE ENCUMBRANCES

Appendix VI

Transmission Easement Template

AFTER RECORDING, RETURN TO
Bonneville Power Administration
TERP-3
P.O. BOX 3621
PORTLAND, OR 97208-3621

Legal description: A portion of the
of Section , Township ,
Range , .M., County,
, as described in Exhibit(s)
and shown on Exhibit(s) . (Affects
Tax Account No. .)

BPA Tract
No(s):

U.S. DEPARTMENT OF ENERGY-BONNEVILLE POWER ADMINISTRATION

EASEMENT Exclusive Transmission

THIS AGREEMENT, made between , the Grantor, whether one or more, and the United States of America and its assigns, the Grantee, pursuant to the Bonneville Project Act, of August 20, 1937, as amended, 16 U.S.C. §§ 832 et seq.; the Federal Columbia River Transmission System Act, of October 18, 1974, as amended, 16 U.S.C. §§ 838 et seq.; the Department of Energy Organization Act, of August 4, 1977, as amended, 42 U.S.C. § 7152; and the Pacific Northwest Electric Power Planning and Conservation Act, of December 5, 1980, as amended, 16 U.S.C. §§ 839 et seq.

The Grantor, for and in consideration of the sum of
DOLLARS (\$)) and the provisions
contained in this agreement, hereby grants and conveys to the United States of
America and its assigns, a perpetual exclusive easement and right-of-way for
electric power transmission purposes in, upon, over and under the following
described land ("Transmission Easement Area"), as described in Exhibit(s) ,
attached hereto and by this reference made a part hereof. The acquiring federal
agency is the Department of Energy, Bonneville Power Administration.

A. Transmission Easement Area

The grant shall include the right to enter and to locate, construct, operate,
maintain, repair, reconstruct, upgrade, remove and patrol one or more lines of
poles or structures and appurtenances thereto, supporting conductors of one or
more electric circuits of any voltage and any communication lines or equipment
and appurtenances thereto (collectively, "Facilities").

The grant further includes the right of ingress and egress over and across
the Transmission Easement Area, including the right to grade and gravel routes
of access if necessary, as determined by the Grantee.

The Grantor also hereby grants and conveys to the United States and its
assigns the present and future right to clear the Transmission Easement Area and
to keep it clear of all types of trees, shrubs, brush and other vegetation, except as
reserved below.

The Grantor reserves the right to grow and maintain non-woody low growing
plants, such as non-structure-supported agricultural crops or vegetative cover
with a mature height not to exceed feet. Any other trees, shrubs, brush or
other vegetation within the Transmission Easement Area will not be allowed
unless the Grantor contacts the Grantee and secures a written agreement
allowing such use. In no event shall the Grantor plant any agricultural crops or
vegetative cover, or trees, shrubs, brush or other vegetation covered by the
written agreement within a 50-foot radius of all poles or structures. The Grantor
also agrees not to obstruct access to these poles or structures within the
Transmission Easement Area at any time. Any rights reserved by the Grantor
shall not interfere with the rights of the Grantee.

The Grantor also hereby grants and conveys to the United States and its assigns the present and future right to clear the Transmission Easement Area and to keep it clear of any and all, structures, above and below ground improvements or infrastructure, fire and electrical hazards.

The Grantor agrees that prior to undertaking any activity (including, but not limited to, building a structure, placing any manmade item, planting, digging, earth-moving, burning, piling or storing materials) within the Transmission Easement Area, the Grantor agrees to contact the Grantee to seek a determination from the Grantee as to whether the proposed activity is safe and compatible with the Grantee's use, and does not interfere with the Grantee's current or future needs. The Grantor shall not proceed with any proposed activity within the Transmission Easement Area without written consent from the Grantee.

All unauthorized trees, shrubs, brush and other vegetation, structures, above and below ground improvements or infrastructure, fire and electrical hazards within the Transmission Easement Area shall become the property of the Grantee on the date of acceptance of this agreement and thereafter, and may be disposed of by the Grantee in any manner it deems suitable.

The Grantor also hereby grants and conveys to the United States and its assigns the present and future right to top, limb, or fell, and to remove, sell, burn, or otherwise dispose of "Danger Trees" located on the Grantor's land adjacent to said Transmission Easement Area. A Danger Tree is any growing or dead tree, or snag, whether stable or unstable, which the Grantee at any time determines (1) could within a five-year period fall, bend or swing (a) within 25 feet of the Facilities, or (b) within electrical arcing distance of said Facilities, or (2) could interfere with the construction, operation and maintenance of said Facilities.

The Grantor covenants to and with the Grantee that the title to all Danger Trees identified, now or in the future, or cut from the Grantor's land adjacent to said Transmission Easement Area is and shall be vested in the Grantee and its assigns; and that the consideration paid for conveying this easement and the rights granted herein is accepted as full compensation for all damages incidental to the exercise of any said rights. At the Grantee's election title to Danger Trees may revert to the Grantor.

B. General Provisions

In addition to the consideration paid hereunder, the Grantee shall repair or make compensation only for damage caused by the Grantee that is not incidental to the exercise of any of the above said rights and which results from and during construction, reconstruction, removal, or maintenance activities associated with the purposes of this agreement on and adjacent to the Transmission Easement Area. Payment for such damage shall be made on the basis of a damage estimate approved by the Grantee.

The rights granted herein are subject to easements of record and mineral rights of third parties.

The Grantor agrees to satisfy of record such encumbrances, including taxes and assessments, as may be required by the Grantee and to obtain such curative documents as may be requested by the Grantee.

The Grantee shall pay all costs incidental to the preparation and recordation of this instrument and for the procurement of any title report and title insurance that it may require.

The Grantor covenants to and with the Grantee and its assigns that the Grantor is lawfully seized and possessed of the land aforesaid, with a good and lawful right and power to sell and convey the same; that the land is free and clear of encumbrances, except as herein provided; and that the Grantor will forever warrant and defend the title to the rights granted herein and the quiet possession thereof against the lawful claims and demands of all persons whomsoever.

The provisions hereof shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the Grantor and upon the assigns of the United States.

| | |
|--------------------------------|--------------------------------|
| <hr/> Grantor: <hr/> | <hr/> Grantor: <hr/> |
| Title (if applicable) | Title (if applicable) |

| | |
|---------------|---------------|
| _____ Date | _____ Date |
|---------------|---------------|

| | |
|--------------------------------|--------------------------------|
| _____ Grantor: | _____ Grantor: |
| _____ Title (if applicable) | _____ Title (if applicable) |
| _____ Date | _____ Date |

| |
|--|
| Accepted for the UNITED STATES OF AMERICA |
| _____ Signature |
| _____ Title |
| _____ Date |

Appendix VII

Template Language Where the Sponsor Receives an Easement and BPA Receives Third Party Rights to Enforce

Where a sponsor secures a deed of conservation easement, it must ensure the grantor grants third party rights of enforcement to the United States, acting by and through BPA, and third party right implementation provisions by including the following four sections in the deed. Any changes to the language provided here must be approved in writing by Real Property Services and Office of General Counsel.

Grant of Third Party Rights. For the same consideration cited above, Grantor hereby voluntarily conveys and warrants to the United States of America and its assigns third party rights of enforcement, entry, and inspection.

Definition of BPA's jurisdiction and control over third party rights should also be in the body of the conservation easement after the granting clause, where language specifically may be as follows:

Third Party Rights. Grantor has conveyed the rights of enforcement, entry, and inspection to the United States of America and its assigns in [cite section]. The Department of Energy, Bonneville Power Administration is the acquiring federal agency having jurisdiction and control over the third party rights, which are more particularly described as follows:

Enforcement. BPA may, after providing Sponsor with notice and a reasonable time to respond and engage in good faith consultation (where reasonable means no more than 14 calendar days, except in cases of emergency or unavailability of Sponsor where BPA may reasonably act immediately to stop or mitigate a threat to conservation values), exercise all of the rights and remedies of Sponsor and is entitled to all of the indemnifications provided to Sponsor. If Sponsor exercises the rights and remedies of the easement, then Sponsor will be entitled to reimbursement from Grantor of its costs of enforcement. If BPA exercises the rights and remedies of the easement, then BPA will be entitled to reimbursement from Grantor of its costs of enforcement. If Sponsor and BPA jointly exercise the rights and remedies of the easement, then Sponsor and BPA will work cooperatively to apportion the

costs of enforcement in accordance with the efforts of each.

Entry and Inspection. BPA may, in a reasonable manner and at reasonable times, enter and inspect the easement area to determine compliance with the terms of easement. Except in the case of an emergency, BPA will attempt to give Grantor and Sponsor notice prior to such entry and inspection, which notice may be by telephone or electronic mail.

Appendix VIII

Sample Covenant for Hatcheries

AFTER RECORDING, RETURN TO:
Bonneville Power Administration
Real Property Services, TERR-3
P.O. Box 3621
Portland, Oregon 97208-3621
Tract ID:

DEED OF COVENANT RUNNING WITH THE LAND

THIS DEED OF COVENANT RUNNING WITH THE LAND (“**Covenant**”) is executed by [*Insert name of sponsor, description of sponsor, and address of sponsor*](“**Grantor**”), in favor of the United States of America (“**United States**” or “**Grantee**”). The acquiring federal agency is the Department of Energy, Bonneville Power Administration (“**BPA**”), headquartered in Portland, Oregon, at P.O. Box 3621, Portland, OR 97208-3621. The Grantor and Grantee together are referred to as the “Parties.”

I. RECITALS

The Grantor currently owns and operates the Grantor’s Hatchery (Hatchery), located along the River on the Grantor’ land, for the purpose of rearing resident trout to stock Grantor’s lakes and streams.

BPA is a federal power-marketing agency having obligations under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839b *et seq.* (“**Northwest Power Act**”) to protect, mitigate, and enhance fish and wildlife and their habitat affected by the development and operation of Federal hydroelectric projects of the Columbia River and its tributaries, referred to as the “**FCRPS**,” in a manner consistent with the purposes of the Northwest Power Act, the Program adopted by the Pacific Northwest Electric Power and Conservation Planning Council under subsection 4(h) of the Northwest Power Act (“**Council Program**”), and other environmental laws.

[*Add recital language explaining the relationship of Grantor and BPA, the need for the*

project, and the role of this acquisition.]

To ensure that sufficient water exists to support future Hatchery operations, the Grantor acquired adjacent property in fee (“**Property**”) having certain appurtenant water rights, with funding from BPA. To ensure that the Property will be managed for fish and wildlife purposes, including Hatchery purposes, the Grantor intend to convey this Covenant to BPA.

II. CONVEYANCE AND CONSIDERATION

The Grantor, for and in consideration of the funding (\$0,000.00) BPA provided to acquire fee title ownership of the Property in hand paid, and for other good and valuable consideration, hereby voluntarily conveys and warrants to the United States of America and its assigns this perpetual Covenant over the Property, situated in the County of Oz, State of Washington, legally described as follows:

THAT PORTION OF [LEGAL DESCRIPTION]

Parties represent that this Covenant is a perpetual real property interest running with the land and consistent with Revised Code of Washington § 64.04.130 and Chapter 84.34 and other applicable state and federal law. BPA has the authority pursuant the Northwest Power Act, 16 U.S.C. §§ 839b(h) and 839f(a), the Federal Columbia River Transmission System Act, 16 U.S.C. §838i(b), or the Bonneville Project Act, 16 U.S.C. §§ 832a(c) through (f), to acquire real estate or to assist in the acquisition and transfer of real property interests.

III. PURPOSE OF USE

This Covenant commits the Grantor, its successors and assigns, to use the Property only for fish and wildlife purposes agreed-upon by the Parties, currently to support operation of the adjacent Hatchery for the purpose of rearing resident trout to stock Reservation lakes and streams.

IV. LIMITATIONS ON USE

The Grantor’ use of the Property, including use of water rights appurtenant to the Property, or any expansion of the Hatchery production or facilities onto the Property, shall be consistent with: any and all applicable laws and regulations; any Council Program; any and all plans and programs of federal, state, and tribal fish agencies for the Columbia Basin; any and all agreements or contracts between the Grantor and BPA,; and any and all plans submitted by the Grantor and approved by BPA, including but not limited to any Hatchery Annual

Operating Plans, Operation and Maintenance Manual, or future land management plans.

IN WITNESS WHEREOF, the undersigned Grantor have executed this Deed of Covenant Running with the Land this _____ day of _____, 2013.

GRANTOR

NAME

TITLE

ACCEPTED BY THE UNITED STATES OF AMERICA

By: _____

Insert Name

Manager, Real Property Services

Bonneville Power Administration

Date: _____

ACKNOWLEDGMENT

STATE OF)

) ss.

County of)

On this _____ day of _____, 20_____, before me personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the _____ acknowledged to me that ___he executed the same freely and voluntarily in such capacity; and on oath stated that ___ he was authorized to execute said instrument in such official or representative capacity.

Signature

Print Name

Notary Public in and for the
State of _____

(SEAL) Residing at _____

My commission expires _____

ACKNOWLEDGMENT

STATE OF _____)

) ss.

County of _____)

On this _____ day of _____, 20____, before me personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the _____

_____ acknowledged to me that ___ he executed the same freely and voluntarily in such capacity; and on oath stated that ___ he was authorized to execute said instrument in such official or representative capacity.

Signature

Print Name

Notary Public in and for the
State of _____

(SEAL) Residing at _____

My commission expires _____

Appendix IX

Water Survey Form

For BPA Funded Water Transactions (work element 5 and 92) and
Selected Water Conservation Actions (work elements 82, 149, 150, 151)

INSTRUCTIONS: The project sponsor or BPA project manager must complete this form for land transaction work elements, including Land Acquisitions (5) and Lease Land (92). This form should be completed during the pre-acquisition phase for a land transaction, and attached to the particular Land Acquisition (5) or Lease Land (92) work element for the property involved.

Project sponsors shall also use the form for the water conservation work elements designed to conserve water, including Install Well (82), Install Pipeline (149), Install Sprinkler (150), or Line Diversion Ditch (151).

BPA Project Manager: _____
Project #: _____
Name of Project Sponsor: _____
Name of Property: _____

1. **Are there surface water sources** (including springs), indications of water use (e.g., canals, irrigation equipment, irrigated lands), wells, or other groundwater sources on or immediately adjacent to the property boundary?
 - a. If not, please add your contact information, and attach this form in Pisces as a "Water Survey" attachment to your contract.
 - b. If so, please briefly describe the sources and the uses of water on the property. If water is being used for a beneficial purpose on the property, specifically state if water point of diversion is located within or outside of the property boundaries.

2. **Please list any and all water rights** associated with the answers to #1b, if any. Provide certificate or permit numbers, purpose of use, volume and instantaneous quantities of flow, date range of use, and priority date. Attach web link to information if available. If water rights have been adjudicated, please provide date of adjudication.

3. **For land transactions:** Please confirm the water rights, if any, that will be included in the transaction. If there are water rights appurtenant to the property and the water rights will not be included in the transaction, explain why.

4. **For water conservation actions:** Please confirm the water rights involved with the water conservation action that will be transferred instream. If it is not intended to include any of the water rights, explain why you would suggest doing this water conservation action for the benefit of fish and wildlife without transferring water instream.

5. **Who will be acting as the applicant** to complete the state administrative process to transfer water instream as part of this project?

6. **Please provide contact information** and date below.

Your Name: _____
Title: _____
Address: _____
Email: _____
Phone: _____
Fax: _____
Date: _____

7. **Attach this form in Pisces as a "Water Survey"** attachment to the contract containing the Land Acquisition or Water Conservation work element.

Thank You.

Appendix X
Environmental Land Audit
Landowner Questionnaire

Please answer the following questions to the best of your ability and initial at the bottom of each page.

Return via FAX to (541) 296-5121, Attention Fred Walasavage

Or mail to:

Bonneville Power Administration
3920 Columbia View Drive
The Dalles, Oregon, 97058
Attn: Fred Walasavage

Or E-mail signed PDF copy to fwalasavage@bpa.gov

If you have any questions, please contact Fred Walasavage at (541) 980-2503.

Where appropriate, include copies of reports, citations, permits, etc. For questions for which a "Yes" response is given, or for those which otherwise need further explanation, please use the space provided on page 3 or additional pages as needed.

Property Owner or Site Name: _____

Site address: _____ (Street Address)
_____ (Town, County)

Phone Number: _____

Years of Property Ownership: _____

Prior Owner (if known): _____

Landowner Questionnaire

1. Is the property or any adjoining property currently used for an industrial or business use?

Subject Property: No ___ Yes ___ Unknown ___
Adjoining Property: No ___ Yes ___ Unknown ___

2. To the best of your knowledge, has the property or any adjoining property been used for an industrial or business use in the past?

Subject Property: No ___ Yes ___ Unknown ___
Adjoining Property: No ___ Yes ___ Unknown ___

3. Do activities on the property or any adjoining property currently involve dispensing fuel, motor vehicle or farm equipment repair or maintenance, storing abandoned vehicles, dumping of household or other items, outside storage of large amounts of equipment and supplies, the application of chemicals, pesticides or herbicides not associated with household use, or waste treatment, storage, or disposal?

Subject Property: No ___ Yes ___ Unknown ___
Adjoining Property: No ___ Yes ___ Unknown ___

4. To the best of your knowledge, in the past, has any activity on the property or any adjoining property involved dispensing fuel, motor vehicle or farm equipment repair or maintenance, storing abandoned vehicles, dumping of household or other items, outside storage of large amounts of equipment and supplies, application of chemicals, pesticides or herbicides not associated with household use, or waste treatment, storage, or disposal?

Subject Property: No ___ Yes ___ Unknown ___
Adjoining Property: No ___ Yes ___ Unknown ___

5. Are there currently, or to the best of your knowledge have there been previously any damaged or discarded automotive or industrial batteries, or pesticides, paints, or other chemicals stored on or used at the property?

No ___ Yes ___ Unknown ___

6. Are there currently, or to the best of your knowledge have there been previously, any industrial drums (typically 30 - 55 gallon) or sacks of chemicals located on the property or at the facility?

No ___ Yes ___ Unknown ___

7. Has fill dirt been brought onto the property that originated from a known contaminated site or that is of an unknown origin?

No ____ Yes ____ Unknown ____

8. Are there currently, or to the best of your knowledge have there been previously, any pits, ponds, or lagoons located on the property in connection with water treatment or waste treatment or disposal?

No ____ Yes ____

9. Are there currently, or to the best of your knowledge has there been previously, any stained soil or signs of stressed vegetation on the property (other than related to automotive oil drip or other similar source)?

No ____ Yes ____ Initial ____

10. Are there currently, or to the best of your knowledge have there been previously, any registered or unregistered storage tanks (above or underground) located on the property?

No ____ Yes ____

11. Are there currently, or to the best of your knowledge have there been previously, any vent pipes, fill pipes or access ways indicating a fill pipe protruding from the ground on the property or adjacent to any structure located on the property?

No ____ Yes ____

12. Are there currently, or to the best of your knowledge have there been previously, any flooring, drains, or walls located within the facility that are stained by substances other than water or are emitting foul odors?

No ____ Yes ____

13. Is the property served by an on-site septic system (i.e. septic tank or cesspool)?

No ____ Yes ____

14. To the best of your knowledge, have any hazardous substances or petroleum products, unidentified waste material, tires, automotive or industrial batteries or any other waste materials been dumped above grade, buried and/or burned on the property?

No ____ Yes ____

15. Is there any oil-filled electrical equipment such as transformers or capacitors?

No ____ Yes ____ Unknown ____

16. To the best of your knowledge, are you aware of the past or current existence of hazardous substances or petroleum products on the property?

No ____ Yes ____

17. Is the property is served by a private water well or non-public water system?

No ____ Yes ____

If yes, has water quality been tested? ____ Approx. Depth of Well: _____

If yes, please list sample date and results. _____

18. To the best of your knowledge, are you aware of any floor drains located in shops or outbuildings, or Dry Wells (a subsurface system used to disperse surface water or other fluids)

No ____ Yes ____ Unknown ____

19. Do you have any knowledge of environmental liens or activity and use limitations, such as deed restrictions or institutional controls on the property?

No ____ Yes ____

20. Do you have any knowledge of governmental notification relating to past or recurrent violations of environmental laws with respect to the property or any facility located on the property?

No ____ Yes ____ Initial _____

21. Do you have any knowledge of any past, threatened, or pending lawsuits or administrative proceedings concerning a release, threatened release, any hazardous substances or petroleum products involving the property?

No ____ Yes ____

22. Please indicate with a check if you can provide, or you are aware of any of the following documents pertaining to the subject property:

- Prior environmental site assessment reports, including asbestos survey or abatement reports
- Environmental compliance audit reports
- Environmental permits (i.e. solid waste disposal permits, hazardous waste disposal permits, wastewater permits, NPDES permits)
- Registration for above or underground storage tanks
- Registrations for underground injection systems
- Safety plans, preparedness and prevention plans, spill prevention plans, etc.
- Notices or other correspondence from government agencies relating to past or current violations of environmental laws or relating to environmental liens encumbering the property.
- Hazardous waste generator reports

Comments related to #22 here:

Please provide a description of the past and current use of the property to the best of your knowledge.

For any question that were answered "Yes", or which otherwise require additional explanation, please provide details. Use additional Pages if needed.

The undersigned represents that to the best of his/her knowledge the responses, statements and facts given in this questionnaire are true and correct and no material facts have been suppressed or misstated.

Name (Please Print)

Company (if applicable)

Signature

Date

Affiliation with the Property

NOTE: BPA provides this sample template as a courtesy to project sponsors. Sponsors must consult their own real property and legal advisors to determine if the template suffices for the acquisition contemplated. BPA assumes no liability for a sponsor's use of this template.

Appendix XI

REAL ESTATE PURCHASE AND SALE AGREEMENT [INSERT NAME OF PROPERTY]

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("**Agreement**") is made this ____ day of _____, 20XX by and between: [IDENTIFY BUYER, including whether a non-profit corporation, Tribe, or State entity], ("**Buyer**") and [IDENTIFY SELLER, WHICH SHOULD MATCH THE VESTING DEED OR WILL NEED TO CONSULT WITH TITLE COMPANY AND BPA], as record owner ("**Seller**").

1. Seller is the owner of [INSERT ACREAGE] acres of real property, located at [INSERT ADDRESS, NEAREST TOWN, COUNTY AND STATE, TAX LOTS IN PARENTHESES], more particularly described in **Exhibit A** (legal description) and shown on **Exhibit B** (map, aerial photo, survey), together with any and all improvements thereon, and any and all rights, licenses, claims, privileges, reversions, and easements appurtenant thereto, including but not limited to access rights, timber rights, grazing rights, water rights, development rights, mineral resources rights, and oil and gas rights (collectively defined as "**Property**").
2. The United States Department of Energy, Bonneville Power Administration ("**BPA**"), is providing funding to Buyer for the purchase of the Property pursuant to [INSERT FUNDING DETAILS FOR THE TRANSACTION, for example, "THE XX MOA, IN EXCHANGE FOR FISH AND WILDLIFE MITIGATION CREDITS"]. Buyer will convey [INSERT "A PERPETUAL CONSERVATION EASEMENT" OR "THIRD PARTY RIGHT OF INSPECTION, ENTRY, AND ENFORCEMENT"] on, over, under, and across the Property, where such instrument will be recorded at "**Closing**." This transaction will thus be subject to BPA approval under federal law, regulations, and standards as set forth below.
3. Purchase and Sale. Seller shall sell, and Buyer shall buy, the Property in [COUNTY, STATE] located within [INSERT ABBREVIATED LEGAL DESCRIPTION, e.g., "Section 31, Township 10 North, Range 8 West, W.M."], described in **Exhibit A** (legal description), and shown in **Exhibit B** (map, aerial photo, survey), subject to the terms and conditions set forth in the

remaining provisions of this Agreement, and together with any and all appurtenant rights, including but not limited to:

3.1 All of Seller's rights, licenses, privileges, reversions and easements appurtenant to the Property, including, without limitation, rights to all mineral resources (where "mineral resources" are broadly defined herein to include any and all non-metallic, metallic, and hydrocarbon resources) in, on and under the Property, as well as all development rights; air rights; water, ditch, and reservoir claims, permits, and rights; grazing rights; and associated tidelands and shorelands;

3.2 All improvements, if any, located on, over, under or across the Property;

3.3 All easements, rights-of-way, appurtenances and other rights used in connection with the Property, including but not limited to maintenance easements, rights to adjacent streets, roads, alleys and rights-of-way;

[FOR RIGHTS LISTED ABOVE THAT ARE PROVEN BY INDEPENDENT DOCUMENTATION, SUCH AS WATER RIGHTS, DEFINE AND CITE TO THEM AND CREATE AN EXHIBIT DOCUMENTING THEIR PERTINENT DETAILS. *So for example: "and together with: (1) any and all water rights, reservoir rights, or ditch rights, including but not limited to the appurtenant surface water rights described in Certificate XXXX, priority date XX, XX, XXXX (Exhibit C), and (2) access rights set forth in Document No. XXXX, recorded on DATE at the XX County recording office, STATE.]*

4. Purchase Price. The Seller voluntarily agrees to sell the Property for [SPELL OUT TOTAL, THEN FOLLOW WITH NUMBERS IN BRACKETS], which is the appraised value of (*i.e.*, just compensation for) the Property.

5. Conditions Precedent to Closing. Buyer's obligation to purchase the Property shall be subject to the following. If any condition set forth in this Section is not satisfied by the date specified (or as of the date of Closing if no date is specified), or such later date as Seller and Buyer agree upon in writing, this Agreement shall terminate and any earnest money, together with interest thereon, shall be refunded to Buyer, unless the condition is waived by the party benefitted.

5.1 Right to Enter and Inspect. Seller grants to Buyer, Buyer's representatives, and BPA, the right to enter upon the Property to

conduct such inspection, survey, tests, and appraisals as Buyer may desire, at Buyer's sole expense and liability.

5.2 Approval. [INSERT NECESSARY APPROVAL OF BOARD OF DIRECTORS, TRIBAL COUNCIL, ETC.]

5.3 No Change in Condition. Seller shall not have altered or damaged, or caused to have altered or damaged, the condition or character of the Property, including but not limited to altering topography, erecting structures, depositing soil, garbage, waste or other material, or removing standing or down timber, mineral resources (see definition in Section 3.1), and the like through activities such as logging, mining, clearing, grading, or excavating, during the period this Agreement is in effect. Present condition of habitat shall not be degraded in any manner.

5.4 Appraisal. Buyer's completion and acceptance of an appraisal report.

5.5 Legal Description of Land and Other Appurtenances. Buyer's review and acceptance of a proper legal description of the Property, and any access rights or other appurtenant rights, if applicable. A proper legal description of the Property and other appurtenant rights may necessarily include completion of other processes, such as a survey(s), to be reviewed and approved by Buyer.

5.6 Water Rights. Buyer's review and acceptance of water rights, claims, or permits (see also Section 3).

5.7 Satisfactory Evidence of Title and Title Insurance. Seller shall provide Buyer, at Seller's expense, with an ALTA policy (ALTA U.S. Policy – 9/28/91) of title insurance in the full amount of the purchase price insuring that title to the Property is vested in Buyer upon close of escrow and is free and clear of all exceptions, except those approved by the Buyer in writing (see also Section 6 regarding determination and approval of satisfactory evidence of title). Seller shall pay any and all fees and costs associated with providing satisfactory evidence of title (*e.g.*, Seller shall be responsible for removal of encumbrances to title deemed unacceptable after review).

5.8 Hazardous Waste. Buyer's satisfaction that no hazardous substances (see Section 9.3 for definition) exist on the Property which exceed acceptable regulatory cleanup standards or pose a threat to human health or the environment. Buyer shall be responsible for

initiating and ensuring the completion of a Phase I Environmental Site Assessment (“**Phase I**”). The Phase I shall meet the objectives and performance factors of 40 C.F.R. Part 312 Standards for All Appropriate Inquiries, final rule (40 C.F.R. § 312.11). Buyer and BPA must be satisfied with the finding, opinions, and conclusions contained within the Phase I report prior to Closing.

6. **BPA Funding.** Funding for the purchase of the Property by Buyer is contingent upon the BPA providing the funding on behalf of Buyer. BPA will only provide funding upon successful completion of its own due diligence. BPA’s review, which may include informal or formal approvals, includes but is not limited to the following:
- ✓ An appraisal of the Property, establishing the just compensation (*i.e.*, purchase price, see Section 4), prepared in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions (*i.e.*, yellow book standards).
 - ✓ Approval of satisfactory evidence of title, in accordance with U.S. Department of Justice regulations and Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (*i.e.*, Title Standards).
 - ✓ Approval of any and all surveys and legal descriptions of land and water or other appurtenances (see Sections 3 and 5), and any deeds, assignments, licenses, permits, access agreements or other documents necessary to the transaction.
 - ✓ Preparation or approval of identification, notification, and plan for relocation of displaced persons, or their actual relocation, under the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Act (Uniform Act, 42 U.S.C. §§ 4601 *et seq.*);.
 - ✓ Preparation or approval of a Phase 1 report (see Section 5.8).
 - ✓ Preparation or approval of any necessary environmental permitting and compliance.
 - ✓ Approval and acceptance of all Buyer contingencies.
 - ✓ Commitment to transfer funds for acquiring the Property on behalf of Buyer at Closing.

If funding by BPA cannot be obtained, this Agreement shall terminate. The Parties shall thereafter be deemed released from their rights, duties, and obligations under this Agreement, and the Escrow Deposits shall be paid to Seller.

7. Escrow and Closing. Within [INSERT NUMBER] days of execution of this Agreement, the parties shall open an escrow account with [INSERT AGREED-UPON CLOSING AGENT] for the purpose of closing the purchase and sale of the Property. The parties shall sign and/or deliver necessary documents or funds when requested by Closing Agent to do so. Seller and Buyer shall each pay one-half the closing and escrow fees due to the Closing Agent.
8. Other Details of Closing. Provisions regarding deed, taxes, and fees at Closing follow:

8.1 General Warranty Deed. All right, title, and interest in and to the Property shall be properly executed, delivered, and recorded by General Warranty Deed (where the general warranty deed will adhere to statutory standards and Title Standards) at Closing, free from all liens and encumbrances, except the standard general title policy exceptions and special exceptions reviewed and approved as part of the satisfactory evidence of title (see Sections 5.7 and 6).

8.2 Proration of Taxes and Fees. Real property taxes, water assessments, rents, interest and reserves, liens, encumbrances or obligations assumed, and utilities on the Property, shall be prorated as of the date of Closing, with Seller responsible for the amounts due prior to Closing, and Buyer responsible for the amounts due after Closing. Closing Agent shall have no responsibility to obtain final billings or to pay for any utilities from the Closing funds.

8.3 Other Costs. Buyer shall be responsible for all taxes not included in Section 8.2 that may be due to applicable government authorities at Closing, including but not limited to excise taxes. Seller shall pay any real estate commission or finder's fees. Buyer shall pay the costs of recording of the deeds and other transfer documents. Buyer shall pay for its own due diligence costs, such as environmental assessments, appraisals and baseline reports. Each party shall pay its own attorney's fees.

9. Seller's Representation and Warranties. Seller represents and warrants to Buyer that each of the following are true and correct on the date of execution of this Agreement, and will be true and correct on the date of Closing.

9.1 Authority. Seller represents and warrants that it has marketable fee simple title to the Property and full power and authority to enter into

this Agreement and other related documents necessary to the land transaction, including but not limited to deeds conveying fee or less-than-fee interest(s). Further, Seller represents and warrants that any individuals signing such documents as Seller, or on the Seller's behalf, are duly authorized to legally bind the Seller. Seller agrees to provide evidence of authority to Buyer.

9.2 Absence of Litigation and Liens. Seller represents and warrants that they do not know, nor have reason to know, of any: (1) pending or threatened litigation, including court action, arbitration, administrative proceeding or other inquiry, against the Seller or Property that could affect the value of the Property or subject an owner of the Property to liability; (2) threatened or pending eminent domain proceedings; (3) intended public improvement that will result in the serving of any lien upon the Property or a portion of the Property; (4) uncured notice notifying Seller of any violation of law, ordinance, rule or regulation, which would adversely affect the Property or a portion of the Property; (5) actual or impending mechanic's or materialman's lien against the Property or a portion of the Property; and (6) lease, tenancy, occupancy agreement, or other possessory rights affecting the Property or portion of the Property.

9.3 Hazardous Substances. Seller represents and warrants to Buyer, in this Agreement and other related documents necessary to the land transaction, including the deed conveying fee or less-than-fee interest, that that they do not know, nor have reason to know, that there is any contamination of the Property by hazardous substances on, over, under or across the Property, including but not limited to contamination of the soil and or groundwater. For purposes of this Agreement, the term "**hazardous substances**" shall be interpreted broadly to include, but not be limited to: "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 *et seq.*); "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §§ 6901 *et seq.*); hazardous, toxic, or dangerous materials, substances or waste, asbestos-containing materials, polychlorinated biphenyls, radioactive materials, chemicals known to cause cancer or reproductive toxicity, petroleum products, distillates or fractions, or any other contaminant the presence of which is regulated by federal, state, or local statute, regulation, ordinance, or rule pertaining to environmental protection, contamination, or cleanup or requiring a permit or special handling in its use, collection, storage, treatment or

disposal, including but not limited to the Federal Water Pollution Control Act (33 U.S.C. §§ 1257 *et seq.*), and the Clean Air Act (42 U.S.C. §§ 2001 *et seq.*).

10. Risk of Loss and Possession. Until Closing, the Seller shall bear the risk of loss with respect to the Property, except such loss as may be directly caused by the actions or omissions of Buyer and Buyer's representatives. In the event of any damage to, or loss or destruction of the Property, except for actions or omissions of Buyer and Buyer's representatives, Buyer at its exclusive election may: (1) require the Seller to perform a specific and satisfactory remedy prior to Closing, (2) complete the purchase with compensatory proceeds from Seller at Closing, or (3) nullify the Agreement. Buyer shall have possession of and, except for a breach of warranty as provided in Sections 5 and 9, shall assume all risks for the Property on and after Closing.

11. Default. For purpose of this Section, a default is the failure of any party, without legal excuse, to complete the purchase or sale of the Property. Time is of the essence for this Agreement.
 - 11.1 By Seller. If Seller defaults prior to Closing, Buyer may terminate this Agreement and receive a refund of the earnest money. Alternatively, at Buyer's sole option, Buyer may elect to seek specific performance of this Agreement.

 - 11.2 By Buyer. If Buyer defaults prior to Closing, Seller's sole remedy shall be to retain the earnest money as liquidated damages. Forfeiture of earnest money shall be Seller's sole remedy. Such amount has been agreed to by both parties to be reasonable compensation and the exclusive remedy for Buyer's default, because the precise amount of such compensation would be difficult to determine.

12. Assignability. Buyer shall not assign this Agreement or any interest herein without the written consent of Seller. Consent to assignment shall not unreasonably be withheld, continued or delayed.

13. Construction – Binding Effect. This Agreement incorporates all prior negotiations and agreements of the parties relating to this land transaction, may not be amended except by a writing executed by Seller and Buyer, and is made under, and shall be construed and enforced in accordance with, appropriate state and federal law. This Agreement is binding upon, and is for the benefit of, the heirs, personal representatives, successors and assigns of Buyer and Seller.

14. Additional Documentation. Buyer and Seller agree to prepare and execute any additional documentation as may be reasonable and necessary to carry out the provisions of this Agreement and effect the transfer and conveyance of the Property to Buyer.

15. Notices. Any notice required to be given or which may be given hereunder shall be in writing and delivered personally or by certified mail to a party at the following addresses. A notice given personally shall be effective on the date of delivery and a notice given by certified mail shall be effective on the date of receipt, postage prepaid.

TO SELLER: NAME
 STREET ADDRESS
 CITY, STATE, ZIP CODE
 E-MAIL
 PHONE, FAX

TO BUYER: NAME
 STREET ADDRESS
 CITY, STATE, ZIP CODE
 E-MAIL
 PHONE, FAX

Seller:

By: _____ Date: _____
[INSERT DULY AUTHORIZED REP MATCHING VESTING STATEMENT]

Buyer:

[INSERT BUYER NAME]

By: _____ Date: _____
[DULY AUTHORIZED REP, TITLE]

LIST OF EXHIBITS

Exhibit A
Legal Description

Exhibit B
Map, aerial photo, survey

Exhibit C-X
[INSERT ADDITIONAL EXHIBITS FOR “TOGETHER WITH” ITEMS, SUCH AS
WATER RIGHT CERTIFICATES OR ACCESS AGREEMENTS]

Appendix XII

Baseline Documentation Report Outline

Baseline documentation may rely on and incorporate by reference other information already in the project file, such as title opinions, appraisals, or water rights certificates and need not be duplicative. At a minimum the reports should include the following:

1) General Contents²

- a) Describe the purpose and conservation values of the easement.
- b) Summarize the easement restrictions.
- c) State baseline report author identification and author's qualifications.
- d) Landowner contact information (name, address, phone numbers, email address)
- e) Physical address of property, including the county
- f) Directions to the property from the nearest town or major highway
- g) Date of site visit if different from date report prepared and signed
- h) Signature of owner and grantor acknowledging the report

2) Property Description

- a) Invasive weed survey or list with kind, location, and extent of invasion.
- b) Flora and fauna survey or list.
- c) Habitat survey or list with types and locations.

3) Current Management and Use

- a) Historical ownership and use describing the history of the easement area such as past agricultural, forestry, residential, commercial, or mitigation uses.
- b) Current property uses; e.g., extent farmed, for what crops, what techniques and management practices used.
- c) Potential threats to the conservation values posed by activities such as unauthorized use of the easement area or adjacent land use, as applicable.
- d) References to, or copies of, existing plans for forestry, burning, agriculture, or stewardship.
- e) Water use and rights.
 - i) Water right permit or certificates attached when appropriate.

² Project sponsors should check Internal Revenue Service requirements for baseline documentation for all easements with a tax deductible component.

- ii) Document beneficial uses, time, place, and manner of use, point of diversion, water delivery infrastructure, and condition of equipment (e.g., fish screen in working order).
- iii) Document evidence of water rights being exercised in past five years.
- f) Evidence of unrecorded easements, leases, and permits, e.g., any evidence of active mining

4) Maps and Photographs

- a) Photographs showing the location size, use, and condition of all structures; e.g., houses, barns, pumps; utilities; fences, roads; trails; potential or future restoration sites; threats or impacts present (e.g., unauthorized trails, marijuana growing sites, dumps); priority ecological systems, plant communities, and other features identified as conservation values. Accompany all photographs with GPS coordinates and directional notations.
 - b) Verbal description covering the nature and condition of all utilities, both above and below ground.
 - c) Locations and conditions of all roads, paths, trails, and fences.
 - d) Photographs, with GPS coordinates of the photo points, of all property boundaries and corners.
 - e) Map depicting the location of photo points used in the baseline documentation report.
 - f) Map showing easement zones or other areas of special emphasis or restrictions, as applicable.
 - g) Acknowledgement
- 5) Easement grantor must sign an acknowledgement affirming that he or she read and agrees with the descriptions in the baseline document report. See the Baseline Documentation Report Acknowledgement below.**
- 6) Record a copy of the acknowledgement, but not the baseline report. BPA should retain a copy of the baseline report for its files.**

Appendix XIII

Baseline Document Report ACKNOWLEDGEMENT OF PROPERTY CONDITION

The undersigned accept and acknowledge that the Baseline Documentation Report titled [TITLE] prepared by [NAME] on [DATE] accurately represents the nature and condition of the [NAME] property at the time the conservation easement was transferred to the grantee. The grantee, sponsor [NAME], and the Bonneville Power Administration all have original copies of the report on file.

Sponsor:

_____ Date: _____

Title: _____

Easement Grantee:

By: _____ Date: _____

Title: _____

Bonneville Project Manager:

_____ Date: _____

Appendix XIV

Land Management Plan Suggested Table of Contents For Newly Acquired Properties

For properties in the Fish and Wildlife mitigation program requiring management plans, BPA must review and approve drafts of the plans. The following Table of Contents lists the topics BPA feels are essential for a plan and also lists general information most plans should cover. BPA does not require any particular format, so entities with established management plan formats and guidelines may use those as long as the essential elements described here are included. Some of the information listed here will already be in documentation developed in other stages of the project. The management plan should bring all the necessary information together in a single place and in a comprehensive manner to facilitate and document transparent property management decision making. Sponsors should be advised that as land management practices and the land itself changes over time, the management plans will also need to be changed and updated periodically.

Note: Bolded items are required to facilitate BPA's review

A. Introduction and Background

Please describe and depict in sufficient detail. With the exception of the first two items, information should only be provided here if different from the baseline. If a baseline was developed during the acquisition process, it should be attached or linked electronically as an appendix.

- 1) Project Site Name, date acquired, time period covered by the management plan, plan preparer name, key on-the-ground staff (Area Manager, technical staff).**
- 2) Property locations and size (include an updated map of all included lands).**
- 3) Purpose of the land acquisition; explain if the property fits into a bigger acquisition plan or larger conservation context. Explain relationship to other BPA mitigation properties or properties purchased by other entities.**
- 4) History of land use on property(ies)
- 5) Describe interim management activities between time of purchase and approval of Land Management Plan. Include the Land Use Agreement, if there is one in place

B. Current ecological setting

Describe and depict the current condition and/or use in sufficient detail. Be sure to describe any differences from the baseline report here.

- **Habitat and Cover Types, including Special Status Habitats**
- **Focal Fish and Wildlife Species Information**
- **Invasive Species**
- **Current Water Rights and Usage**

If relevant to property management, or the desired future condition of the property, describe and depict the following in sufficient detail. Again, describe any differences from the baseline report:

- Documented species of concern
- Hydrology
- Historical and cultural resources and traditional use resources
- User groups and current recreational activities (include community involvement and educational activities)
- Climate Change
- Soils and Topography
- Fire History

C. Public Participation

Summarize how the public was engaged in your Land Management Plan development process. List other agencies or tribes that were involvement in the development of the plan.

D. Goals and Actions

Describe your management goals and actions: goals should include measurable objectives.

- 1) Describe the desired future condition for each conservation value, target species, and/or key habitat type. Explain how the desired future conditions were developed.**
- 2) Describe the restoration activities and operations and maintenance (O&M) activities that will be used to achieve each desired future condition. Include weed management practices, if any.**
- 3) Provide timeline of planned management actions, including O&M, restoration, and evaluation actions related to management goals.**
- 4) Identify all threats to any conservation values identified in the conservation easement and the plan for protecting the values from threat. Items to consider include: invasive species, use of adjacent land, recreational activities, etc.**

E. Management Restrictions and Prohibitions

- 1) **Address each landowner reserved right in the conservation easement and MOA and describe how the landowner will exercise those rights in a manner that does not violate the conservation easement. Explain when, where, how much, and how each reserved right is managed. If necessary, include maps showing activity locations.**
- 2) **Address each prohibited use identified in the conservation easement and MOA and explain how the prohibition will be honored. If there are any exceptions, explain those here.**
- 3) **Describe any regulatory agency guidance active within the property e.g. required actions in NEPA mitigation action plans, incidental take permits, or biological opinions. Include other agency requirements, such as DEQ, as they impact management.**
- 4) **Describe hazardous waste remediation and management. If there are ongoing remediation and management actions or any follow-up from the pre-acquisition remediation, describe here. Attach a copy of the Environmental Land Assessment.**

F. Other Management Actions

Describe and depict in sufficient detail:

- 1) **Water usage and water rights management. Describe any plans to transfer water rights instream or to document annual use of any water rights not placed into trust for instream use. Attach relative documents for these plans.**
- 2) **Infrastructure management (e.g., road, gate, and fence installation or maintenance)**
- 3) **Access management including trespass prevention. *Describe any actions that may impact any existing access rights/ easements.***
- 4) **Protection of known historic resources as they relate to the land management**
- 5) **Income-generating activities (if permitted by easement). For properties that re-invest the income produced back into the property, describe activities in detail and describe how the income will be managed.**

G. Adaptive Management Planning

***Include anticipated issues, the process and steps taken to address them, and summary of progress to date, if applicable.*

H. Reporting

- 1) List any reporting requirements that are required by the MOA, CE, other funding sources, or your own agency.
- 2) Describe how you will report on remedial actions taken to protect property from harm by third parties or to address past easement or management plan violations.
- 3) Summarize key issues or decisions that would cause managers to notify BPA. Include issues that trigger a formal BPA approval.
Include:
 - i. Changes in ownership.
 - ii. Enforcement actions.
 - iii. Violations of regulatory, easement, or agreement conditions and planned remedial action, if any.

I. Appendices — include links if applicable

- 1) Easement Restrictions and Management Actions Table
- 2) Baseline Report
- 3) Water right certificates
- 4) Mining permits
- 5) BPA-issued Land Use Agreements
- 6) Other documents that impact management of the property. Including, but not limited to:
 - Access easements
 - Responses to substantive public comments on the draft that were not incorporated into the final plan.
 - ELA
 - Consent Decree for Hazardous Waste

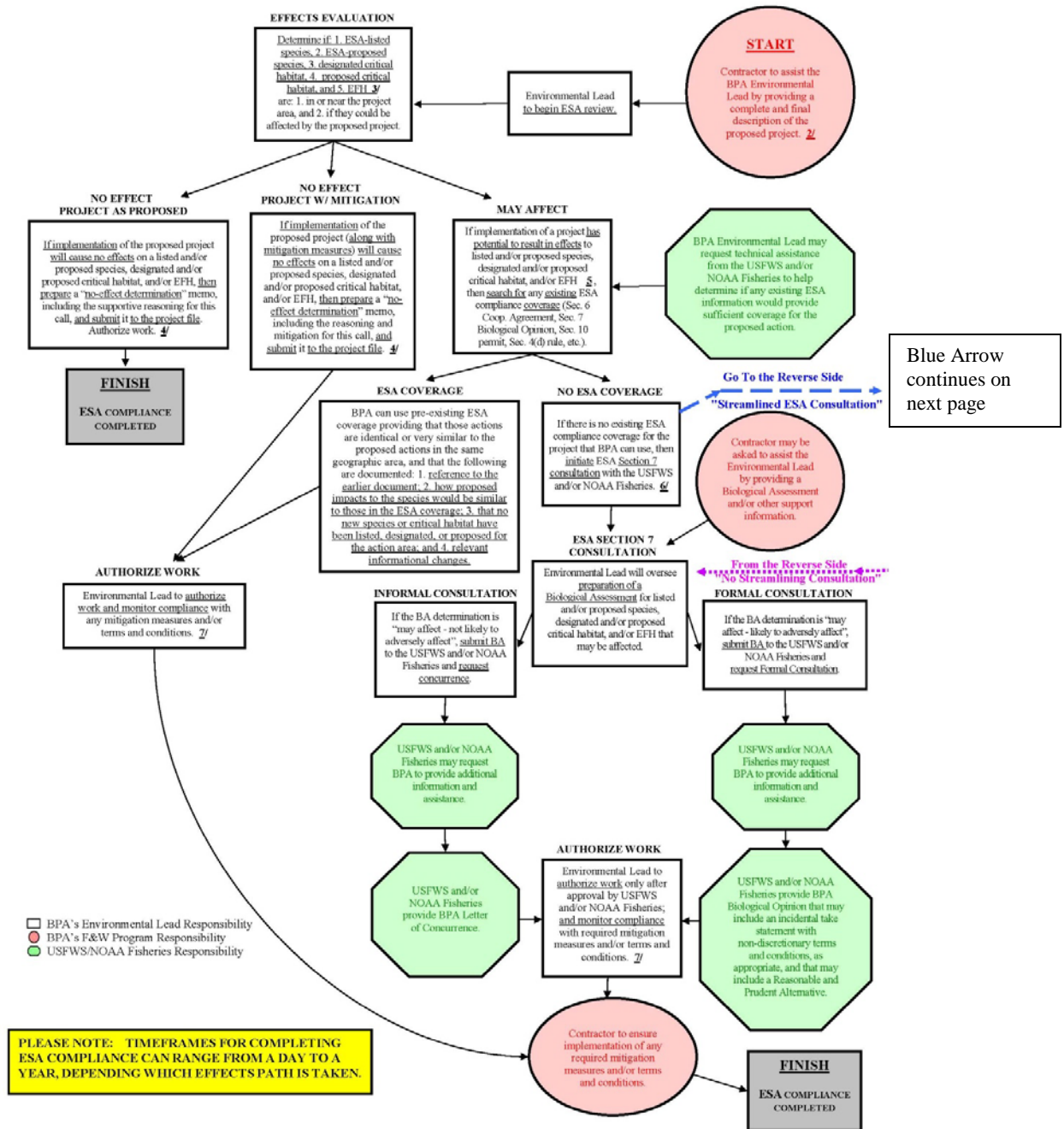
Appendix 1. Easement Restrictions and Management Actions Table

Please include ALL easement restrictions and prohibitions in the table. The following is an example of the detail requested.

| <i>Summary of Easement Restrictions</i> | <i>Management Action Compliance</i> |
|---|---|
| Preserve and protect the Conservation Values of the Property, including restoring and enhancing the site for fish | Goals and objectives in Management Plan provide for long-term protection/restoration of habitats, see |

| | |
|--|--|
| <p>and wildlife habitat as approved in the management plan or by BPA.</p> | <p>Section X. Public use will be managed to protect wildlife and habitats; see section X, Goals a-c. Objective X developed to monitor and evaluate effects of public use on site.</p> <p>Adaptive management (section X) includes monitoring and evaluating (section X) management actions, important for long-term success and protection of Conservation Values.</p> |
| <p>No residential, commercial, or industrial use of the Protected Property</p> | <p>At the time of purchase land was leased for agricultural use. This lease will continue as per Land Use Agreement with BPA while restoration activities are being planned.</p> |
| <p>No new construction, except fences as needed to facilitate habitat restoration or other activities included in the Management Plan or approved by BPA.</p> | <p>No fence construction anticipated or included in the Management Plan. Interior fences are planned for removal as part of restoration work.</p> |
| <p>No new utilities except as negotiated with BPA.</p> | <p>None contemplated as part of Management Plan.</p> |
| <p>No signs, except for no trespassing signs, no hunting signs, for sale signs, signs identifying the owner of the Protected Property, signs facilitating public use or education, and signs that may be erected by the Grantor or the Grantee identifying the Purpose of the Protected Property, all other signs, advertisements, and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet in size.</p> | <p>Boundary marker installation is included in Management Plan. Interpretive and instructional (use rules) signs may be installed as part of restoration.</p> |

Appendix XV Endangered Species Act Compliance Flow chart



1/ In accordance with the Endangered Species Act of 1973 (ESA) as amended, Federal agencies shall "seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act". This compliance process requires integrated communication and participation among BPA, the Contractor, and the U.S. Fish and Wildlife Service and/or NOAA Fisheries.

2/ ESA compliance review cannot proceed unless this is finalized.

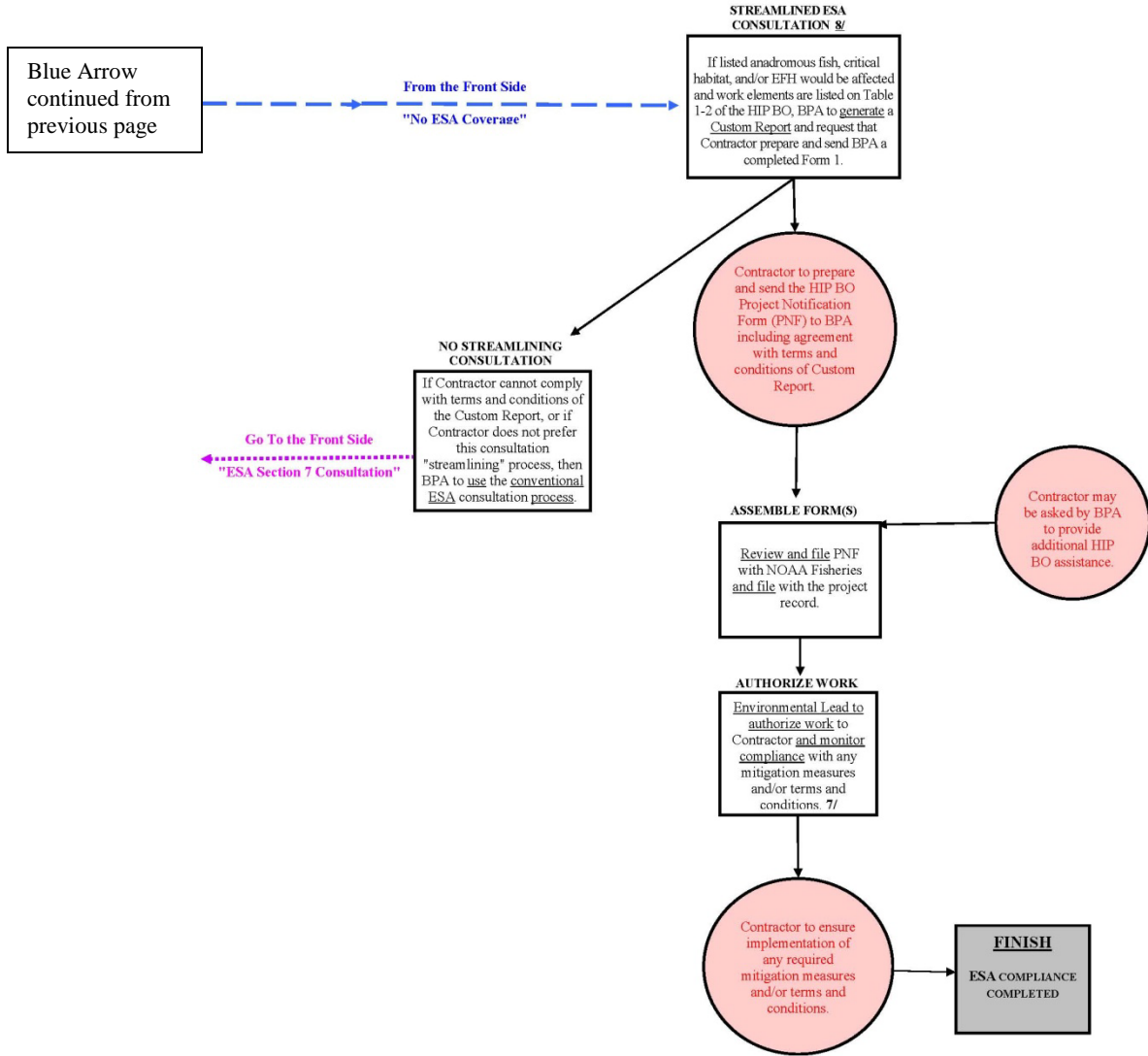
3/ In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, Federal agencies which carry out activities that may adversely impact Essential Fish Habitat (EFH) are required to consult regarding the potential effects of their actions on EFH. EFH means those waters and substrate necessary to fish for spawning, breeding, feeding or growing to maturity. The requirements of EFH reviews are hereby embedded into BPA's ESA compliance review. As needed, Environmental Planning biologists can suggest websites to assist in identifying species, critical habitat, and EFH.

4/ Process complete for only those species that would not be affected.

5/ Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct. "Harm" is further defined by FWS to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. "Harass" is defined by FWS as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering.

6/ Section 7 consultation with the USFWS includes wildlife, plants, bulltrout, and non anadromous-listed fish species; consultation with NOAA Fisheries includes anadromous and marine fish, marine mammals, marine turtles, marine invertebrates, and marine plants.

7/ Environmental Lead to ensure that required mitigation measures, and terms and conditions are included in BPA's decision documents, such as ROD, FONSI, MAP, CX, etc.



8/ This streamlined process applies only to the species regulated by NOAA Fisheries and not to any species regulated by the USFWS. The Habitat Improvement Program (HIP) BO title is: "Endangered Species Act Section 7 Consultation Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation, Habitat Improvement Program, Oregon, Washington and Idaho, CY2007-2012 (HIP1)" of January 10, 2008. 2007/03996

Appendix XVI

Checklist of Requirements Conservation Easements Acquired with BPA Funding

BPA reviews all conservation easements being acquired with its funding. This checklist identifies some of the basic requirements for an easement. This is not a comprehensive list, and it does not replace the detailed review each easement receives by BPA's Real Property Services and Office of General Counsel.

Conservation Values. The easement needs the following features:

- Clearly defined Conservation Values, with the Values described in the body of the easement after the granting clause, not in the recitals.
- The Conservation Values at a minimum reference the species and habitats targeted for BPA mitigation, e.g., loss assessment species. Accord projects should specifically reference the targeted ESU and describe the benefits the species will derive from the easement.

Exhibits: The Conservation Easement should include the following exhibits.

- An exhibit with the legal description of the easement, *including the specific water rights being acquired* (if any).
- An exhibit showing the easement area on an aerial photograph or map, acceptable for recording purposes.
- An exhibit showing any reserved residential, restoration, hunting or agricultural zones or similar demarcations. Surveys, tax lots, or other forms of legal description are preferred, at a minimum use GPS points with BPA approval;
- An exhibit documenting the agreed-upon title encumbrances.
- An exhibit documenting agreement by grantor and grantee on baseline documentation.
- An exhibit with the sample BPA transmission line easement.

BPA's Role. Some reference to BPA role and authorities, substantially similar to the following:

Federal Funding. The Bonneville Power Administration (BPA) is a power-marketing agency within the United States Department of Energy. The Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h

(Northwest Power Act) directs BPA to protect, mitigate, and enhance fish and wildlife affected by the development and operation of federal hydroelectric projects on the Columbia River and its tributaries (the Federal Columbia River Power System, or FCRPS), in a manner consistent with the purposes of the Northwest Power Act, the fish and wildlife program (Program) adopted by the Pacific Northwest Electric Power Planning and Conservation Council (Council) under subsection 4(h) of the Northwest Power Act, and other environmental laws. Under the Endangered Species Act, BPA must avoid jeopardizing the continued existence, and aid in the recovery of, species listed for protection. 16 U.S.C. § 1536. The United States, acting through BPA, has the authority to fund conservation easements as provided by 16 U.S.C. §§ 832a(c), 839b(h)(10)(A), 839f(b). This Easement benefits BPA and the public interest by providing a mechanism for BPA to help permanently protect, mitigate and enhance fish and wildlife habitat to help address the construction, inundation, and operational impacts from the Federal Columbia River Power System.

Granting clause. Use the following template language when possible, *including the specific consideration paid by BPA*, and the grant to the United States rights of enforcement, entry, inspection, and transmission substantially similar to the following:

The Grantor, for and in consideration of the funding in the amount of ([Insert the dollar amount provided by BPA for the purchase of the property]) in U.S. dollars which BPA provided to acquire fee title ownership of the Protected Property, hereby voluntarily conveys and warrants to the United States of America and its assigns a perpetual easement with access for conservation purposes (“Conservation Easement”) in, over, under, upon and across the Protected Property, legally described in Exhibit A (legal description)[Note: the legal description must include a description of any water rights accompanying the property in the transaction], attached and incorporated by reference, and shown in Exhibit B (map/aerial photo) attached and incorporated by reference, created and implemented under applicable state and federal law, and creating an interest in property intended to be a conservation easement under [Site the appropriate state statute]. For the same consideration cited above, Grantor also grants and conveys to the United States of America and its assigns, rights of enforcement, entry, inspection and rights relating to transmission facilities.

The Parties intend this Conservation Easement to be a perpetual and irrevocable easement in gross, and further intend its terms and conditions, set forth below, to create equitable servitudes and covenants running with the land, binding upon Grantor’s successors and assigns for the benefit of the [NAME] as Grantee and the

United States as holder of certain rights.

BPA RIGHTS OF ENFORCEMENT, ENTRY, INSPECTION, & RELATING TO TRANSMISSION FACILITIES:

Clauses (separate and apart from the granting, habendum or warranty provisions) referencing BPA as the U.S. agency for which the rights are being acquired, including transmission rights, and further describing those rights substantially similar to the following:

RIGHTS CONVEYED TO THE UNITED STATES

Regarding the rights of entry, inspection, enforcement, and rights for transmission facilities granted to the United States, BPA is the acquiring federal agency.

A. Access.

1. To enter the Property at a reasonable time and upon prior written notice to Grantor, for the purpose of making a general inspection of the Protected Property to monitor compliance with this Easement, including surveying the fish and wildlife habitat.

2. To enter the Property at such other times as are necessary if the BPA has a reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor [and Grantee], and BPA shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property by such access.

B. Enforcement. In the event that the Grantee fails to enforce any of the terms of this easement, as determined at the sole discretion of the BPA, then BPA may exercise all of the rights and remedies of the Grantee, and is entitled to all of the indemnifications provided to the Grantee.

A clause providing for BPA's transmission rights substantially similar to the following:

Transmission Facilities. If BPA needs a transmission line right-of-way including access over the Property, BPA may construct, locate, operate, maintain and access future transmission facilities within the Conservation Easement area, provided that such construction, location, operation, maintenance and access are consistent with the purposes of this Easement [INSERT THE FOLLOWING IF LANDOWNER SEEKING CHARITABLE DEDUCTION: “to preserve and protect the Property ‘predominantly in its existing condition as a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,’” (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law)]; and further provided that such construction, location, operation, maintenance and access does not have a materially adverse impact on the conservation values protected by this Easement. Should such a transmission right-of-way be needed by BPA over the Property, Grantee, Grantor, and BPA will negotiate the terms and conditions of the right-of-way in accordance with applicable law. Any transmission rights-of-way shall be for the sole purpose of transmission of electrical power and ancillary transmission communications.

Notices to BPA.

- A requirement that the landowner notify the Grantee and BPA regarding any *anticipated* change in land ownership;

- A requirement that the landowner notify the Grantee and BPA regarding any potential violations of the terms of the easement;

- Consider what other notices the landowner is required to give the Grantee that BPA would also be interested in, and include notification to BPA.

- Make sure the “Notices” provision of the Easement includes appropriate contacts for BPA (i.e., Real Property Services and Fish and Wildlife).

BPA Approvals.

Easement provides the following.

- BPA’s review and approval of: the Land Management or Stewardship Plan for the property and any amendments to the Plan; for example:

- CHOOSE ONE:

- A. Land Management Plan Approval.** The Grantor and Grantee shall provide the initial draft Land Management Plan to BPA and BPA

will have 30 business days to review it. The plan cannot be final without BPA's approval, which BPA may not unreasonably withhold or condition. When such approval is not granted or denied within thirty business days, approval of the Management Plan or any revisions thereto may be presumed. The Parties will provide subsequent Management Plans and plan revisions for BPA review, but they need BPA approval only when proposing substantive changes from the initial plan.

[Or]

B. Land Management or Stewardship Plan Approval. The Land Management Plan is attached as Exhibit [XX]. In the event of substantive changes to the Plan, the Parties shall provide a revised Plan to BPA and BPA will have 30 business days to review it. The revised Plan cannot be implemented without BPA's approval, which BPA may not unreasonably withhold or condition. When such approval is not granted or denied within thirty business days, approval of the revised Land Management Plan may be presumed.

Language requiring BPA's review and approval of any assignment of the easement.

Language requiring BPA's review and approval (through new acknowledged acceptance) of any amendment of the easement.

BPA Participation in Grantee Reviews

Language addressing how the Grantee and BPA will coordinate on review of activities by the landowner that the Grantee has oversight/review approvals for--when would BPA be involved, or not involved in prior approvals of activities by the landowner that the Grantee is reviewing and approving? This should be determined between the Parties on a case-by-case basis. For example, perhaps BPA wants to get the same notices of activities that the Grantee gets, and then Grantee and BPA can work out themselves (e.g. consistent with their MOA) how to address. Sample language from a recent conservation easement is below:

Notices to BPA. In addition to any other notices the Parties may provide to BPA, Grantee will promptly provide BPA with any notices provided by

Grantor to Grantee pursuant to Sections VIII and XIII.E. Grantee will also promptly provide BPA with any notices received or issued by Grantee pursuant to Sections IX, X, XIII, and XV.

Post-Termination/Proceeds

- Language providing for the appropriate allocation of the funds to BPA (or to other habitat projects coordinated and approved by BPA) if the easement is judicially terminated or extinguished, e.g., "This conservation easement was acquired using funds provided to the [Grantee] by BPA. In the event of judicial termination or extinguishment of the easement for circumstances as described under this Paragraph, the [Grantee] shall coordinate with BPA and shall apply any funds received in settlement for such termination or extinguishment to resident fish and wildlife habitat conservation as approved by BPA.

REFERENCE TO the U.S. IN the HABENDUM CLAUSE; TITLE WARRANTIES:

- That there is a habendum clause, sufficient title warranties and covenants for the Grantee and the United States, and an Exhibit that includes agreed-upon encumbrances, such as:

To have and to hold the Easement herein granted unto the Grantee and its successors and assigns.

Grantor hereby warrants and covenants to the Grantee and the United States that the Grantor is lawfully seized and possessed of the Protected Property in fee simple with a good and lawful right to grant the same, including a good and lawful right to grant this Conservation Easement; the Property is free and clear of any and all encumbrances and restrictions except those specifically set forth in Exhibit XX, attached and incorporated by reference; that the Grantee and its successors and assigns shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement; that Grantor shall at the request of the Grantee execute or obtain any reasonable further assurances of the title to the Property; and that Grantor will forever warrant the title to the Property and defend the Conservancy against all persons who claim a lawful interest in the Property, except for persons who claim interests under the exceptions described in Exhibit XX.

EXECUTION & ACCEPTANCE

That Grantor's execution of the easement, and the acceptance by Grantee and the United States, should read substantially as follows:

Witness my hand executing this Conservation Easement this [INSERT DAY] day of [INSERT MONTH], 2013.

GRANTOR:

[Insert signature line, and underneath, name or names and how vesting statement reads on deed, followed by date + notarized acknowledgment]

ACCEPTED BY GRANTEE: [Insert signature line, and underneath, name or names and how vesting statement reads on deed, followed by date, +notarized acknowledgment]

ACCEPTED BY THE UNITED STATES

[Insert signature line, and underneath:
Name

Title: Manager, Real Property Services, Bonneville Power Administration

Date, followed by notarized acknowledgment]

THINGS THE CONSERVATION EASEMENT SHOULD NOT HAVE:

Any binding arbitration clause that includes BPA.

A clause that requires BPA to submit any disputes to a particular judicial venue. (If the Grantor & Grantee want to agree on venue for their disputes, that's okay.)

Appendix XVII

Document List for “DOJ” Title Review

(For internal BPA use, provided here for information only)

- Completed BPA 945 form with resolution of all title items
- Purchase Agreement and amendments, signed by vested owner(s)
- Title report (BPA’s showing proposed insured as the “United States of America and its assigns”) and all exceptions with Surveyor certification stamp on legal description and all referenced legal description documents
- Phase 1 ELA with BPA review and approval and resolution of any recommendations
- Conservation Easement in final or near final form
- Draft warranty deed (if acquiring fee title) with water rights (if any)
- Baseline Documentation Report (if applicable)
- Authority to sign (Tribe, State agency, LLC, etc.) or completed affidavit (of heirship, interest of spouse for example), if necessary
- Water survey form fully completed
- Maps
- Appraisal or access to appraisal
- Answers or documentation related to outstanding questions
- Surveys and other documents as appropriate, e.g. for access and to ensure consistency with legal description

- Indication of project manager, and documentation from project manager, as appropriate, indicating that a particular cloud or encumbrance on title does not interfere with the conservation purposes of the acquisition
- Update acquisition spreadsheet with date sent for 945 reviews.

Appendix XIII

BPA COTR Annual Site Visit Land Monitoring Report Form

Description of Monitor Visit: Monitoring is conducted by auto, plane or on foot. Maps, routes and photopoints are all completed using GIS referencing with Trimble Nomad hardware and ESRI ArcPAD software. Photos are taken and stored digitally

| | |
|--|--|
| Site: _____ _____ | Name of current owner: _____ Phone #: _____ |
| Tract ID: _____ | Address: _____ |
| County/State: _____ | <i>New address?</i> Yes ____ No ____ |
| Project #: _____ | Email: _____ |
| | <i>New email?</i> Yes ____ No ____ |
| Guiding Documents: (<i>Contracts, easements, management plans, land use agreements, etc.</i>) | |
| Easement dated: _____ | Baseline dated: _____ |

Name of monitor: _____

Phone: _____

Date of monitoring visit: _____ Date of last monitoring visit:

Owner contacted prior to visit? Yes__ No__ If not, why:

Name(s) of person(s) accompanying monitor:

1. Ownership Status: Has property changed hands since last monitoring visit?

Yes__ No__

If **yes**, to whom has the land been transferred (name/address/phone):

If **no**, does landowner has plans to transfer or sell land in near future?

Yes__ No__

Details:

2. **Present Land Use:** How is the protected land currently being used by the landowner(s)?

Residential use:

Agricultural use:

Forestry use:

Other uses or management activities:

3. **Condition of Protected Land:**

Has the property been altered by human/animal activity since last monitored (e.g. new buildings, roads, trails, fences, timber harvesting, excavation, grazing)?

Yes ___ NO ___

If **yes**, describe the activity and indicate its location on map. If possible, photograph and attach.

Has the property been altered by natural causes since last monitored (e.g. flood, fire, windstorm)?

Yes ___ No ___

If **yes**, describe the activity and indicate its location on map. If possible, photograph and attach.

Are there any adjacent property uses that could be affecting this property?

Yes ___ No ___

If **yes**, describe the activity and indicate its location on map. If possible, photograph and attach.

4. **Landowner Concerns:** Does the landowner have any questions or concerns?

Please list questions **below** and any responses by monitor. Note questions not answered for later follow up.

Any landowner management activities requiring sponsor or BPA Prior Approval?
__YES __NO

Any landowner management activities requiring prior notice to FWP?
__YES __NO

Did landowner exercise any limited reserved rights?
__YES __NO

5. Easement Concerns: Identify potential problems or specific areas of concern.
Attach photos if possible.

◆ Building(s):

◆ Encroachment issues:

◆ Vegetation:

◆ Erosion issues:

◆ Water issues:

6. Are Grantee rights and responsibilities (see below) being met?
__YES __NO

LANDOWNER RIGHTS AND RESPONSIBILITIES

(Based on applicable agreements, easements, and law)

- Buildings and structures:
- Grazing – Range Management:
- Cultivation, sod-busting, or other range management:
- Timber management:

- Water rights used:
- Water Developments – alterations to wetlands and riparian areas – changes to water rights:
- Maintenance or new construction of roads, fences, utilities or other improvements:
- Agrichemicals use – Pest management:
- Exploration and/or extraction of soil, gravel, sand, hydrocarbons or other minerals:
- Subdivisions, property sales, or property leases:
- Restoration and/or Habitat Enhancement:
- Unauthorized commercial uses:
- Dumping:
- Game farming or related:

Status of Management Plan: (If being developed or amended)

Monitoring Concerns: Is there anything you noted during this visit that future monitors should be aware of not already listed in monitoring plan or baseline?

Photo points taken: Yes ____ No ____

Conclusion: Grantor was/was not in full compliance with all terms of the conservation easement during FY2____.

At the end of monitoring visit, please check one of the following:

____ I noted nothing of concern ____ I think there might be a problem

Monitor signature: _____

Date: _____

Appendix XIX

Self-Assessment Form for BPA Easement Properties

Please answer the following questions about your conservation easement or property. This is a generalized questionnaire, so some of the questions may pertain to your individual property. Once completed, please return the form via e-mail to Dorie Welch, BPA F&W Biologist, at dwwelch@bpa.gov.

- 1. Property Information.** *(This information is filled in by BPA before sending the form to the landowner.) Please review information in this section for accuracy and make any corrections or updates if needed.*

| | |
|--|--|
| Property Name: | |
| Property Address: | |
| Landowner Name: | |
| Landowner Address: | |
| Landowner Phone: | |
| Landowner Email: | |
| BPA staff assigned to land: | |
| Preparer's Name (if different from landowner): | |

- 2. Ownership.** Please answer the following questions regarding the ownership of the property, and note any changes in the past year. Please include the names and dates of any transfers or claims made by others.

| | |
|---|--|
| Does the landowner still own the entire parcel? | |
| Has there been any change in the land ownership in the past year? | |
| Has there been any division or partition of the | |

| | |
|---|--|
| property in the past year? | |
| Has an easement, lien, water right, or other right to use the property been granted in the past year? | |
| Has anyone asserted a claim (mineral right or other) to the property in the past year? | |

3. Management activities.

| | |
|--|--|
| Does this property have a management plan? | |
| What problems arose implementing the management plan? Should the management plan be changed or amended? | |
| Is the management plan effectively protecting the conservation values of the property? If not, please explain. | |

4. Natural Disturbances.

| | |
|--|--|
| Have there been ecological changes or natural disturbances in the past year? If yes, describe the specific changes and the location of the change. | |
|--|--|

5. Adjacent Lands.

| | |
|--|--|
| <p>Are you aware of any planned or current activities on land adjacent to your property that may negatively impact the conservation values of the property?</p> | |
| <p>Are you aware of any new or planned or existing roads, trails, paths, or other features that pass close to your property? If so, please provide an explanation of what this feature is.</p> | |
| <p>Are there any disputes regarding the boundary of this property? Has anyone entered and used the property without your permission? Have there been any problems with neighbors or trespassers not indicated above? If yes, please provide details.</p> | |

6. Prohibited Uses. The following uses are prohibited on the land covered by the conservation easement. If a section is marked “not applicable” by BPA, the prohibition is not applicable to your easement. Please note if there was any change in a prohibited use of the land in the past year.

| Attribute | Easement Restriction | Change in the past year? If yes, please describe |
|-----------|----------------------|--|
|-----------|----------------------|--|

| | | | |
|---------------------------------|--|------|------|
| Commercial activity | Commercial or industrial activity is prohibited. | ___Y | ___N |
| <i>Observations:</i> | | | |
| New residential activity | New residential activity is prohibited. | ___Y | ___N |
| <i>Observations:</i> | | | |
| Cutting vegetation | No cutting of trees or vegetation, except as part of activities described in the Approved Management Plan or the manual removal of exotic species | ___Y | ___N |
| <i>Observations:</i> | | | |
| Construction | All construction, improvements and/or other man-made modifications such as buildings, structures, and parking lots are prohibited except those approved in writing by BPA. | ___Y | ___N |
| <i>Observations:</i> | | | |
| Fences | Fences are prohibited except for: 1. Temporary fences for the protection of trees or wildlife which provide for deer and elk movement 2. Fencing to control wildlife damage to sensitive vegetation is permitted provided that it is limited to small areas. | ___Y | ___N |
| <i>Observations:</i> | | | |

| | | | |
|--------------------------------|--|------|------|
| Roads | Roads and parking lots are prohibited except for: 1. Maintenance of existing roads to allow restoration 2. Those approved by BPA | ___Y | ___N |
| <i>Observations:</i> | | | |
| Topography | Altering the general topography, including but not limited to flood control work is prohibited except as approved by BPA. | ___Y | ___N |
| <i>Observations:</i> | | | |
| Water courses | Natural water courses, lake shores, wetlands or other bodies may not be altered. | ___Y | ___N |
| <i>Observations:</i> | | | |
| Off-road vehicles | Except for vehicles used to facilitate the Approved Management Plan, motorized off-road vehicles may not be operated on the property. Bicycles may not be used either. | ___Y | ___N |
| <i>Observations:</i> | | | |
| Land surface alteration | Any mining, quarry, gravel extraction, grading, excavation, or alteration of the land surface is prohibited | ___Y | ___N |
| <i>Observations:</i> | | | |
| Hazardous materials | No release of hazardous substances such as oil, asbestos, fertilizers, herbicides, pesticides or nuclear material is allowed. | ___Y | ___N |
| <i>Observations:</i> | | | |

| | | | |
|--------------------------------|--|------|------|
| Public and river access | Public access which damages the Property's Conservation Values or threatens such damage is prohibited. 1. Minimal public access, public access authorized in the Approved Management Plan, or public access approved by BPA by mail or email is permitted. | ___Y | ___N |
| <i>Observations:</i> | | | |
| Dumping | Waste, soil, trash, ashes, bio-solids and unsightly or offensive materials are not allowed and may not be accumulated. | ___Y | ___N |
| <i>Observations:</i> | | | |
| Animals | No domestic, exotic or farm animal of any type are allowed on the Property unless expressly permitted in writing by BPA and consisted with the restoration, preservation, or protection of the Conservation Values. | ___Y | ___N |
| <i>Observations:</i> | | | |
| Billboards | Billboards and signs are prohibited. Signs may be displayed to state: 2. The name and address of the Property 3. The owner's name 4. The area protected by this conservation easement 5. No trespassing signs and the like 6. Educational signs consistent with protection of the Conservation Values | ___Y | ___N |
| <i>Observations:</i> | | | |

7. **Other**—Please use additional paper as needed.

Are there any easement conditions that you have questions about or that you would like to see readdressed?

Are there any other things that BPA should know regarding this property?

Is there any information or material that you need from BPA?

If you have any questions about your easement or the information requested on this sheet, please contact Heidi Haserot, BPA Real Property Specialist, at 503-230-3115 or Dorie Welch at 503-230-5479.

Completed By: _____

Date: _____

Thank you for your assistance.

Appendix XX

Sample Land Use Agreement

In reply to:

BPA Case No.

Tract No.

Line Name:

AD NO# ; Structure #

Stationing:

LAND USE AGREEMENT

Bonneville Power Administration (BPA) hereby agrees to your use of BPA's conservation easement area for construction/installation, use, and maintenance of a _____.

The location of your use is partially within the _____ of Section _____, Township _____, Range _____, _____ Meridian, _____ County, State of _____, as shown on the attached segment of BPA Drawing No. _____, marked as Exhibit _____.

You shall not make any changes or additions to your use of the easement without BPA's review and written approval. Any other uses on the easement must be applied for separately.

Please note that BPA is not the owner of this property. If you are not the owner, you must obtain the owner(s) permission to use this property. There may also be other uses of the property that might be located within the same area as your project. This agreement is subject to those other rights.

This agreement is entered into with the express understanding that it is not assignable or transferable to other parties without the prior written consent of BPA. This agreement is revocable at will by BPA and does not modify, change, or otherwise alter the rights BPA acquired by Deed. BPA may terminate this agreement upon 30 days written notice.

The subject use of this easement area has been determined not to be a hazard to, or an interference with, BPA's present use of this easement for conservation and mitigation purposes. Accordingly, there is no present objection to such use. However, if BPA should determine at any time, that your use has become adversely affect the conservation values protected by the easement, you will be required to stop your use or remove such hazard or interference from the easement at no expense to BPA.

BY ACCEPTING THIS LAND USE AGREEMENT YOU ARE AGREEING TO THE FOLLOWING CONDITIONS

1. [Fill in conditions related to proposed use and conservation values on the easement. Samples follow.]
2. Any money's or rents collected as a result of grantees use of the easement will be deposited with _____, and applied towards the cost of funding the project O&M.
3. No additional structures of any kind shall be built within or on this BPA fee-owned site without BPA's written permission and an amendment to this LUA.
4. No commercial, industrial, manufacturing, or retail operation of any kind may take place at this BPA site.
5. No hunting of any kind will be allowed at this BPA site.
6. No accumulation of garbage, trash, junk, debris, machinery that does not run, brush or wood.
7. No livestock or pets allowed on the premises.
8. No discharge of any weapon on the premises, including but not limited to fire arms, air guns, or bows.
9. BPA premises (grounds, buildings and improvements) shall be maintained in good repair and in a safe, clean, and sanitary condition

IN ADDITION, THE FOLLOWING IS BROUGHT TO YOUR ATTENTION

You agree to assume risk of loss, damage, or injury which may result from your use of the easement area, except for such loss, damage, or injury for which BPA may be responsible under the provisions of the Federal Tort Claims Act, 62 Stat. 982, as amended. It is understood that any damage to BPA's property caused by or resulting from your use of the easement area may be repaired by BPA, and the actual cost of such repair shall be charged against and be paid by you.

Construction/installation, use, and maintenance of the _____ shall be at no cost to BPA.

BPA shall not be liable for damage to your property, facilities, or injury to persons that

Appendix XXI

U.S. DEPARTMENT OF ENERGY-BONNEVILLE POWER ADMINISTRATION PERMISSION TO ENTER PROPERTY

Owner Name:

Representatives of the Bonneville Power Administration (BPA) may enter my property identified below, for the purposes generally described.

| Parcel ID | Section | Township | Range | Meridian | County | State |
|-----------|---------|----------|-------|----------|--------|-------|
|-----------|---------|----------|-------|----------|--------|-------|

I understand that:

BPA shall repair or pay for damage occurring by reason of this entry. Payment shall be made on the basis of an estimate approved by BPA and paid as soon as reasonably possible, but not later than six months from the date the damage occurred.

BPA representatives may enter the property, either by ground access or from the air, for the purposes listed below.

RECONNAISSANCE: During the preliminary project location process, personnel such as realty specialists, engineers, environmental specialists, and survey crews may enter the property to make site inspections, review access roads, establish and survey field control points, and/or place temporary aerial photography markers.

RESOURCE ANALYSIS: Environmental studies may identify locations where natural resources, such as plants and animals, are found and may also identify protective measures that BPA would take during the construction process if BPA decides to build a transmission line or substation. An archeologist or historian may inspect the proposed project area as part of the cultural resource analysis (see testing below). As a result of these studies, areas of significance may be selected for enhanced protection. Evaluation of historic structures may involve an inspection of these structures. You will be contacted before any structure inspections are made.

SURVEY: Surveyors will stake the proposed location, determine topography, and locate section/property corners and geographic features. Survey monuments may be set at project corners (substation only), proposed tower sites, and/or other necessary points. In cultivated areas, monuments will be buried to avoid interference with farming activity. Any cutting of brush or trees will be limited to the minimum width necessary to conduct the survey, and survey crews will attempt to restrict the width cleared to 5 feet. Trees up to 6 inches in diameter may be cut if necessary.

It may also be necessary to survey existing or proposed access roads to serve the project.

TESTING: For engineering purposes, it may be necessary to drill and excavate, at random intervals, to obtain earth samples from varying depths for soils analysis. There may also be testing for wetlands determination, or prehistoric archaeological evidence, both of which can involve auger holes (about 6 inches in diameter). All test holes and excavations will be refilled promptly after examination.

APPRAISAL: As part of the valuation analysis a Realty Specialist or licensed Appraiser may inspect the property. The information obtained from this inspection, together with an analysis of comparable properties recently sold in your community, will form the basis for the estimate of value. The Appraiser/Realty Specialist will appreciate being accompanied by you or your representative on this inspection, and every reasonable effort will be made to select a mutually convenient date.

OTHER: If applicable, please see attached explanation of additional purposes.

CONTACT: I would like BPA to contact me or my representative prior to entering my property Yes _____ No _____.

If Yes, please contact _____ at telephone number _____.

Special Instructions or Comments:

Is there a Tenant: Yes _____ NO _____

If Yes, name _____

Phone number: _____

Are there now in the general area of the proposed project:

Structures or Improvements: Yes _____ No _____.

Personal Property: Yes _____ No _____

Describe: _____

BPA Contact:

_____, BPA Realty Specialist

Office No.:

Toll Free: _____

Property Owner Signature

Date received by BPA

Property Owner (Print Name)

Project Name

Address

BPA Tract No.

City State

Zip

Home Phone: _____

Cell Phone: _____

E-Mail: _____

Appendix XXII

Sample Draft Bonneville Stewardship Funding Agreement

[Name of sponsor or property]

I. Purpose of the Agreement

The Bonneville Power Administration (“**BPA**”) has funded the acquisition by [SPONSOR] (“**Sponsor**”) of certain real property in _____ County, [State] (“**Property**”). BPA provided this funding to partially fulfill its fish and wildlife mitigation responsibilities under the Pacific Northwest Electric Power and Conservation Act, 16 U.S.C. § 839(b)(h)(10), and consistent with its obligations under the [Insert governing MOA and date]. In exchange, [Sponsor] granted the United States (acting by and through BPA) a conservation easement encumbering the Property (“**Conservation Easement**”). BPA and [Sponsor] are the Parties (“**Parties**”) to this agreement.

II. Property[/ies] Covered by this Agreement

1. [Property name] (BPA Tract ID

III. Consideration

1. BPA will make a one-time lump sum payment of \$_____ from which [Sponsor] will draw monies as needed to provide stewardship on the Property (the “**Stewardship Funding**”).
2. Upon delivery of the Stewardship Funding, BPA will have forever satisfied any and all obligations it may have to [Sponsor] or any other entity or under any law to fund the stewardship of the Property.
3. [Sponsor] will not request or support the requests of others for any additional funding from BPA for stewardship activities on the Property as those activities are described in section IV.2 below. This agreement does not, however, preclude [Sponsor] from seeking other funding from BPA or any other source to restore the Property, as provided in section IV.4 below, to improve the ecological conditions on them for native fish and wildlife. BPA has no obligation to provide additional funding for restoration.

IV. Use of the Stewardship Funding

1. BPA is providing the Stewardship Funding under this agreement for [Sponsor] to provide stewardship on the Property; that is, for land management and maintenance on the Property in a manner that preserves or enhances its conservation value. [Sponsor] must use the Stewardship Funding only in a manner that helps fulfill the terms of the Conservation Easement, legal obligations associated with land ownership not otherwise prohibited by this agreement, and any land management plan for the Property determined by BPA to be consistent with the purpose of the acquisition and the terms of the Conservation Easement.
2. [Sponsor] may expend the Stewardship Funding on land management and maintenance activities, including project management and oversight. BPA encourages [Sponsor] to use the funding for on-the-ground activities wherever possible to ensure protection, maintenance and enhancement of the Conservation Values identified in the Conservation Easement. Notwithstanding the foregoing, Stewardship Funding shall not be used for restoration activities as described in section IV.4, below. Any uncertainty may be referred to BPA for resolution.

Representative stewardship activities under this agreement include, but are not limited to:

- Maintain and defend Property boundaries and other legal property interests;
- Monitor and address surrounding land uses or activities that could adversely affect the conservation values on the Property;
- Maintain [Sponsor]'s realty files including current photos, maps, tax and ownership information;
- Update site management plans;
- Maintain roads, trails, gates, fences, locks and signage;
- Control and prevent unauthorized public access or use;
- Control and administer authorized access or use, such as for recreation;
- Prevent encroachment and mitigate risk of catastrophic wildfire;
- Inventory, map and evaluate habitat conditions;
- Outreach to neighbors, stakeholders, local governments and volunteers;
- Detect, map and treat non-native invasive species;
- Plan, conduct and monitor effects from prescribed fire;

- Vegetation management, such as planting, seeding, mowing and maintenance of past plantings; or
- Stewardship Fund reporting.

3. [Sponsor] is responsible for following applicable state and federal laws and obtaining any required permits when conducting stewardship activities. All activities completed with Stewardship Funding should be done using best management practices.
4. [Sponsor] shall not use Stewardship Funding for restoration activities. For purposes of this agreement, restoration differs from stewardship in that restoration is typically larger scale, often includes earthmoving activities or construction, and occurs only once or at most infrequently. Restoration activities include such things as removing dikes, creating islands, reshaping topography, and placing or removing riprap or pilings.
5. [Sponsor] shall not pay property taxes with Stewardship Funding.
6. [Sponsor]'s stewardship actions funded in whole or in part with Stewardship Funding is not considered an ongoing federal action. [Sponsor] shall not be required to get any pre-approval from BPA for activities which are carried out with the Stewardship Funding, other than approvals that may be otherwise required under the Conservation Easement or other agreement with BPA, and federal regulations shall not, by reason of the Stewardship Funding, apply to contracts issued by [Sponsor] for any work on the Property.

V. Stewardship Funding

1. Upon execution of this agreement, BPA will wire the Stewardship Funding to [Sponsor]'s designated account.
2. *[This provision subject to change in order to reflect Sponsor's structure for accounting on individual properties]* Subject to the above, [Sponsor] may allocate the Stewardship Funding as it deems appropriate between: (1) a "spend-down" stewardship account for the Property, maintained centrally in the manner customary for such accounts for [Sponsor]; and (ii) an endowment account, from which the Property will receive a certain amount each year for application to the purposes of this agreement. [Sponsor] will maintain both kinds of accounts centrally at [Sponsor], with a separate subaccount for bookkeeping purposes for the Property, which will allow [Sponsor] to accurately track the Stewardship Funding and any other income from the Property.

3. In addition, [Sponsor] will deposit any net proceeds from any income generated from the Property through permitted activities (e.g., timber receipts, grazing lease fees, recreational or hunting fees, movie rights or royalties, sale of fixtures, etc.) in the stewardship account for the Property which is established in the manner described above. "Net proceeds" refers to proceeds remaining after necessary expenses related to the income-generating activity. Property taxes may be paid using income generated from the Property.
4. BPA and [Sponsor] may, by mutual written agreement, in addition to the property identified in in section II, above, agree to include under the terms of this agreement one or more additional properties where BPA has funded [Sponsor]'s purchase of the property(ies) to aid BPA in fulfilling its fish and wildlife protection, mitigation, and enhancement responsibilities under the Pacific Northwest Electric Power and Conservation Act, 16 U.S.C. § 839(b)(h)(10), or the Endangered Species Act, 16 U.S.C. § 1536. In that event, the terms of this Agreement shall apply to the funding BPA provides to [Sponsor] for the stewardship of the additional property(ies), and such additional property(ies) shall be included within the defined term "Property". The Parties intend that the Stewardship Funding shall be confined to the property for which it was originally awarded and that the term "Property" shall be construed to refer to such individual property, except as the context requires otherwise.

VI. Administrative Provisions

1. [Sponsor] will provide to BPA an annual accounting of the use of the Stewardship Funding, beginning in calendar year 20__ [*insert calendar year following acquisition*], documenting all expenditures made using the Stewardship Funding until the account is exhausted or the agreement expires as outlined in section VI.7, below. [Sponsor] will send the report to F&W Project Manager, KEWL/U/M-4, P.O. Box 3621, Portland, Oregon 97208-3621 unless otherwise directed by BPA. BPA may inspect [Sponsor]'s books for the stewardship account(s) at any time upon reasonable notice which shall be no less than five business days.
2. This agreement binds the Parties and their successors and assigns.
3. This agreement is meant to support [Sponsor]'s stewardship of the Property; however, this agreement does not amend or void any provision, or relieve [Sponsor] of any legal duties or restrictions, under the Conservation Easement or management plan. In the event of any conflict between the terms of this agreement and the terms of the Conservation Easement, the terms of the Conservation Easement shall control.

4. This agreement is a contract, and is separate and enforceable outside the terms of the Conservation Easement.
5. In the event there are disputes between the Parties relating to this agreement that are not resolved at the staff level, the staff of each Party will present the information and the nature of the dispute to its senior management staff for resolution. Should the Parties be unable to resolve the dispute at the senior staff level, the Parties agree to participate in mediation, using a mutually agreed upon mediator. The mediator will not render a decision, but will assist the disputing Parties in reaching a mutually satisfactory agreement.
6. In the event that [Sponsor] assigns or transfers the Property, [Sponsor] shall transfer the balance of the Stewardship Funding at the same time, including all principal, accrued interest, and other earnings, to the new owner of the property interest (or other entity approved by BPA), and [Sponsor] agrees to provide BPA a signed acknowledgement from the new owner that it understands the conditions for the use of the Stewardship Funding and will abide them. BPA will honor a reasonable, good faith calculation by [Sponsor] of the proper dollar amount to be transferred to the assignee of the Stewardship Funding.
7. The limitations and obligations that this Stewardship Funding Agreement imposes on [Sponsor] expire when either the Stewardship Funding has been fully expended or on September 30, 20__*[30 years]*, whichever comes first.
8. Where this Agreement grants or requires BPA approval, unless provided otherwise, BPA shall complete its review and provide its decision within a reasonable time, typically within 30 business days after submission of a completed document from [Sponsor]. For amended or redrafted submissions, review should typically be within 15 business days. BPA shall not withhold its approval unreasonably.

The United States Department of Energy, Bonneville Power Administration

 F. Lorraine Bodi
 Vice President, Environment, Fish and Wildlife

 Date

SPONSOR

Name / Title

Date

Appendix XXIII

Survey Delivery Standards

The following standards are within the scope of typical survey work throughout the BPA service region, so following them will usually not increase project survey costs.

Survey Delivery Standards

- 1) Deliver the CAD drawing in any one of the following formats, in order of preference:
 - a. .dgn
 - b. .dwg
 - c. dxf
2. Use State Plane grid as the coordinate system of the CAD drawing.
 - a. Make sure the State Plane grid coordinates in the CAD drawing are referenced to the National Spatial Reference System (NSRS), currently NAD 83 (2011), or its successor, at a positional accuracy of one meter (1m).
3. Include a metadata statement in the CAD drawing with the following minimum information. An example of Washington SPCS, South Zone is as follows:
 - a. Units: USFT
 - b. Horizontal Datum: NAD 83(2011)
 - c. Vertical Datum: NAVD88 (Geoid12A)
 - d. State Plane Coordinate System: Washington SPCS, South Zone
 - e. Basis of Bearing: S89°46'22"W, 2635.32' between the southeast corner of Section 3 and the south quarter corner of Section 3, Township 9 North, Range 16 East.