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# WILDLIFE MITIGATION AGREEMENT FOR DWORSHAK DAM

BONNEVILLE POWER ADMINISTRATION

STATE OF IDAHO

NEZ PERCE TRIBE

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This WILDLIFE MITIGATION AGREEMENT FOR DWORSHAK DAM (Agreement), executed this 10th day of March, 1992, is among the Bonneville Power Administration (BPA) the State of Idaho and the Nez Perce Tribe.

**WITNESSETH**

WHEREAS, Dworshak Dam was constructed on the Clearwater River in the State of Idaho and within the Nez Perce Reservation and for which hydroelectric production is one of the project's authorized purposes;

WHEREAS, Dworshak Dam is operated as part of the Federal Columbia River Power System and is within the Columbia River Basin;

WHEREAS, section 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501 (Northwest Power Act) includes provisions for the protection, mitigation, and enhancement of fish and wildlife affected by the development, and operation of hydroelectric facilities of the Columbia River Basin;

WHEREAS, Section 4(h)(10)(A) of the Northwest Power Act authorizes the Administrator of the BPA to use the BPA fund to protect, mitigate, and enhance fish and wildlife affected by the development and operation of hydroelectric facilities of the Columbia River Basin;

WHEREAS, the State of Idaho and Nez Perce Tribe evaluated and defined wildlife impacts from the construction of Dworshak Dam;

WHEREAS, the Northwest Power Planning Council (Council) in its Columbia River Basin Fish and Wildlife Program (Program), identified the need for wildlife protection, mitigation, and enhancement at Dworshak Dam;

WHEREAS, the State of Idaho and Nez Perce Tribe have authority to engage in protection, mitigation and enhancement of fish and wildlife described by this Agreement;

NOW, THEREFORE, the BPA, the State of Idaho and the Nez Perce Tribe agree as follows:

1. Purpose

The purpose of this Agreement is to establish an arrangement that provides for the protection, mitigation, and enhancement of wildlife and wildlife habitat within the State of Idaho affected by the development of Dworshak Dam.

2. Definitions

a. Bonneville Power Administration or BPA means the Bonneville Power Administration, a Federal power marketing agency created by the Bonneville Project Act and its agents, successors, and assigns.

b. Council means the Pacific Northwest Electric Power and Conservation Planning Council created by Section 4 of the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. No. 96-501.

c. Dworshak Dam means the construction but not operation (which may cause variation in water levels downstream) of Dworshak Dam, reservoir, and associated facilities, including hydroelectric projects and electric power facilities, for which BPA has a responsibility under the Pacific Northwest Electric Power Planning and Conservation Act.

d. Dworshak Wildlife Mitigation Advisory Committee is the committee established pursuant to sections 7 and 8 of this Agreement to provide advice and guidance regarding implementation of mitigation activities within the State of Idaho.

e. Fiscal Year means the fiscal year beginning October 1 and ending September 30.

f. Fish and Wildlife Program means the Program adopted and revised by the Council pursuant to the Northwest Power Act to protect, mitigate, and enhance fish and wildlife on the Columbia River and its tributaries.

g. Habitat or Wildlife Habitat means those habitats within the State of Idaho and lost or affected by the development of Dworshak Dam.

h. Idaho Dworshak Wildlife Mitigation Trust Fund means the trust fund established by the State pursuant to section 9 of this Agreement and the laws of State for the purpose of wildlife mitigation.

i. Nez Perce Dworshak Wildlife Mitigation Trust Fund means the trust fund established by the Tribe pursuant to section 9 of this Agreement and the laws of the Tribe and of the United States for the purpose of wildlife mitigation.

j. Operation and Maintenance means activity or action performed during and after the term of the Agreement to manage, operate, keep up, repair, maintain, retain, and preserve the wildlife and wildlife habitat values and benefits of the mitigation efforts, actions, or projects undertaken during the term of this Agreement.

k. Pacific Northwest Electric Power Planning and Conservation Act, or Northwest Power Act means the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, 16 U.S.C. 839 et seq., and as it may be amended.

l. Parties means the State of Idaho and the Nez Perce Tribe, jointly and severally.

m. Party means the State of Idaho or the Nez Perce Tribe, individually.

n. State means the government of the State of Idaho, including its various departments, agencies, commissions and subdivisions; and its officials, representatives, employees, appointees and contractors, whether elected or appointed. However, State excludes Idaho appointees to the Pacific Northwest Electric Power Planning and Conservation Planning Council, to the extent that such exclusion is necessary to

enable Idaho appointees to perform their responsibilities under the Pacific Northwest Electric Power Planning and Conservation Act.

o. Term means the period of time the Agreement is in effect.

p. Tribe means the Nez Perce Tribe, including its various departments, agencies, commissions and subdivisions; and its officials, representatives, employees, appointees and contractors, whether elected or appointed.

q. Wildlife or Associated Wildlife means any and all wildlife species associated with the habitats identified in Exhibit 1 and includes wildlife either specifically or not specifically described in this Exhibit.

r. Wildlife Mitigation, Mitigation, or Protection, Mitigation, and Enhancement means actions or activities undertaken to protect, mitigate, and enhance wildlife and wildlife habitat affected by the development of Dworshak Dam.

### 3. Exhibits

1. Wildlife Impact Assessment - Dworshak Reservoir (Phases I and II)
2. Tribal Executive Committee Resolution
3. Funding of Nez Perce Dworshak Wildlife Mitigation Trust Fund
4. Funding of Idaho Dworshak Wildlife Mitigation Trust Fund
5. Memorandum of Agreement between State and Tribe

### 4. Agents

#### State.

The Director of Idaho's Department of Fish and Game or the Director's appointee will serve as the representative for State for carrying out the provisions of this Agreement.

Tribe.

The Director of the Wildlife Program will serve as the representative for Tribe for carrying out the provisions of this Agreement.

BPA.

The Director of the Division of Fish and Wildlife of BPA or the Director's appointee will serve as the representative for BPA for carrying out the provisions of this Agreement.

The addresses of these representatives are:

BPA:	State:	Tribe:
Director Division of Fish and Wildlife Bonneville Power Administration P.O. Box 3621 Portland, OR 97208	Director Idaho Department of Fish and Game 600 S. Walnut P.O. Box 25 Boise, ID 83707	Director Wildlife Program Nez Perce Tribe P.O. Box 365 Lapwai, ID 83540

BPA and the Parties may change representatives or addresses by notifying the others in writing. A written communication mailed to the address for a Party shall be deemed to be received by the Party within 5 working days after the communication is placed in the United States mail.

### 5. Wildlife Impacts

The State and Tribe have estimated the impacts to wildlife and wildlife habitat within the boundaries of Idaho from the development of Dworshak Dam and associated facilities and sets forth these estimates in Exhibit 1. The losses identified in Exhibit 1 adequately represent the area, types of wildlife and associated wildlife within the State of Idaho impacted by the development of Dworshak Dam. Further, BPA and the Parties agree that the State and the Tribe's use of target wildlife species to estimate impacts to wildlife in Exhibit 1 adequately addresses impacts to any and all wildlife species associated with these habitats.

## 6. Term

a. Effective Signatures. This Agreement shall be effective the day after it is signed by the Administrator of Bonneville and is approved by at least one other Party in the following manner:

(1) Tribe. Tribe issues a resolution approving this Agreement (Exhibit 2), the Chairman of the Tribal Executive Committee signs this Agreement, and the Secretary of the Interior or his designate approves this Agreement.

(2) State. The Governor of the State of Idaho and the Director of the Idaho Department of Fish and Wildlife and the Chairman and Members of the Idaho Fish and Game Commission sign this Agreement.

b. Maximum Term. The maximum term of this agreement shall be 60 years from the date on which this Agreement becomes effective. The actual term of this Agreement shall depend upon BPA's decisions to exercise its options to make additional payments to the Nez Perce Dworshak Wildlife Mitigation Trust Fund and the Idaho Dworshak Wildlife Mitigation Trust Fund and thereby extend the term of this Agreement pursuant to Exhibits 3 and 4.

## 7. Joint Actions of State and Tribe

BPA and the Parties agree that the Tribe and State shall, pursuant to the Memorandum of Agreement between the Tribe and State, which is attached as Exhibit 5 and incorporated herein by reference, jointly take the following actions:

a. Identify particular wildlife mitigation measures to be implemented by Tribe or State;

b. Develop a plan to monitor and evaluate the respective activities of the Parties; and



c. Establish a single Dworshak Wildlife Mitigation Advisory Committee.

In the event that Tribe and State do not agree upon the actions set forth in paragraphs a, b, and c of this section, then Tribe and State shall refer the matter to three policy representatives. Tribe and State shall each select a policy representative, and Tribe and State shall ask the U.S. Fish and Wildlife Service Field Supervisor of the Boise Field Office of the U.S. Fish and Wildlife Service to select a third policy representative. If the Fish and Wildlife Service Field Supervisor does not select a third policy representative, then the representatives selected by the Tribe and State shall select a third representative. The three representatives shall then make a recommendation to the Party(ies) responsible for implementing the action(s) in question. The Party(ies) responsible for the action in question shall then make a final decision.

8. Dworshak Wildlife Mitigation Advisory Committee

a. Membership. Each of the following entities shall be entitled to appoint a representative to the Advisory Committee to serve at the appointing entity's expense: State of Idaho, Tribe, BPA, Council, Pacific Northwest Utilities Conference Committee (PNUCC), U.S. Fish and Wildlife Service, U.S. Forest Service, and the U.S. Army Corps of Engineers. The Parties may jointly agree to invite other entities to appoint representatives. The particular representatives are subject to approval of the Parties, and the Parties may require an appointing entity to appoint a different representative.

b. Annual Report. Each Party will develop and provide an Annual Report to the Advisory Committee at the end of each fiscal year (September 30) this Agreement is in effect. The Annual Reports shall address mitigation activities undertaken, wildlife benefits derived, and provide an accounting of revenues and expenditures in accordance with generally accepted accounting principles, along with

a listing of funds currently held by a trust of a Party. The Annual Reports shall also outline future activities, expected wildlife benefits, and their estimated costs.

c. Meetings. The Parties shall decide how to conduct meetings of the Advisory Committee. The State's representative shall serve as chairperson with regard to actions for which State has responsibility, and the Tribe's representative shall serve as chairperson with regard to actions for which Tribe has responsibility. The Committee shall develop and provide advice and guidance to the State and Tribe. The Advisory Committee will meet when requested by BPA or a Party. However, the Advisory Committee shall meet at least twice each fiscal year. The Advisory Committee may create technical working groups, with participants of such groups serving at their own expense.

#### 9. Dworshak Wildlife Mitigation Trust Funds

a. Separate Trust Funds. Tribe shall utilize all funds provided by BPA pursuant to this Agreement to establish and administer a trust fund entitled the Nez Perce Dworshak Wildlife Mitigation Trust Fund. (State shall utilize all funds provided by BPA pursuant to this Agreement to establish and administer a trust fund entitled the Idaho Dworshak Wildlife Mitigation Trust Fund.) BPA shall deposit funds in these trust funds pursuant to Exhibit 3, entitled "Funding of Nez Perce Dworshak Wildlife Mitigation Trust Fund," and Exhibit 4, entitled "Funding of Idaho Dworshak Wildlife Mitigation Trust Fund". (The Parties shall use principal, interest, and other earnings of each trust fund only for activities or actions to protect, mitigate, and enhance wildlife and wildlife habitat within State affected by the development of Dworshak Dam in accordance with the provisions of this Agreement and any subsequent agreements; and for the operation and maintenance of such mitigation actions.) Parties agree to undertake such mitigation actions in a manner that is consistent with the Council's Columbia River Basin Fish and Wildlife Program and the joint actions of Tribe and

State pursuant to section 7 of this Agreement. The Parties will also consult with the Dworshak Wildlife Mitigation Advisory Committee established pursuant to sections 7 and 8 of this Agreement for advice and guidance in designing and implementing such mitigation actions taken by the trusts.

b. Satisfaction of BPA Obligation. BPA will receive credit for wildlife mitigation undertaken with funds from BPA and the Trust Funds, and such mitigation actions will be used only to fully satisfy BPA's responsibilities to protect, mitigate, and enhance wildlife and wildlife habitat within the State affected by the development of Dworshak Dam.

c. Geographic Implementation Limits. The Parties agree that all such mitigation actions will be performed within the State of Idaho.

d. Public Access. Lands on which wildlife mitigation efforts under this Agreement are performed by Tribe shall be open during the term of this Agreement to the general public to the same extent that such lands are open to members of the Tribe. Lands on which wildlife mitigation efforts under this Agreement are performed by State shall be open during the term of this Agreement to the general public, including members of the Tribe, to the same extent that such lands are open to citizens of the State. Nothing in this Agreement shall be construed to affect the authority of Tribe or State with respect to hunting or fishing rights, management, or regulation.

e. Retained Ownership of a Party. During the term of this Agreement and following expiration of this Agreement, State or Tribe or their respective agents, successors, or assigns will retain ownership of real property and facilities that it or its agents, successors, or assigns has acquired or constructed with funds from the Trust or Trusts.

f. Operation and Maintenance. A Party shall, following expiration of the maximum possible period of this Agreement, continue the operation and

maintenance of mitigation actions undertaken under and during the term of this Agreement and retain and use funds from its Trust in accordance with respective State and/or Tribal Funding Agreements (Exhibits 3 and 4), to pay for such operation and maintenance. If funds in a trust fund are inadequate to pay for such operation and maintenance, BPA and the Parties do not have an obligation to deposit additional funds in such trust fund.

#### 10. Relationship to the Columbia River Basin Fish and Wildlife Program

The Parties shall undertake mitigation actions implemented pursuant to this Agreement in a manner consistent with the Council's Fish and Wildlife Program. Mitigation measures in the Council's Fish and Wildlife Program for Dworshak Dam will be given consideration as priority projects to be implemented under this Agreement. Neither BPA nor any Party shall submit, endorse, or support amendments to the Council's Fish and Wildlife Program that conflict with the intent, purpose, or terms of this Agreement.

#### 11. Hold Harmless and Indemnification

a. Satisfaction of BPA Responsibilities. The Parties agree that by entering this Agreement and funding the Trust Funds consistent with section 9 of this Agreement, Bonneville Power Administration (BPA) has satisfied for the term of the Agreement, any and all of BPA's responsibilities that can be performed under the Northwest Power Act for the protection, mitigation, and enhancement of wildlife and wildlife habitat affected by the development of Dworshak Dam and its hydroelectric facilities.

Subject to the limitations of State law, the State agrees to take lawful actions to indemnify and hold harmless BPA for the term of this Agreement from 60% of any and all claims, orders, adjudications, rules, suits, or actions, binding on BPA, whether

by State, Tribe, the Council, Federal and State agencies, tribes, fish and wildlife organizations, or any other entity or individual, that BPA has not satisfied any and all of its responsibilities that can be performed under the Northwest Power Act to protect, mitigate, and enhance wildlife and wildlife habitat in State affected by the development of Dworshak Dam, by taking the following actions: (i) using any and all funds from whatever source that the Idaho Department of Fish and Game (Department) and Idaho Fish and Game Commission (Commission) can use, transfer, assign, or authorize for use, or obtain by the exercise of lawful discretion, for wildlife mitigation at Dworshak Dam, (ii) using its best efforts to obtain appropriations and by giving priority to obtaining such appropriations, or (iii) identifying, assigning, and dedicating wildlife actions undertaken or to be undertaken by State with funds other than those in the Idaho Dworshak Wildlife Mitigation Trust Fund as undertaken or to be undertaken in satisfaction of BPA's responsibilities that can be performed under the Northwest Power Act for the protection, mitigation, and enhancement of wildlife and wildlife habitat affected by the development of Dworshak Dam and its hydroelectric facilities. In fulfilling its obligation under this paragraph, Department and Commission shall exercise their lawful discretion to utilize their budgetary authorities, including those described in Idaho Code 36-107(a)&(b). The Department and Commission shall modify existing budgets to assign and dedicate agency funds and agency actions for wildlife mitigation at Dworshak Dam to the extent required to indemnify and hold harmless BPA. To the extent required to indemnify and hold harmless BPA, State shall obtain and provide all approvals, decisions, and determinations needed to undertake the actions described in subsections (i), (ii), and (iii). Nothing in this Agreement shall be so construed or interpreted to commit or obligate unlawfully the State to expend funds which have not been appropriated or budgeted.

Tribe agrees to indemnify and hold harmless BPA for the term of this Agreement from 40% of any and all claims, orders, adjudications, rules, suits, or actions, whether by State, Tribe, the Council, Federal and State agencies, tribes, fish and wildlife organizations, or any other entity or individual, that BPA has not satisfied any and all of its responsibilities that can be performed under the Northwest Power Act to protect, mitigate, and enhance wildlife and wildlife habitat in Idaho affected by the development of Dworshak Dam.

This indemnification by State and Tribe includes responsibility for the area, amounts, and types of habitats identified in Exhibit 1 for any wildlife species associated with these habitats either specifically or not specifically described in this Exhibit. The Parties' maximum obligation under this section shall be to replace the lost habitat affected by the development of Dworshak Dam with an amount of habitat that has an equivalent biological carrying capacity.

b. To the extent consistent with existing applicable law, State and Tribe further agree that, during and after the term of this Agreement, State and Tribe will indemnify and hold harmless BPA from any and all claims, orders, adjudications, rules, suits, or actions, whether by State, Tribe, the Council, Federal and State agencies, tribes, fish and wildlife organizations, or any other entity or individual, that BPA should pay additional moneys for (i) mitigation actions undertaken under and during the term of this Agreement by that Party, (ii) the operation and maintenance of mitigation actions undertaken under and during the term of this Agreement by that Party, and (iii) damages to wildlife and wildlife habitat that were not mitigated as a result, directly or indirectly, of that Party's misuse, mismanagement, or negligent use of the trust funds, or as a result of negligent or improper conduct of protection, mitigation, and enhancement efforts undertaken during the term of this Agreement.

c. If BPA exercises its options to renew this Agreement for the maximum possible period of 60 years, then, during and after termination of this Agreement,

neither BPA nor any Party to this Agreement shall, directly or indirectly, (i) recommend to the Council or any other person or entity, (ii) endorse or support the recommendations or claims of others, or (iii) make any other claims that BPA should pay additional moneys for the protection, mitigation, and enhancement of wildlife affected by the development of Dworshak Dam, if such protection, mitigation, and enhancement can be performed under the Northwest Power Act. State shall actively oppose any claims that BPA should pay additional moneys for the protection, mitigation, and enhancement of wildlife affected by the development of Dworshak Dam, if such protection, mitigation, and enhancement can be performed under the Northwest Power Act.

d. The BPA and Parties do not intend that this Agreement create or confer rights upon third party beneficiaries of any sort whatsoever.

e. BPA and each Party shall retain its own attorneys and pay its own legal fees and costs.

## 12. Choice of Law

Federal law shall govern. If state law applies, this Agreement shall be interpreted under the law of the State. If Tribal law applies, this Agreement shall be interpreted under the law of the Tribe.

## 13. Enforcement of Agreement against BPA

BPA waives its sovereign immunity from suit for the purpose of any claims or actions by Tribe or State arising out of this Agreement, whether for equitable relief or damages, and consents to such suit in any Federal court of competent jurisdiction.

14. Enforcement of Agreement against Idaho

The Parties and BPA agree that this Agreement is enforceable by the Parties and BPA against Idaho in any court of competent jurisdiction, whether for equitable relief or damages.

15. Enforcement of Agreement against Tribe

Tribe hereby waives its sovereign immunity from suit for the purposes of any claims, suits or actions by BPA against the Tribe arising out of this agreement, whether for equitable relief or damages, and consents to assertion of such claims in any Federal or Tribal court of competent jurisdiction to the extent described in this section 15.

a. In the event of any third party claim that falls within the scope of paragraph 11(a) of this agreement, the Tribe's waiver is to the extent of damages not to exceed the value of the funds remaining in the Nez Perce Wildlife Mitigation Trust Fund and assets purchased by Tribe with Trust Fund moneys.

(1) In the event of any third party claim that falls within the scope of paragraph 11(a), and that BPA refers to the Tribe pursuant to the provisions of that paragraph, BPA and Tribe agree that each will provide the other such information, materials, documents, records and other assistance as may be necessary and requested by the other to defend against that claim. The Tribe and BPA agree they will work cooperatively to defend any third party claim.

(2) BPA warrants that there are presently no third party claims of the type described in paragraph 11(a) filed, existing, anticipated or otherwise known to BPA and that BPA will immediately notify the Tribe as soon as it becomes aware of any such claims.

b. In the event of claims for damages that fall within the scope of paragraph 11(b) of this Agreement, the Tribe's waiver shall be to the extent of any actual



damages resulting from intentional wrongful acts or negligence of Tribe that are alleged and proven by BPA at trial or agreed to by the Tribe in any stipulation.

c. If it is determined, either by stipulation of BPA and Tribe or by court decision, that the Tribe has a responsibility for damages for intentional wrongful acts or negligence under paragraph 11(b) of this Agreement, then Tribe shall assign, dedicate, and pay a portion of its annual revenues directly into the Nez Perce Dworshak Wildlife Mitigation Trust Fund until such time as the responsibility is satisfied.

(1) The portion of the annual revenues to be paid annually under this section shall be not less than that amount which represents one-tenth of the total amount the Tribe is responsible to pay.

(2) The obligation of the Tribe to assign, dedicate, and pay a portion of its annual revenues shall arise in the Tribal fiscal year (Oct. 1 - Sept. 30) immediately following any stipulation or court decision in which it is determined that Tribe is responsible for damages. Following any judgment against the Tribe for damages for intentional wrongful acts or negligence under paragraph 11(b) of this Agreement, BPA may place a judgment lien on the Tribe's annual revenues, to ensure payment consistent with this section 15.

(3) As used in this section, "annual revenues" means all income, dividends, receipts, and other assets that Tribe collects or receives or has a right to collect or receive, including accounts receivable and contract rights from the enterprises it operates, at the time of any stipulation or judgment described in subsections 15(b) and (c) is entered into or rendered. "Annual revenues" includes funds held by those enterprises that are subject to payment to the Tribe upon the Tribe's request.

d. If BPA believes that Tribe has failed to substantially comply with the terms and provisions of any stipulation or judgment pertaining to the Tribe's

responsibilities under paragraph 11(b), BPA shall serve written notice to the Tribe in which the failure to comply is identified. Such notice shall be by certified mail, return receipt requested, addressed to the Tribe's representative identified pursuant to section 4 of this Agreement. Upon receipt of such notice, the Tribe shall have up to ninety days to remedy the problem identified. The failure of the Tribe to remedy the problem within that time frame is grounds for rescission by BPA of the contractual relationship between BPA and Tribe described by this Agreement.

#### 16. Invalidity

In the event any part, term, or provision of this Agreement is determined by a court of competent jurisdiction to be void, voidable, unenforceable, illegal, or in conflict with any applicable law, then such determination shall not affect the remaining provisions of this Agreement. If the court's ruling includes a determination that the principal purpose or intent of this Agreement is defeated, or that any of the indemnification and hold harmless provisions of the Agreement are void, voidable, unenforceable, illegal, or in conflict with any applicable law, then each party to this Agreement shall appeal any such adverse determination at its own expense. However, BPA and the Parties may by mutual agreement decide not to appeal any such adverse determination. If all parties agree not to appeal, or appeals are unsuccessful, and the adverse determination remains in effect, and if BPA and the Parties do not agree to amendments to this Agreement so that the Agreement is consistent with such adverse determination, then, within 60 days after the decision not to appeal or exhaustion of opportunities for appeal, Parties will pay to BPA (1) the amount of money in the Trust funds in the Parties' control or custody, less obligations to the extent they are unconditional and cannot be reduced or revoked, at the time of the initial adverse determination, plus (2) earnings, if any, from the Trust Fund in a Party's control or custody from the time of the initial adverse determination to the

time of exhaustion of opportunity for appeal or the decision not to appeal, less obligations on such earnings to the extent they are unconditional and cannot be reduced or revoked, plus (3) any payments made by BPA to the Party during the period of appeal. If the above obligation to return money to BPA causes a burden on continuing mitigation efforts during the period of appeal, then BPA and a Party may mutually agree on (1) mitigation efforts that should continue, and (2) the amount of moneys from the Party's Wildlife Mitigation Trust Fund that will be spent on such continuing mitigation efforts. All moneys then remaining in the Party's Wildlife Mitigation Trust Fund at the time of exhaustion of opportunity for appeal, less obligations to the extent they are unconditional and cannot be reduced or revoked, will be paid to BPA. In addition, BPA and a Party will agree on the disposition or retention of real property and facilities and personal property acquired or constructed with funds from a Trust Fund. After a Party makes such payment to BPA, as established above, and closes out its Wildlife Mitigation Trust Fund, and the disposition of real and personal property is completed, this Agreement will terminate and the BPA and Parties will not continue to incur any liabilities or obligations pursuant to this Agreement.

#### 17. Miscellaneous Provisions

a. **Public Planning.** The Parties shall establish an open and public planning and implementation process which shall be consistent with applicable Federal, State and Tribal laws, rules and regulations respecting the environment.

b. **Regional Fishery Benefits.** BPA and the Parties recognize that mitigation efforts undertaken pursuant to this Agreement may also produce benefits to regional fisheries. The Parties agree that BPA is also entitled to fishery mitigation credit to the extent that efforts of the Parties yield such benefits.

c. Water Rights. The Parties recognize that acquisition of water rights associated with real property acquired pursuant to this Agreement is desirable. The Parties recognize that use of such water rights to benefit wildlife and anadromous fish is desirable.

18. Application when one but not both Parties has signed this Agreement

During such period that only one but not both Parties has signed this agreement, then the terms "Party" and "Parties" shall mean the Party that has signed this Agreement, and this Agreement shall apply in its entirety, except as expressly modified in subsections 18(a) and (b) below:

(a) During such period that Tribe but not State has signed this Agreement,

(i) section 9(b) is modified to read as follows:

Satisfaction of BPA Obligation. BPA will receive credit for wildlife mitigation undertaken with funds from BPA and the Trust Funds, and such mitigation actions will be used only to fully satisfy forty percent (40%) of BPA's responsibilities to protect, mitigate, and enhance wildlife and wildlife habitat within the State affected by the development of Dworshak Dam.

(ii) section 11(a) is modified to read as follows:

Satisfaction of BPA Responsibilities. The Parties agree that by entering this Agreement and funding its Trust consistent with Section 9 of this Agreement and the Memorandum of Agreement between State and Tribe (Exhibit 5), that BPA has satisfied, for the term of the Agreement, forty percent (40%) of any and all of BPA's responsibilities that can be performed under the Northwest Power Act for the protection, mitigation, and enhancement of wildlife and wildlife habitat affected by the development of Dworshak Dam and its hydroelectric facilities.

Tribe agrees to indemnify and hold harmless BPA for the term of this Agreement from 40% of any and all claims, orders, adjudications, rules, suits, or actions, whether by State, Tribe, the Council, Federal and State agencies, tribes, fish and wildlife organizations, or any other entity or individual, that BPA has not satisfied any and all of its responsibilities that can be performed under the Northwest Power Act to protect, mitigate, and enhance wildlife and wildlife habitat in Idaho affected by the development of Dworshak Dam.

This indemnification by State and Tribe includes responsibility for the area, amounts, and types of habitats identified in Exhibit 1 for any wildlife species associated with these habitats either specifically or not specifically described in

this Exhibit. The Parties' maximum obligation under this section shall be to replace 40 percent (40%) of the lost habitat affected by the development of Dworshak Dam with an amount of habitat that has an equivalent biological carrying capacity.

(b) During such period that State but not Tribe has signed this Agreement,

(i) section 9(b) is modified to read as follows:

Satisfaction of BPA Obligation. BPA will receive credit for wildlife mitigation undertaken with funds from BPA and the Trust Funds, and such mitigation actions will be used only to fully satisfy sixty percent (60%) of BPA's responsibilities to protect, mitigate, and enhance wildlife and wildlife habitat within the State affected by the development of Dworshak Dam.

(ii) section 11(a) is modified to read as follows:

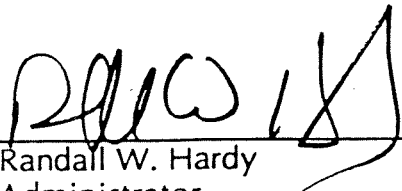
Satisfaction of BPA Responsibilities. The Parties agree that by entering this Agreement and funding its Trust consistent with Section 9 of this Agreement and the Memorandum of Agreement between State and Tribe (Exhibit 5), that BPA has satisfied, for term of the Agreement, sixty percent (60%) of any and all of BPA's responsibilities that can be performed under the Northwest Power Act for the protection, mitigation, and enhancement of wildlife and wildlife habitat affected by the development of Dworshak Dam and its hydroelectric facilities.

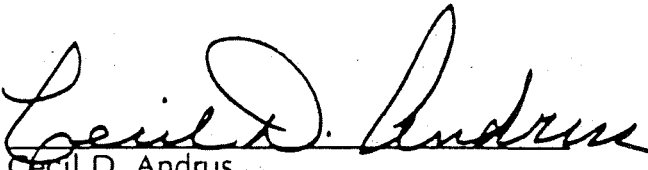
Subject to the limitations of State law, the State agrees to take lawful actions to indemnify and hold harmless BPA for the term of this Agreement from 60% of any and all claims, orders, adjudications, rules, suits, or actions, binding on BPA, whether by State, Tribe, the Council, Federal and State agencies, tribes, fish and wildlife organizations, or any other entity or individual, that BPA has not satisfied any and all of its responsibilities that can be performed under the Northwest Power Act to protect, mitigate, and enhance wildlife and wildlife habitat in State affected by the development of Dworshak Dam by taking the following actions: (i) using any and all funds from whatever source that the Idaho Department of Fish and Game (Department) and Idaho Fish and Game Commission (Commission) can use, transfer, assign, or authorize for use, or obtain by the exercise of lawful discretion, for wildlife mitigation at Dworshak Dam, (ii) using its best efforts to obtain appropriations and by giving priority to obtaining such appropriations, or (iii) identifying, assigning, and dedicating wildlife actions undertaken or to be undertaken by State with funds other than those in the Idaho Dworshak Wildlife Mitigation Trust Fund as undertaken or to be undertaken in satisfaction of BPA's responsibilities that can be performed under the Northwest Power Act for the protection, mitigation, and enhancement of wildlife and wildlife habitat affected by the development of Dworshak Dam and its hydroelectric facilities. In fulfilling its obligation under this paragraph, Department and Commission shall exercise their lawful discretion to utilize their budgetary authorities, including those described in Idaho Code 36-107(a)&(b). The Department and Commission shall modify existing budgets to assign and dedicate agency funds and agency actions for wildlife mitigation at Dworshak Dam to the extent required to indemnify and

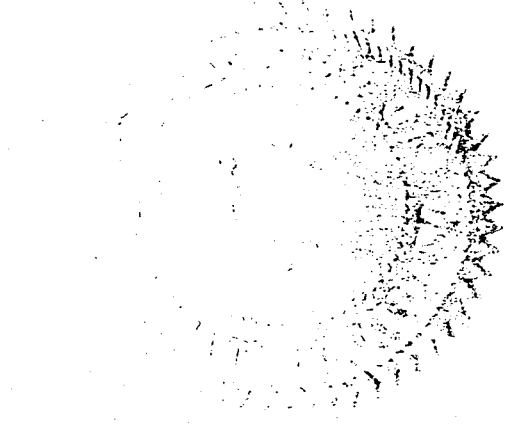
hold harmless BPA. To the extent required to indemnify and hold harmless BPA, State shall obtain and provide all approvals, decisions, and determinations needed to undertake the actions described in subsections (i), (ii), and (iii). Nothing in this Agreement shall be so construed or interpreted to commit or obligate unlawfully the State to expend funds which have not been appropriated or budgeted.

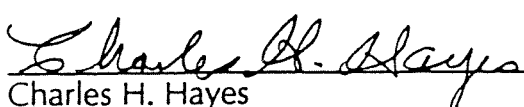
This indemnification by State and Tribe includes responsibility for the area, amounts, and types of habitats identified in Exhibit 1 for any wildlife species associated with these habitats either specifically or not specifically described in this Exhibit. The Parties' maximum obligation under this section shall be to replace 60 percent (60%) of the lost habitat affected by the development of Dworshak Dam with an amount of habitat that has an equivalent biological carrying capacity.

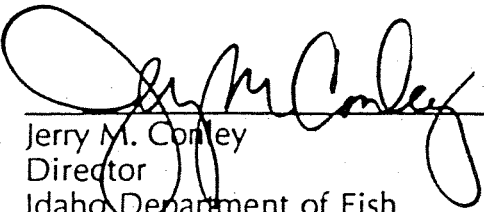
IN WITNESS WHEREOF, the parties have executed this Agreement this 10th day of March, 1992, in Lewiston, Idaho.

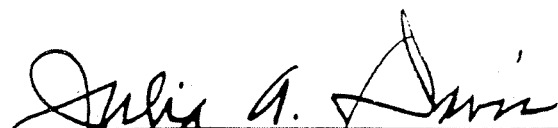
  
\_\_\_\_\_  
Randall W. Hardy  
Administrator  
Bonneville Power Administration

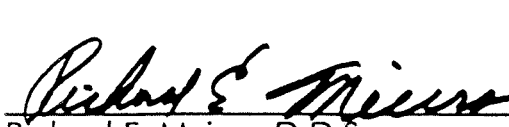
  
\_\_\_\_\_  
Cecil D. Andrus  
Governor  
State of Idaho

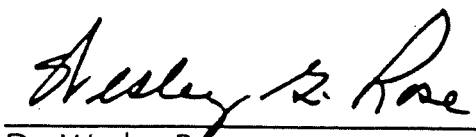



  
\_\_\_\_\_  
Charles H. Hayes  
Chairman, Nez Perce  
Tribal Executive Committee  
Nez Perce Tribe


  
\_\_\_\_\_  
Jerry M. Conley  
Director  
Idaho Department of Fish  
and Game

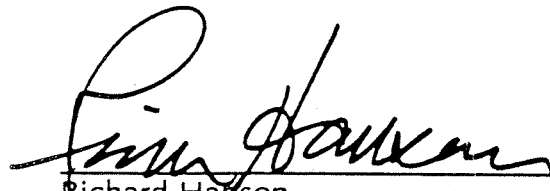
  
 \_\_\_\_\_  
 Julia A. Davis  
 Secretary, Nez Perce  
 Tribal Executive Committee  
 Nez Perce Tribe

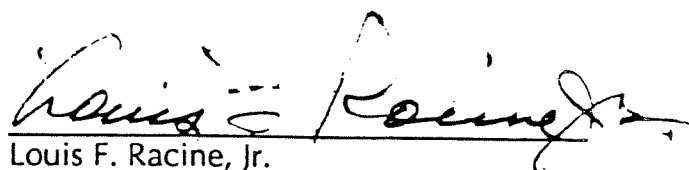
  
 \_\_\_\_\_  
 Richard E. Meiers, D.D.S.  
 Chairman, Idaho Fish and Game  
 Commission

  
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 Dr. Wesley Rose  
 Vice-Chairman, Idaho Fish and Game  
 Commission

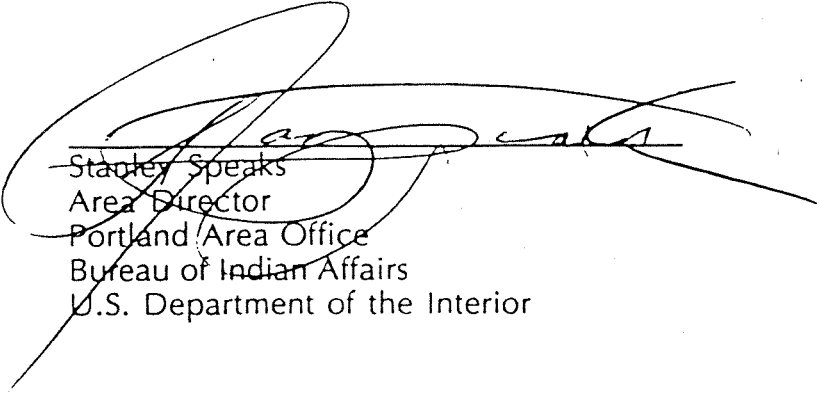
  
 \_\_\_\_\_  
 Keith Carson  
 Member, Idaho Fish and Game  
 Commission

  
 \_\_\_\_\_  
 Norman H. Guth  
 Member, Idaho Fish and Game  
 Commission

  
 \_\_\_\_\_  
 Richard Hanson  
 Member, Idaho Fish and Game  
 Commission

  
 \_\_\_\_\_  
 Louis F. Racine, Jr.  
 Member, Idaho Fish and Game  
 Commission

This Agreement is hereby approved and declared to be made in accordance with the law and the rules and regulations prescribed by the Secretary of the Interior thereunder, and now in force.



~~Stanley Speaks~~  
Area Director  
Portland Area Office  
Bureau of Indian Affairs  
U.S. Department of the Interior



# Exhibit 1

Wildlife Impact Assessment -  
Dworshak Reservoir (Phases I and II)

## Exhibit 2

Tribal Executive Committee Resolution

## R E S O L U T I O N

WHEREAS, the Nez Perce Tribal Executive Committee has been empowered to act for and in behalf of the Nez Perce Tribe, pursuant to the Revised Constitution and By-Laws, adopted by the General Council of the Nez Perce Tribe, on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961; and

WHEREAS, the Nez Perce Tribe (Tribe) has approved entering into an agreement with Bonneville Power Administration (BPA) regarding Wildlife Mitigation for Dworshak Reservoir by resolution 92-92; and

WHEREAS, the Idaho Department of Fish and Game (State) and the BPA had not fully agreed to terms when the Tribe reached agreement with BPA; and

WHEREAS, the Tribe and the State will be signing the same agreement with Bonneville Power Administration, changes in language that have been introduced through additional negotiations with the State and BPA need the review of the Tribe; and

WHEREAS, the language changes in subsequent drafts of the agreement are significant, compared with the language contained in the draft initially approved by resolution 92-92; and

WHEREAS, resolution 92-92 only empowered the Chairman to review and approve minor modifications; and

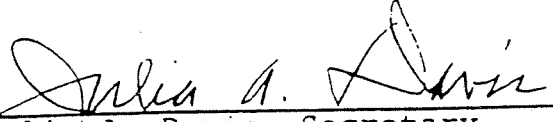
WHEREAS, the final draft includes changes relating almost exclusively to terms affecting Idaho Department of Fish and Game.

NOW, THEREFORE, BE IT RESOLVED, that the Tribe accepts the changes made in the final draft of the Dworshak Wildlife Mitigation Agreement and authorizes the Chairman and Secretary to sign the Agreement.

## C E R T I F I C A T I O N

The foregoing resolution was duly adopted by the Nez Perce Tribal Executive Committee meeting in Special Session, February 25, 26, 27, 1992, in the Richard A. Halfmoon Council Chambers, Lapwai, Idaho, a quorum of its members being present and voting.

BY:

  
 Julia A. Davis, Secretary

ATTEST:

  
 Charles H. Hayes, Chairman

## Exhibit 3

Funding of Nez Perce Dworshak  
Wildlife Mitigation Trust Fund

### EXHIBIT 3

#### FUNDING OF NEZ PERCE DWORSHAK WILDLIFE MITIGATION TRUST FUND

The following conditions shall apply to the Nez Perce Dworshak Wildlife Mitigation Trust Fund established pursuant to section 9 of this Agreement.

##### 1. Payments and Term of Agreement

a. Initial Payment and Term. On or before March 31, 1992, BPA will pay the Tribe the amount of \$ 500,000 for deposit in the Nez Perce Wildlife Mitigation Fund, and this Agreement shall remain effective for an initial term ending 6 months after BPA, in compliance with the National Environmental Policy Act, completes environmental analysis of this Agreement's creation of the Nez Perce Dworshak Wildlife Mitigation Trust Fund and issues a record of decision on such analysis. During this initial term, any expenditure by Tribe shall be consistent with Title 40, section 1506.1 of the Code of Federal Regulations, which is entitled "Limitations on actions during NEPA process". BPA will commence its environmental analysis by April 30, 1992. BPA will exert its best efforts to issue a record of decision as soon as possible.

b. Option for Additional Payment and Extension of Term for 60 years. If, prior to expiration of the initial term of this Agreement described in section 1.a. of this Exhibit 3, BPA deposits in the Nez Perce Dworshak Wildlife Mitigation Trust Fund the sum of \$ 6,600,000, then the term of this Agreement shall be 60 years from the date on which this Agreement first becomes effective.

c. BPA Failure to Exercise Option. If BPA does not exercise its option for extension, then the Tribe will retain the moneys paid by BPA into the Trust Fund and use such moneys on activities within the Columbia River Basin and the State that protect, mitigate, and enhance wildlife and wildlife habitat within State affected by the development of Dworshak Dam. BPA will receive credit for all wildlife mitigation undertaken with funds from BPA and the Trust Fund.

d. Upon expiration of this Agreement, the Parties shall not continue to incur liabilities and obligations pursuant to this Agreement, except for the provisions of section 9(f) of this Agreement and section 2.b of Exhibit 3 of this Agreement pertaining to operation and maintenance of mitigation actions undertaken and those provisions of sections 11(b) and 11(c) pertaining to Hold Harmless and Indemnification.

2. Management and Investment of the Wildlife Mitigation Trust

a. Standards. All funds placed in the Nez Perce Dworshak Wildlife Mitigation Trust Fund shall be deposited with the Nez Perce Tribe Finance Manager, and such funds and any property acquired by the trust fund shall be invested and managed in accordance with the Prudent Man Investment Act, as currently codified at Idaho Code 68-501 through 68-506, and other applicable Federal, State, and Tribal laws, rules and regulation governing such activity. Such rules and regulations shall, as appropriate, be approved by the Bureau of Indian Affairs. Property acquired by the Trust Fund and proceeds from such property shall be used in accordance with this Agreement for the benefit of wildlife.

b. Reserve. Following expiration of the maximum possible period of this Agreement (60 years), the Tribe shall continue to administer the Trust, and will retain unobligated moneys in the Trust in an amount adequate to provide earnings sufficient to pay for the operation and maintenance of mitigation actions undertaken under and during the term of this Agreement. If funds in a trust fund are inadequate to pay for such operation and maintenance, BPA and the Parties do not have an obligation to deposit additional funds in such trust fund. If earnings from the Trust exceed the amount necessary to pay for the operation and maintenance of mitigation actions undertaken, then the Tribe may spend such excess funds on additional activities within the State that further protect, mitigate, and enhance wildlife and wildlife habitat.

## Exhibit 4

Funding of Idaho Dworshak  
Wildlife Mitigation Trust Fund

## EXHIBIT 4

### FUNDING OF IDAHO DWORSHAK WILDLIFE MITIGATION TRUST FUND

The following conditions shall apply to the Idaho Dworshak Wildlife Mitigation Trust Fund established pursuant to section 9 of this Agreement.

#### 1. Payments and Term of Agreement

a. Initial Actions and Term. On or before March 31, 1992, BPA will acquire title to real property commonly known as the Pene Lands, which is more particularly described in Attachment A to this Exhibit 4. On or before March 31, 1992, BPA will acquire the Dworshak Old Growth timber on a tract of land commonly known as the Buck Creek Old Growth lands, which is more particularly described in Attachment B to this Exhibit 4. These lands are subject to any easements, liens, encumbrances, or limitations described in Attachments A and B. Prior to transfer of these lands to State pursuant to section 1(b) of this Exhibit 4, State and BPA may agree to amend the real property descriptions in Attachments A and B to allow, for example, the exchange of a parcel of land for another parcel of land of comparable wildlife habitat value following consultation with the Dworshak Wildlife Mitigation Advisory Committee. On or before March 31, 1992, or as soon as possible thereafter, BPA will enter into services contracts with State for the preservation of these interests. These contracts will provide for preservation at a total cost of not more than \$400,000 per year. The services contracts shall be for a period beginning on or about April 1, 1992, and ending June 30, 1994, with an option for extension by BPA if BPA needs additional time to complete the environmental analysis and issue a record of decision described in the following paragraph of this section 1(a) of Exhibit 4 of this Agreement.

As a consequence of acquisition by BPA of these tracts and of entering into the services contracts, this Agreement shall remain effective for an initial term ending 6 months after BPA, in compliance with the National Environmental



Policy Act, completes environmental analysis of this Agreement's creation of the Idaho Dworshak Wildlife Mitigation Trust Fund and issues a record of decision on such analysis. During this initial term, any expenditure by State shall be consistent with Title 40, section 1506.1 of the Code of Federal Regulations, which is entitled "Limitations on actions during NEPA process." BPA will commence its environmental analysis by April 30, 1992. BPA will exert its best efforts to complete its environmental analysis and issue a record of decision as soon as possible.

b. Option for Extension of Term for 60 years. If, prior to expiration of the initial term of this Agreement described in section 1.a. of this Exhibit 4, BPA deposits in the Idaho Dworshak Wildlife Mitigation Trust Fund the sum of \$ 3,019,000 and conveys by quitclaim deed to State BPA's interest in the Dworshak Old Growth lands and Pene Lands, then the term of this Agreement shall be 60 years from the date on which this Agreement first becomes effective.

c. BPA Failure to Exercise Option. If BPA does not exercise its option for extension, then the State will retain the moneys paid by BPA pursuant to the services contracts and use any remaining moneys on activities within the Columbia River Basin and the State that protect, mitigate, and enhance wildlife and wildlife habitat within State affected by the development of Dworshak Dam. BPA will receive credit for all wildlife mitigation undertaken with funds from BPA and the Idaho Dworshak Wildlife Mitigation Trust Fund.

d. Upon expiration of this Agreement, the Parties shall not continue to incur liabilities and obligations pursuant to this Agreement, except for the provisions of section 9(f) of this Agreement and section 2.b of Exhibit 4 of this Agreement pertaining to operation and maintenance of mitigation actions undertaken and those provisions of sections 11(b) and 11(c) pertaining to Hold Harmless and Indemnification.

## 2. Management and Investment of the Wildlife Mitigation Trust

a. Standards. All funds placed in the Idaho Dworshak Wildlife Mitigation Trust Fund shall be deposited with the Fish and Game Expendable Trust Fund, and such funds and any property acquired by the trust fund, as well as property conveyed by BPA to State pursuant to this Agreement, shall be invested and managed in accordance with the Prudent Man Investment Act, codified at Idaho Code 68-501 through 68-506, and other applicable Federal and State laws, rules and regulations governing such activity. Property placed in or acquired by the Trust Fund shall be held by the State in trust for the benefit of BPA and fish and wildlife.

b. Reserve. Following expiration of the maximum possible period of this Agreement (60 years), the State shall continue to administer the Trust, and will retain unobligated moneys in the Trust in an amount adequate to provide earnings sufficient to pay for the operation and maintenance of mitigation actions undertaken under and during the term of this Agreement. If funds in a trust fund are inadequate to pay for such operation and maintenance, BPA and the Parties do not have an obligation to deposit additional funds in such trust fund. If earnings from the Trust exceed the amount necessary to pay for the operation and maintenance of mitigation actions undertaken, then the State may spend such excess funds on additional activities within the State that further protect, mitigate, and enhance wildlife and wildlife habitat.

TO PURCHASE AND SALE AGREEMENT  
BY AND BETWEEN AETNA LIFE INSURANCE COMPANY ("SELLER")  
AND THE CONSERVATION FUND ("PURCHASER")

LAND

EXHIBIT "A"

SITUATE IN THE COUNTY OF NEZ PERCE, STATE OF IDAHO, TO-WIT:

PARCEL C:

Township 29 North, Range 3 West of the Boise Meridian:

Section 6: Lots 1, 2, 3, 4, 5, 9 and 10; SEXNW~~X~~, EXSW~~X~~,  
and NW~~X~~SE~~X~~

Section 7: Lot 3

PARCEL D:

Township 30 North, Range 3 West of the Boise Meridian:

Section 5: Lots 3 and 4

Section 6: Lots 1, 2, 3, 4, 8, 9; SEXNW~~X~~, SW~~X~~NEX~~X~~, NW~~X~~SE~~X~~  
and EXSW~~X~~

Section 7: Lots 3, 4, 9, 10, and NEXNW~~X~~

Section 18: Lots 3, 6, 7, 8, and 9

Section 19: Lots 3, 4, 9, 10 and EXSW~~X~~

Section 29: SW~~X~~SW~~X~~

Section 30: Lots 3, 4; W~~X~~NEX~~X~~, EXNW~~X~~, EXSW~~X~~ and SE~~X~~

Section 31: Lots 2, 3, 4; EXW~~X~~ and EX

Section 32: NW~~X~~ and NW~~X~~SW~~X~~, EXCEPT NEXNW~~X~~NEXNW~~X~~ and NW~~X~~NEXNEXNW~~X~~

PARCEL E:

Township 30 North, Range 4 West of the Boise Meridian:

- Section 1: Lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, SWX and WXSEX
- Section 2: Lots 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, and SX
- Section 3: Lots 3, 4, 5, 9, 12, NWXSWX, SEXSWX, SWXSEX and EXSEX
- Section 4: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, NEXSWX, and NXSEX
- Section 9: EXNEX, EXSWX and SEX
- Section 10: All of Section 10
- Section 11: All of Section 11
- Section 12: WXNEX, NWX, NEXSWX, SXSWX, and SEX
- Section 13: All of Section 13
- Section 14: SXNEX, NWX, NXSWX and SEX
- Section 15: NWX, SXSWX, SWXSEX, and NWXSWX
- Section 17: EXWX, WXEX, and EXSEX
- Section 20: Lots 1, 2, 3, SEXNWX, SXNEX, and SEX
- Section 21: Lots 2, 3, 4, SXNWX, SWXNEX, SWX, and WXSEX
- Section 22: Lots 1 and 2, SXNEX, and SX
- Section 23: All of Section 23
- Section 24: All of Section 24
- Section 25: NX, NXSEX, and SEXSEX
- Section 26: NXNEX, WX, WXSEX, and SEXSEX

PARCEL E: (continued)

Section 27: NX, SWX, WXSEX, and SEXSEX  
Section 28: EXWX, SEXNEX, EXSEX, and WXEX  
Section 33: NEX  
Section 34: NX, NXSX, and SEXSEX  
Section 35: NEX, NWXNWX, SEXNWX, and SX

PARCEL F:

Township 31 North, Range 3 West of the Boise Meridian:

Parcel 1:

Section 4: SWXSWX and SWXSEX  
Section 5: EXSWX and SEX  
Section 6: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, and 17;  
Section 7: Lots 10, 11 and SWXSEX  
Section 8: WXWX and NEXNWX  
Section 9: EX  
Section 16: EXNEX  
Section 18: Lots 1, 2, 3, 5, 6, NXNEX, SWXNEX, SWXSEX  
Section 19: Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12;  
WXNEX, and SEX  
Section 20: WXSX  
Section 21: SXSEX  
Section 28: NXNEX  
Section 29: WX, WXEX  
Section 30: Lots 1, 2, 3, 4; EXWX, NEX, NWXSEX, and SXSEX  
Section 31: Lots 1 and 3, NEXNWX, EXSWX, and EX  
Section 32: WX, WXNEX, and NWXSEX

PARCEL F: (continued)

Parcel 2:

- Section 4: Government Lots 4, 5, 12, 13, 14, 15, NXSWX, SEXSWX, and NWXSEX; EXCEPTING from all the Bonanza Lode, Giant Lode Deposit No. 1 Lode and Paris Lode Mining Claims.
- Section 5: Government Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and WXSX
- Section 6: Government Lots 10, 18, 19 and SEX
- Section 7: Government Lots 1, 2, 5, 6, 7, 8, 12, NEX, NXSEX and SEXSEX
- Section 8: SEXNW, SXNEX, EXSW, and SEX
- Section 9: NEXNW, SXNW, and SW
- Section 17: All of Section 17
- Section 18: Government Lot 7, SEXNEX, NXSEX, and SEXSEX; EXCEPT the Evening Star Lode Mining Claim
- Section 19: EXNEX
- Section 20: NXN, SWXNW, SEXNEX, and EXSEX
- Section 21: NX, SW, NXSEX
- Section 28: Government Lots 1, 2, 3, NW, SWXNEX, NXSW

Parcel 3:

- Section 29: EXNEX, NEXSEX

PARCEL G:

Township 29 North, Range 4 West of the Boise Meridian:

- Section 1: All of Section 1
- Section 2: Lots 1, 2, 3, 4; SXNEX, and SX
- Section 3: Lot 1, and NEXSEX
- Section 11: NXNW, SEXNW, NEX, and NXSEX
- Section 12: NXNEX and NW

PARCEL H:

Township 32 North, Range 3 West of the Boise Meridian:

Parcel 1:

- Section 4: Lots 3, 4, SXNX, and EXSEX
- Section 5: WXSXX, EXSWX, Lots 3 and 4; SXNWX
- Section 6: Lots 1, 2, 4, 5, 6, 7; SEXNWX, SXNEX, and SEXSWX
- Section 7: Lots 1, 2, 3, 4; EXNWX, NEXSWX, SEX, SEXSWX
- Section 8: SWXNEX, and WXSEX
- Section 9: EXNEX, SXNWX, NXSWX, and SWXSWX
- Section 21: WXNEX, SWX, SWXSEX
- Section 28: WXNEX
- Section 29: WX
- Section 30: Lots 3, 4, EXSWX and SEX
- Section 31: All of Section 31
- Section 32: NX, and SEX
- Section 33: SXNWX, and NXSWX

Parcel 2:

- Section 6: SEX, NEXSWX, Lot 3 EXCEPT beginning at the Northwest corner of said Lot 3, thence South along the West line of said Lot 3 a distance of 660 feet to a point, thence East 400 feet more or less to the East bank of Webb Creek, thence in a Northerly direction on and along the East bank of Webb Creek to a point on the North line of Lot 3, thence West on and along the North line of Lot 3 a distance of 314 feet more or less to the place of beginning.
- Section 17: NWXSWX
- Section 18: NEX, SEX, EXSWX, and NEXNWX
- Section 19: NX
- Section 20: NWXNWX
- Section 33: SWXSWX

PARCEL J:

Township 33 North, Range 3 West of the Boise Meridian:

Section 31: Lots 2, 3, 4; SXNEXNW, SEXNW, EXSW, SXNEX and SEX

Section 32: Lot 4, WXNW, and NWXSW, EXCEPT that portion heretofore conveyed to F. D. Warner by Instrument recorded in Book 84 of Deeds at page 14 on September 14, 1905.

PARCEL K:

Township 33 North, Range 3 West of the Boise Meridian:

Section 36: Lots 3 and 4

PARCEL L:

Township 31 North, Range 4 West of the Boise Meridian:

Section 1: Lots 1, 2, 3; SXNEX, SEXNW, EXSW, SEX, and WXSW

Section 2: Lot 4, SWXNW, NXSW

Section 3: Lot 1, SEXNEX, and SEX

Section 4: Lots 1, 2, 4; SXNEX, SWXNW, SWXSW and EXSW

Section 5: Lots 1, 2, 3, 4, SEXNEX and EXSEX

Section 8: NEXSEX

Section 9: NWXNW, WXSW, and SEXSW

Section 10: NXNX, SWXNEX, SEXNW, NEXSW, and SEX

Section 11: SW, SWXSEX, SXNEX, NXSEX, SEXSEX

Section 12: NEXNEX, WXNEX, EXNW, WXNW, SW WXSEX, SEXSEX

Section 13: SXNW, SWXSW, Lots 2, 3, 4, SWXNEX, NXSW, SEXSW, and NWXSEX

Section 14: Lot 1, SEXNEX, SX and NXNW

Section 15: EXEX, NWXNEX, SWXSEX and WX



PARCEL L: (continued)

Section 21: EXNEX

Section 22: All of Section 22

Section 23: All of Section 23

Section 24: All of Section 24

Section 25: All of Section 25

Section 26: All of Section 26

Section 27: EX

Section 32: NXNEX

Section 33: WXNW, SW, and NWSEX

Section 34: WXNEX, and NXSEX

Section 35: EXNEX, NXSW, SEXSW, and SEX

Section 36: NXNEX

PARCEL N:

Township 32 North, Range 4 West of the Boise Meridian:

Parcel 1:

- Section 1: Lots 1, 2, 3, 4, 5, 6, 7, SWXNEX, SXNWX, SWX, and WXSEX
- Section 2: Lots 1, 2, 3, 4, and SXNX, EXSWX SEX
- Section 3: Lots 1 and 2, SXNEX, and SEX
- Section 4: SEXSWX, and SWXSEX
- Section 8: SEXNEX, SWXSEX, and EXSEX
- Section 9: NEXNEX, SXNEX, WX, SEX
- Section 10: All of Section 10
- Section 11: NWX, SXSWX, except SWXSWXSWX; EXSEX, and NXNEX
- Section 12: Lot 1 and SWX
- Section 13: SWX Except that part of the SWX of Section 13 of Township 32 North, Range 4 West, B.M., Nez Perce County, Idaho, more particularly described as follows: Beginning at the Northwest corner of said SWX; thence Easterly along the North line of said SWX a distance of 0.87 feet; thence South  $0^{\circ} 14' 05''$  West a distance of 173.16 feet to a point on the West line of said SWX; thence North  $0^{\circ} 03' 06''$  West along said West line a distance of 173.16 feet to the place of beginning.
- Section 14: WX Except That part of the SWX of Section 14 of Township 32 North, Range 4 West, B.M., Nez Perce County, Idaho, more particularly described as follows: Beginning at the Northeast corner of said SWX; thence South  $89^{\circ} 55' 48''$  West a distance of 14.66 feet; thence South  $0^{\circ} 14' 05''$  West a distance of 2633.27 feet; thence South  $89^{\circ} 59' 01''$  East a distance of 20.53 feet to a point on the East line of said SWX; thence North  $0^{\circ} 06' 26''$  East along said East line a distance of 2633.27 feet to the true place of beginning.
- Section 15: EXNEX, SWXNEX and NWX
- Section 17: EXNEX
- Section 19: SEXSEX
- Section 20: EXNWX, SWX and EX

PARCEL N: (continued)

- Section 21: NX, NXSX, SWXSWX, SEXSEX  
Section 22: WX, SEX  
Section 23: All of Section 23  
Section 24: WX  
Section 25: NX, NXSWX, SEXSWX, SEX  
Section 26: EXNWX, SWXNWX, SWX, and NEX  
Section 27: NWXNEX, SXNX, SEX, and NEXNEX  
Section 28: SXNEX, WX, WXSEX, and SEXSEX  
Section 29: All of Section 29  
Section 30: Lots 1, 6, 7, 8, 9, 10, 11, 12, and EX  
Section 31: Lots 1, 2, 3, 14 NEX, NEXSEX  
Section 32: All of Section 32  
Section 33: Lots 2, 3, and 4, NX, NXSX  
Section 34: WXNWX, NEXSEX, Lot 1  
Section 35: Lot 4, NWXSWX  
Section 36: Lots 1, 2, 3, NWXNEX, NEXNWX

Parcel 2:

- Section 11: SEXNEX, SWXNEX Except SWXSWXSWXNEX

Parcel 3:

- Section 11: SWXSWXSWXNEX

Parcel 4:

- Section 11: SWXSWXSWX

Parcel 5:

- Section 24: NEX

PARCEL P:

Township 33 North, Range 4 West of the Boise Meridian:

Section 21: SXSX

Section 22: SWXSWX

Section 26: NWXSWX, SXSWX

Section 27: SXNEX, WXX, SEXSWX, SEX

Section 34: NXNX, SEXNEX

Section 35: NEXNW, WXX, SEXSWX, and SEX EXCEPT beginning at the Southeast corner of said Section 35, thence North along the section line between Sections 35 and 36, 545 feet, thence West 696 feet, thence North parallel to the East line of said Section 35, 375 feet, thence East 696 feet, thence South 375 feet to the point of beginning.

Section 36: SEX, and NEX south of county road.

Section 35: Beginning at the Southeast corner of the SEXNEX, thence North a distance of 15 rods to the county road, thence Northwesterly along the county road to a point on the West line of said SEXNEX, 30 rods North of the Southwest corner thereof, thence South to Southwest corner of said SEXNEX, thence East to place of beginning.

Situate in Lewis County, State of Idaho, to-wit:

Township 31 North, Range 3 West of the Boise Meridian.

Section 2: SW $\frac{1}{2}$ NW $\frac{1}{2}$ .  
Section 3: S $\frac{1}{2}$ NE $\frac{1}{2}$ , E $\frac{1}{2}$ NW $\frac{1}{2}$ , E $\frac{1}{2}$ SW $\frac{1}{2}$ , and NE $\frac{1}{2}$ SE $\frac{1}{2}$ .  
Section 10: SW $\frac{1}{2}$ NW $\frac{1}{2}$ , SW $\frac{1}{2}$ , SW $\frac{1}{2}$ SE $\frac{1}{2}$ .  
Section 15: N $\frac{1}{2}$ , SW $\frac{1}{2}$ , N $\frac{1}{2}$ SE $\frac{1}{2}$ , SW $\frac{1}{2}$ SE $\frac{1}{2}$ .  
Section 22: Entire Section.  
Section 23: SW $\frac{1}{2}$ , SE $\frac{1}{2}$ NW $\frac{1}{2}$ , SW $\frac{1}{2}$ NE $\frac{1}{2}$ .  
Section 25: N $\frac{1}{2}$ NW $\frac{1}{2}$ , SW $\frac{1}{2}$ NW $\frac{1}{2}$ .  
Section 26: E $\frac{1}{2}$ NE $\frac{1}{2}$ , NW $\frac{1}{2}$ NE $\frac{1}{2}$ , N $\frac{1}{2}$ NW $\frac{1}{2}$ .  
Section 27: Lot 2, E $\frac{1}{2}$  of Lot 3 and N $\frac{1}{2}$ NE $\frac{1}{2}$ .

Township 32 North, Range 3 West of the Boise Meridian.

Section 3: W $\frac{1}{2}$ SW $\frac{1}{2}$ , S $\frac{1}{2}$ SE $\frac{1}{2}$ .  
Section 10: W $\frac{1}{2}$ NW $\frac{1}{2}$ , W $\frac{1}{2}$ SE $\frac{1}{2}$ .  
Section 15: S $\frac{1}{2}$ NE $\frac{1}{2}$ , NW $\frac{1}{2}$ NE $\frac{1}{2}$ , W $\frac{1}{2}$ .  
Section 22: NW $\frac{1}{2}$ NW $\frac{1}{2}$ , E $\frac{1}{2}$ SW $\frac{1}{2}$ , SE $\frac{1}{2}$ .  
Section 26: SW $\frac{1}{2}$ .  
Section 27: W $\frac{1}{2}$ SW $\frac{1}{2}$ , E $\frac{1}{2}$ SE $\frac{1}{2}$ .  
Section 34: W $\frac{1}{2}$ NE $\frac{1}{2}$ , NE $\frac{1}{2}$ NW $\frac{1}{2}$ , S $\frac{1}{2}$ NW $\frac{1}{2}$ , E $\frac{1}{2}$ SE $\frac{1}{2}$ .  
Section 35: SW $\frac{1}{2}$ .

Exhibit 4, Attachment B

Buck Creek Old Growth Project

QUITCLAIM DEED

The Grantor, D.A.W. FOREST PRODUCTS COMPANY, L.P., a Delaware limited partnership, for and in consideration of \_\_\_\_\_ Dollars (\_\_\_\_\_), conveys and quitclaims to Grantee, the UNITED STATES OF AMERICA and its assigns, all of Grantor's right, title, and interest in and to any and all timber on the following described real estate, situated in Shoshone County, State of Idaho:

Section 11, Township 43 North, Range 7 East, B.M.

S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$   
S $\frac{1}{2}$ S $\frac{1}{4}$ SW $\frac{1}{4}$   
SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$   
E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$   
SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$   
W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$   
SE $\frac{1}{4}$ SE $\frac{1}{4}$

To the best of Grantor's knowledge, information, and belief, Grantor has good and lawful title to the property conveyed herein.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

D.A.W. FOREST PRODUCTS COMPANY, L.P.  
By D.A.G.P., L.P., its General Partner  
By D.A.G.P., Inc., its General Partner

ATTEST:

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

# Exhibit 5

Memorandum of Agreement  
between State and Tribe

MEMORANDUM OF AGREEMENT  
IMPLEMENTATION AND ALLOCATION OF DWORSHAK  
WILDLIFE MITIGATION UNDER THE  
NORTHWEST POWER PLANNING ACT OF 1980

An Agreement Between  
The State of Idaho  
Department of Fish and Game  
and  
The Nez Perce Tribe

This memorandum of Agreement, made this \_\_\_ day of \_\_\_\_\_, 1991, by and between the State of Idaho, hereinafter called the "State," and the Nez Perce Tribe, hereinafter called the "Tribe," is entered into for the purpose of delineating the areas of responsibility for the implementation of wildlife mitigation amended into the Northwest Power Planning Council's program due to construction of Dworshak Dam.

As used below, references to the Tribe and State shall include the respective Departments within those governments having responsibility for wildlife management and references to wildlife managers shall refer to the heads of those departments or their designees and the Idaho Field Supervisor, U.S. Fish and Wildlife Service, or his designee. The State and the Tribe agree to the following to promote cooperation and communication in the mitigation of wildlife losses attributed to Dworshak Dam.

Points of Agreement

The split for Dworshak mitigation shall be 60 percent for the State and 40 percent for the Tribe. This split is based upon the 25,328 Habitat Units identified in the Wildlife Loss Statement.

Conditions

- A. The State will implement wildlife mitigation, as funded by the Bonneville Power Administration, at the Cascade Project. That mitigation shall be done with the advice of the Tribe, and no aspect of it shall diminish, reduce or impair the Tribe's treaty reserved rights.
- B. Twenty percent (20 percent) of the State's Habitat Units for Dworshak Mitigation may be implemented outside the Tribe's ceded area with the concurrence of the wildlife managers of the State, Tribe and U.S. Fish and Wildlife Service. It is further understood that the Tribe's primary interest is in assuring that their Treaty

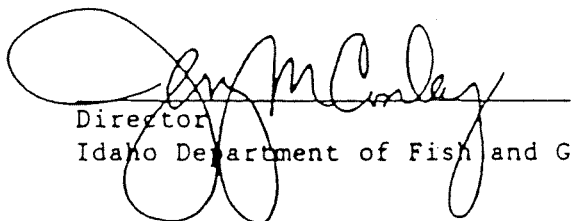


reserved rights in the ceded area are protected, and the State shall insure that such rights are not diminished, reduced or impaired.

- C. Any reduction to Dworshak wildlife mitigation (funds or Habitat Units) as a result of in-lieu or allocation issues will be allocated equally between the parties.
- D. The total Dworshak Mitigation Plan, comprised of the plans of the Tribe and State, will be jointly negotiated with the Bonneville Power Administration to ensure the total implementation will proceed on a common time frame.
- E. Funds from Bonneville Power Administration will be distributed proportionately under the agreed upon split of 60 percent to the State and 40 percent to the Tribe.
- F. The wildlife managers will appoint a single advisory committee to give guidance and input on the implementation of the mitigation plan. The advisory committee will be jointly chaired by the State and the Tribe.
- G. The wildlife managers will jointly develop evaluation and monitoring plans and will jointly monitor and evaluate the results of their mitigation activities.
- H. Mitigation lands acquired under the plan shall be open to the general public and Tribal members, consistent with the wildlife management objective and with the agreement of the wildlife managers.
- I. It is the interest of both parties that wildlife mitigation be implemented as soon as possible and that the length of the settlement and the basis for cost calculations will be mutually agreed upon by both parties.
- J. Lands acquired under the Dworshak Mitigation Plan shall be managed consistent with the purposes of the plan. Both parties will manage lands for the benefit of wildlife in perpetuity. Prior to five (5) years of the end of this agreement, the State and the Tribe shall meet to discuss the additional needs for mitigation projects after the end of the agreement with Bonneville Power Administration.
- K. In the event that the wildlife managers' designees cannot agree on the implementation of the mitigation plan, then such matters shall be referred to policy representatives. A policy representative shall be selected by the Tribal Chairman, a policy representative selected by the Department of Fish and Game Director, and a policy representative selected by the Fish and Wildlife Service Field Supervisor.
- L. This agreement shall terminate with the mutual consent of the parties in writing.

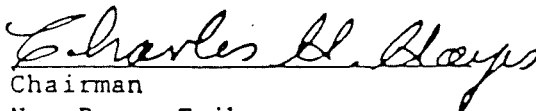
IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date written below.

Date 1-25-91



Director  
Idaho Department of Fish and Game

Date 1/29/91



Chairman  
Nez Perce Tribe