

WASHINGTON WILDLIFE MITIGATION
AGREEMENT

among members of

the

Washington Wildlife Coalition

of

Resource Agencies And Tribes

and

the

Bonneville Power

Administration

APR 16 1993

Index to Sections

	<u>Page</u>
1. Purpose	3
2. Definitions	3
3. Agents and Addresses	5
4. Term	6
5. Provision of Funds	7
a. Budget	7
b. Review of Projects	9
c. Conditions for Approved Projects	13
d. Implementation of Projects	15
6. Advisory Committees	16
7. Monitoring and Evaluation of Progress	17
8. Long Term Agreement	17
9. Commitment Not to Seek Additional Funds	19
10. No Precedent	20
11. Enforcement	20
12. Miscellaneous Provisions	21

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2 WASHINGTON WILDLIFE MITIGATION AGREEMENT
3 among members of
4 the WASHINGTON WILDLIFE COALITION OF RESOURCE AGENCIES
5 AND TRIBES
6 and
7 the BONNEVILLE POWER ADMINISTRATION
8
9

10 This WASHINGTON WILDLIFE MITIGATION AGREEMENT
11 (Agreement) is made among the members of the Washington Wildlife
12 Coalition of Resource Agencies and Tribes and the Bonneville Power
13 Administration.

14
15 WITNESSETH
16

17 WHEREAS Federal dams were constructed in the Columbia River
18 in, or along the border of, the State of Washington;

19 WHEREAS construction of these dams adversely affect wildlife in
20 the State of Washington, including Indian reservations, ceded lands,
21 and other lands located within the State of Washington;

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

27 WHEREAS, Section 4(h)(10)(A) of the Northwest Power Act
28 authorizes the Administrator of the BPA to use the BPA fund to

1 protect, mitigate, and enhance fish and wildlife affected by the
2 development and operation of hydroelectric facilities of the Columbia
3 River Basin;

4 WHEREAS, the Northwest Power Planning Council (Council) in its
5 Columbia River Basin Fish and Wildlife Program (Program), identified
6 the need for wildlife protection, mitigation, and enhancement with
7 respect to hydroelectric facilities in the Columbia River Basin;

8 WHEREAS, the Coalition is an organization of certain entities
9 interested in wildlife in the State of Washington (Coalition Members),
10 and these Coalition Members have authority to engage in protection,
11 mitigation and enhancement of fish and wildlife described by this
12 Agreement;

1 NOW, THEREFORE, the Coalition and BPA agree as follows:
2

3 1. Purpose

4 The purpose of this Agreement is to (a) establish a budget of
5 money by BPA for Projects proposed by Coalition Members and
6 approved by BPA for the protection, mitigation, and enhancement of
7 wildlife and/or wildlife habitat within the State of Washington affected
8 by the construction of the following Federal dams in the Columbia
9 River: Grand Coulee, Chief Joseph, Bonneville, The Dalles, John Day,
10 and McNary (hereinafter "Federal dams"); (b) to establish a method for
11 the expeditious use of this budget; and (c) secure a commitment to
12 negotiate a long-term agreement..
13

14 2. Definitions

15 a. Agreement means this agreement among BPA and
16 Coalition Members.

17 b. Bonneville Power Administration or BPA means the
18 Bonneville Power Administration, a Federal power marketing agency
19 created by the Bonneville Project Act.

20 c. Coalition means the Washington Wildlife Coalition of
21 Resource Agencies and Tribes when the Coalition Members are acting
22 as a body.

23 d. Coalition Member or Coalition Members means any of the
24 following entities:

- 25 i. the Washington Department of Wildlife (WDW);
26 ii. the Confederated Tribes of the Colville Reservation
27 (CCT);

1 iii. the Confederated Tribes of the Umatilla Indian
2 Reservation (CTUIR);

3 iv. the Yakima Indian Nation (YIN);

4 v. the United States Fish and Wildlife Service (USFWS);
5 and

6 vi. the Spokane Tribe of Indians.

7 e. Congress means the Congress of the United States or any
8 of its committees, including the House and Senate Appropriations
9 Committees.

10 f. Council means the Pacific Northwest Electric Power and
11 Conservation Planning Council created by Section 4 of the Pacific
12 Northwest Electric Power Planning and Conservation Act, Pub. L. No.
13 96-501.

14 g. Executive Branch means the President of the United
15 States, and any of the departments, agencies or offices responsible to
16 the President.

17 h. Fiscal Year means the Federal fiscal year beginning
18 October 1 and ending September 30.

19 i. Fish and Wildlife Program means the Fish and Wildlife
20 Program developed and as amended by the Council pursuant to the
21 Northwest Power Act to protect, mitigate, and enhance fish and
22 wildlife on the Columbia River and its tributaries.

23 j. Land means real property, and interest in the real
24 property, including any improvements to or on the land.

25 k. Mitigate includes to protect, mitigate, and enhance
26 wildlife and/or wildlife habitat, and Mitigation includes the protection,
27 mitigation, and enhancement of wildlife and/or wildlife habitat.

1 1. Monitoring and Evaluation means the methodology
2 developed by Coalition Members and BPA to assess wildlife and/or
3 wildlife habitat benefits resulting from Projects under this Agreement.

4 m. Pacific Northwest Electric Power Planning and
5 Conservation Act, or Northwest Power Act means the Pacific
6 Northwest Electric Power Planning and Conservation Act, Pub. L. 96-
7 501, 16 U.S.C. 839 et seq., and as it may be amended.

8 n. Parties means the entities that have signed this
9 Agreement.

10 o. Project or Projects mean all mitigation activities
11 undertaken pursuant to this Agreement, including acquisitions and
12 enhancements.

13 p. Term means the period of time the Agreement is in effect.

14 q. Wildlife or Associated Wildlife means any and all wildlife
15 species associated with the habitat within the State of Washington
16 affected by the construction of Federal dams in the Columbia River.

17
18 3. Agents and Addresses

19 Written notices given pursuant to this Agreement shall be mailed
20 by first-class mail, postage prepaid, to each Party at the address listed
21 below or such subsequent address as a Party shall identify by written
22 notice to all other Parties. Notices shall be deemed to be given five (5)
23 days after mailing. The addresses of the Parties and the names of the
24 current addressees are:
25

Curt Smitch, Director
Washington Dept. of Wildlife
600 Capitol Way North
Olympia, WA 98501

Carolyn Bohan, Director
Division of Fish and Wildlife
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208

Wilferd Yallup, Chairperson
Yakima Indian Nation
P.O. Box 151
Toppenish, WA 98948

Bruce Wynne, Chairperson
Spokane Tribe of Indians
P.O. Box 100
Wellpinit, WA 99040

Elwood Patawa, Chairperson
Confederated Tribes of the
Umatilla Indian Reservation
P.O. Box 638
Pendleton, OR 97801

Patti Stone, Director
Fish and Wildlife Department
Confederated Tribes of the
Colville Reservation
P.O. Box 150
Nespelem, WA 99155

Marvin Plenert, Regional Director
U.S. Fish & Wildlife Service
911 N.E. 11th Ave.
Portland, OR 97232-4181

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2 4. Term

3 This Agreement shall become effective on the day the last Party
4 signs. This Agreement, together with all responsibilities incurred
5 pursuant to this Agreement, shall terminate on September 30, 1997,
6 or when all of the funds budgeted pursuant to this Agreement have
7 been expended, whichever date is later, *provided, however*, that the
8 termination of this Agreement shall not affect the obligation of BPA in
9 section 5.b.xi to continue funding for the operation and maintenance
10 of projects approved during the term of this Agreement. The Parties
11 may enter into other agreements that create responsibilities
12 continuing beyond the term of this Agreement.

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5. Provision of Funds

a. Budget

1. In its annual budget submitted to the Executive Branch, BPA shall include and support the amounts shown for the five fiscal years identified in the following Wildlife Budget Table to mitigate wildlife and/or wildlife habitat in satisfaction of the purpose described in section 1(a) of this Agreement.

Wildlife Budget Table
(Annual and Total Budget Amounts)

Fiscal Year Ending September 30:					
1993	1994	1995	1996	1997	5-Yr. Total
\$8.3 million	\$ 5.5 million	\$5.5 million	\$12.85 million	\$13.35 million	\$45.5 million

ii. The amount budgeted by BPA for a specific fiscal year shall not be available for obligation until the beginning of that fiscal year unless BPA, at its option, agrees to make the funds available earlier.

iii. Expenditures and obligations by BPA to implement Projects approved by BPA shall not exceed the total budget amount (\$45.5 million) set forth in the Wildlife Budget Table in section 5.a.i of this Agreement, except for continued operation and maintenance of Projects pursuant to section 5.b.xi.

iv. Expenditures and obligations by BPA to implement Projects approved by BPA shall be consistent with the following percentages of the annual and total budget amounts set forth in the Wildlife Budget Table in section 5.a.i of this Agreement:

1 aa. 48% of the annual and total budget amounts shall be
2 available for projects proposed by WDW and approved by BPA;

3 bb. 20% of the annual and total budget amounts shall be
4 available for projects proposed by CCT and approved by BPA;

5 cc. 11.3% of the annual and total budget amounts shall be
6 available for projects proposed by CTUIR and approved by BPA;

7 dd. 10.7% of the annual and total budget amounts shall be
8 available for projects proposed by YIN and approved by BPA;

9 ee. 6% of the annual and total budget amounts shall be
10 available for projects proposed by USFWS and approved by BPA; and

11 ff. 4% of the annual and total budget amounts shall be
12 available for projects proposed by Spokane Tribe and approved by BPA;

13
14 *Provided, however, that Coalition Members may agree to change these*
15 *percentages.*

16 v. If BPA expenditures and obligations during a fiscal year for
17 projects proposed by a Coalition Member are less than the product of
18 the annual budget amount for that fiscal year multiplied by the
19 percentage associated with that Coalition Member in section 5.a.iv of
20 this Agreement, then the difference shall be available for projects
21 proposed by that Coalition Member and approved by BPA during the
22 remainder of the term of this Agreement.

23 vi. BPA shall keep a record of budget amounts available for
24 obligation and of expenditures and obligations for Projects proposed by
25 Coalition Members and approved by BPA.

26

1 b. Review of Projects

2 i. BPA shall use the budgeted amounts to implement wildlife
3 mitigation Projects in the State of Washington that have been approved
4 by BPA consistent with this Agreement, unless affirmatively restricted
5 by Congress or the Executive Branch of the United States.

6 ii. BPA has already approved, subject only to analyses in
7 compliance with applicable environmental laws, the Projects
8 described in the following table.

9

Proposing Coalition Member	Approved Project
YIN	Lower Yakima Valley riparian Wetlands
WDW	Vancouver Lowlands
WDW	Douglas County Pygmy Rabbit
CCT	Hellsgate Big Game Range
Spokane Tribe	Blue Creek Winter Range
WDW	Lincoln County Sharp Tailed Grouse

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11 This Agreement applies to these Projects. Expenditures for these
12 Projects shall be from the budget amounts set forth in the Wildlife
13 Budget Table in section 5.a.i of this Agreement. However, the cost of
14 BPA's environmental review, if any, shall be borne by BPA and shall not
15 be paid from the budget amounts in the Wildlife Budget Table in
16 Section 5.a.i. The extent of implementation shall be consistent with
17 the budget principles in Section 5.a.

18 iii. Coalition Members may propose to BPA for
19 implementation Projects in addition to the Projects identified in
20 section 5.b.ii. Coalition Members may propose individual projects.

1 multiple projects, or a plan for implementation of Projects. Projects
2 and plans proposed by Coalition Members may be coordinated among
3 the Coalition Members and shall not violate the budget principles set
4 forth in section 5.a of this Agreement, and shall satisfy the general
5 conditions set forth in section 5.c of this Agreement.

6 iv. A Coalition Member, at or prior to the time of
7 submitting a proposal to BPA, may engage in a public involvement
8 process where the public is given an opportunity to comment on the
9 proposal. If a Coalition Member undertakes a public involvement
10 process, the Coalition Member shall give notice to interested persons,
11 including the Council and members of the Policy Review Group, and
12 shall provide all interested persons a reasonable opportunity to
13 comment. All parties to this Agreement and the Council may
14 participate in the process, and the Coalition Member shall reasonably
15 make available copies of documents developed in connection with the
16 process. The Coalition Member shall timely submit copies of all public
17 involvement materials, including public comments, to BPA. If a
18 Coalition Member conducts a public involvement process, then BPA
19 shall not conduct a second public involvement process. If a Coalition
20 Member does not conduct a public involvement process, then BPA may
21 conduct a public involvement process.

22 v. If a Coalition Member has undertaken a public
23 involvement process, then BPA shall approve or disapprove a project
24 proposal within 45 days of the date of receipt of copies of the Coalition
25 Member's public involvement materials and complete project
26 proposal.

1 vi. If a Coalition Member has not undertaken a public
2 involvement process, then BPA shall approve or disapprove a project
3 within 120 days of the date that the Coalition Member submits a
4 complete project proposal to BPA.

5 vii. If BPA approves a proposal, then BPA shall commence
6 implementation in accordance with section 5.d. If BPA does not
7 approve a proposal or supports revisions to a proposal, then BPA shall
8 explain in writing the basis for its disapproval or proposed revision
9 and identify criteria in section 5.c that the proposed project does not
10 meet. If BPA does not approve a proposal or supports revisions to a
11 proposal, then BPA and the proposing Coalition Member will endeavor
12 to resolve any differences in opinion. To achieve resolution of any
13 differences in opinion, BPA and the proposing Coalition Member may
14 agree to retain a mediator. BPA or the proposing Coalition Member
15 may also seek to resolve any differences in opinion by using a fact
16 finder selected pursuant to the process set forth in section 8.d.i. If a
17 fact finder is retained, then, in a written report, the fact finder shall
18 find whether the Coalition Member's proposal or the proposal with
19 revisions supported by BPA satisfy the conditions set forth in section
20 5.c. Upon receipt of the report, BPA and the proposing Coalition
21 Member may use this report to resolve differences in opinion.

22 viii. Upon approval of a Project, BPA shall notify the
23 Council of the approved Project and of BPA's intention to implement
24 the Project. BPA may also accordingly amend the annual
25 implementation work plan reviewed by the Council. The Parties do

1 not intend that notification under this section shall delay
2 implementation of an approved Project.

3 ix. BPA's approval and implementation process shall
4 include and may be conditioned upon compliance with applicable
5 environmental laws, including the National Environmental Policy Act
6 (NEPA). Any activity on a Project by or permitted by any of the Parties
7 prior to BPA's completion of its NEPA process shall maintain or
8 enhance the status quo of wildlife and other resources involved and
9 shall comply with the provisions of Title 40, Section 1506.1 of the
10 Code of Federal Regulations.

11 x. BPA and a Coalition Member shall agree in advance on
12 the portion of budgeted amounts available pursuant to this Agreement
13 for the Coalition Member's costs related to preparation/coordination
14 of proposals and public involvement and advisory committee
15 processes. BPA and each Coalition Member shall review the
16 reasonableness of costs expended under this part as they deem
17 appropriate.

18 xi. Funds for approved Projects shall include reasonable
19 amounts for operation and maintenance of Projects during the term of
20 this Agreement. After the term of this Agreement, BPA shall provide
21 additional funds for continued operation and maintenance that is
22 determined to be necessary to maintain or provide positive wildlife
23 and/or wildlife habitat benefits.

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1 c. Conditions for Approved Projects

2 All Projects implemented pursuant to this Agreement and all activities
3 by or permitted by any Party on such Projects must satisfy the
4 conditions set forth in this section 5.c.

5 i. All Projects shall mitigate wildlife and/or wildlife habitat
6 within the State of Washington affected by the construction of Federal
7 dams in the Columbia River Basin.

8 ii. All activities on Projects shall be consistent with sound
9 biological management for the mitigation of wildlife and/or wildlife
10 habitat within the State of Washington affected by the construction of
11 Federal dams in the Columbia River Basin.

12 iii. All Projects shall be permanently dedicated to wildlife
13 and wildlife mitigation purposes of the Pacific Northwest Electric
14 Power Planning and Conservation Act and not be inconsistent with
15 Section 1000 of the Council's Fish and Wildlife Program.

16 iv. All Projects shall be consistent with basin-wide wildlife
17 implementation priorities approved by the Council in October 1990.
18 Projects shall focus on natural ecosystems and species diversity.

19 v. All Projects shall satisfy the parameters described in
20 section 4(h) of Pacific Northwest Electric Power Planning and
21 Conservation Act for inclusion of measures in the Council's Fish and
22 Wildlife Program.

23 vi. All Projects must reflect consideration of the criteria in
24 section 1003(b)(7) of the Council's Fish and Wildlife Program.

1 vii. Projects shall address important habitat needs and best
2 satisfy the purpose described in section 1(a) of this Agreement for a
3 reasonable economic cost.

4 viii. When feasible, Projects shall also benefit fish.

5 ix. For the purposes of this Agreement, BPA shall receive full
6 credit for existing habitat value for all lands that are acquired,
7 permanently dedicated to wildlife and wildlife mitigation purposes,
8 and provided with reasonable funding for operation and maintenance
9 over the life of the Project. If BPA's wildlife mitigation responsibility is
10 measured in acres, then BPA's responsibility to mitigate wildlife under
11 the Northwest Power Act shall be reduced by one acre for each acre
12 purchased when the enhancement agreed upon for the acre purchased
13 in the Project proposed by a Coalition Member and approved by BPA is
14 implemented.

15 For the purposes of this Agreement, BPA shall also receive
16 full credit for habitat improvements that enhance public or tribal lands
17 that are permanently dedicated to wildlife and wildlife mitigation
18 purposes and provided with reasonable funding for operation and
19 maintenance over the life of the Project. If BPA's wildlife mitigation
20 responsibility is measured in acres, then BPA's responsibility to
21 mitigate wildlife under the Northwest Power Act shall be reduced by
22 one-third acre for each acre that is enhanced.

23 x. Projects implemented pursuant to this Agreement shall be
24 credited to wildlife mitigation goals set forth in Section 1000 of the
25 Council's Fish and Wildlife Program.

1 xi. Funds for approved Projects shall include reasonable
2 amounts for operation and maintenance and monitoring and evaluation
3 of Projects during the term of this Agreement.

4 xii. Projects shall adequately identify the acreage and an
5 estimate of the value of habitat associated with the projects.

6 d. Implementation of Projects

7 i. BPA shall disburse the budgeted amounts for approved
8 Projects through BPA's contracting processes and/or by acquisition of
9 land.

10 ii. The implementation of a Project approved as provided
11 under this Agreement shall be contracted by BPA to the Coalition
12 Member proposing the project using noncompetitive contracting to
13 the extent permitted by law. All contracts under this paragraph shall
14 also comply with reasonable BPA contracting practices and be at
15 reasonable economic cost.

16 iii. If BPA approves a Project, and the Project involves the
17 acquisition of land or an interest in land, then BPA shall acquire the
18 land or, at BPA's option, may contract with the proposing Coalition
19 Member(s) to acquire the land. BPA may consider eventual transfer of
20 ownership of the land to the proposing Coalition Member. If BPA
21 acquires the land, then BPA may contract with counties, tribes, or
22 other local governments for the provision of actual services.

23 Expenditures pursuant to such contracts shall be from the budget
24 amounts set forth in the Wildlife Budget Table in section 5.a.1 of this
25 Agreement. If lands or interests in lands are acquired under this
26 Agreement, BPA shall pay from funds separate from the budget

1 identified in section 5.a all pre-acquisition costs that include, by way of
2 example, appraisal costs, title insurance and reports, closing costs,
3 and toxic or hazardous waste surveys. Upon entering into a long-term
4 agreement described in section 8.a, BPA shall transfer acquired lands
5 to the proposing Coalition Member, if requested by that Coalition
6 Member.

7 iv. The Parties shall cooperate in conducting studies and
8 shall provide assistance in obtaining any approvals or permits which
9 may be required for implementation of this Agreement.

10 v. If efforts to implement an approved Project raise new
11 information that substantially reduces the merits of the Project, then
12 BPA shall consult with the proposing Coalition Member to determine
13 how to revise or, if warranted, terminate the Project. If BPA and the
14 proposing Coalition Member differ with regard to the need to revise
15 and/or terminate a Project, then either Party may seek use of a
16 mediator or use of a fact finder pursuant to the process set forth in
17 section 8.d.i. If a fact finder is retained, then, in a written report, the
18 fact finder shall find whether new information has substantially
19 reduced the merits of the Project.

20

21 6. Advisory Committees

22 To assist in the development of proposed Projects or in the
23 implementation of Projects pursuant to contracts with BPA, the
24 Coalition and Coalition Members may develop a public advisory
25 process. If the Coalition or Coalition Members create advisory groups,
26 then they shall invite interested persons, as well as the Council and

1 any of the Parties to this Agreement and members of the Policy Review
2 Group, to participate as members of the groups.

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4 7. Monitoring and Evaluation of Progress

5 BPA and Coalition Members shall cooperatively develop a monitoring
6 and evaluation plan for projects approved pursuant to this Agreement.
7 Funds for approved projects shall include reasonable amounts for
8 monitoring and evaluation of Projects during the term of this
9 Agreement. After the term of this Agreement, BPA may provide
10 additional funds for continued monitoring and evaluation of the
11 Projects that provide positive fish and wildlife benefits.

12

13 8. Long Term Agreement

14 a. The Parties agree to expeditiously engage in a process of
15 negotiating a long-term trust agreement to fully address BPA's
16 responsibility to mitigate wildlife and/or wildlife habitat within the
17 State of Washington affected by the construction of Federal dams in
18 the Columbia River Basin. The Parties agree to use their best efforts to
19 complete this process within three years. Projects implemented
20 pursuant to this Agreement shall be credited to and become part of
21 any long-term wildlife trust agreement.

22 b. To facilitate negotiations, the Parties shall, within 180 days
23 after execution of this Agreement, complete a written assessment(s)
24 as to why they have not yet consummated a long-term trust agreement.
25 The assessment shall identify outstanding issues, the respective views

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BPA losing
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1 of the Parties with respect to these issues, and potential approaches to
2 resolving the issues.

3 c. To facilitate negotiations, the Parties may agree to select a
4 mediator acceptable to Coalition Members and BPA.

5 d. If the Parties fail to consummate a long term wildlife trust
6 agreement within three years after execution of this Agreement, then
7 any Party may request that a fact finder be retained to assist the
8 Parties in reaching Agreement.

9 i. The fact finder shall be selected by mutual agreement of
10 the Parties within 20 days after a request to appoint a fact finder. If
11 the Parties fail to agree upon a fact finder, then, within 20 days after
12 the request to appoint a fact finder, BPA and the Coalition shall each
13 identify a single nominee for the fact finder, and these two nominees
14 shall, within 20 days after identification of the last nominee, select a
15 third person who shall be the fact finder.

16 ii. In a written report, the fact finder shall find whether
17 the Parties can reach agreement through additional negotiation or
18 mediation, what issues divide the Parties, and describe options for the
19 Parties to consider.

20 iii. Upon receipt of the report, the Parties may undertake
21 additional efforts to reach agreement before seeking to raise issues in
22 other forums such as courts, legislatures, or the Council. The fact
23 finder's report may be introduced by the Parties in such forums. The
24 Parties agree that, if a fact finder is used, they will not seek such
25 forums until completion of the fact finder's report. Any report by a

1 fact finder under this or any other provision of this Agreement may be
2 used by any Party but shall not be binding.

3 iv. Budget amounts made available pursuant to section 5 of
4 this Agreement shall not be used to pay for the costs of any mediator
5 or fact finder retained by the Parties. BPA and the Coalition shall each
6 pay one-half of the costs of a mediator or fact finder retained pursuant
7 to this Agreement to address a disagreement between BPA and
8 Coalition Members. The Coalition shall pay all of the costs of a
9 mediator or fact finder retained pursuant to this Agreement to address
10 a disagreement between Coalition Members.

11

12 9. Commitment Not to Seek Additional Funds

13 During the term of this Agreement, neither BPA, the Coalition, nor
14 Coalition Members shall, directly or indirectly, seek, claim, support,
15 or recommend to the Council or others additional funding from BPA or
16 seek to impose additional responsibilities upon BPA for the mitigation
17 of wildlife and/or wildlife habitat within the State of Washington
18 affected by the construction of Federal dams in the Columbia River
19 Basin. Coalition Members shall withdraw any mitigation amendments
20 proposed to the Council as Phase IV amendments that would result in
21 funding by BPA for wildlife mitigation within the State of Washington.
22 Nothing in this section 9 or other section of this Agreement shall limit
23 the ability of a Coalition Member to (a) file a petition or initiate a
24 judicial or administrative proceeding to list a species as threatened or
25 endangered under the Endangered Species Act, 16 U.S.C. 1531 et
26 seq., (b) participate in any action or respond to any petition filed or

1 brought by another person or entity to list a species under the ESA, or
2 (c) request the Council or other governmental entity or agency to take
3 action to protect wildlife listed under the Endangered Species Act,
4 provided that the Coalition Member does not request funding from
5 BPA in addition to the amounts provided pursuant to this Agreement.
6

7 10. No Precedent

8 Except for Projects approved and implemented pursuant to this
9 Agreement, this Agreement is not binding with respect to (a) any
10 other negotiations or proceedings taking place after the term of this
11 Agreement, or (b) development of a long-term Agreement as provided
12 in section 8.
13

14 11. Enforcement

15 a. BPA consents to suit in any Federal court of competent
16 jurisdiction for the limited purpose of obtaining injunctive or
17 declaratory relief to enforce the terms and conditions of this
18 Agreement, and to that extent waives its sovereign immunity.

19 b. WDW consents to suit in any Federal or state court of
20 competent jurisdiction for the limited purpose of obtaining injunctive
21 or declaratory relief to enforce the terms and conditions of this
22 Agreement, and to that extent waives its sovereign immunity.

23 c. CCT, CTUIR, YIN, and the Spokane Tribe of Indians consent
24 to suit in any Federal or tribal court of competent jurisdiction for the
25 limited purpose of obtaining injunctive or declaratory relief to enforce

1 the terms and conditions of this Agreement, and to that extent waive
2 their sovereign immunity.

3 12. Miscellaneous Provisions

4 a. Authority. Each Party to this Agreement represents and
5 acknowledges that it has full legal authority to execute this Agreement
6 and shall be fully bound by the terms hereof.

7 b. Integrated Agreement. This Agreement constitutes the
8 entire agreement among the Parties, and no modifications of this
9 Agreement shall be binding upon any Party unless executed or
10 approved in writing by the Parties.

11 c. Waiver of Default. Any waiver at any time by any Party hereto
12 of any right with respect to any other Party with respect to any matter
13 arising in connection with this Agreement shall not be considered a
14 waiver with respect to any subsequent default or matter.

15 d. Benefit. This Agreement shall be binding upon and inure to
16 the benefit of the Parties hereto and their successors and assigns.

17 e. Treaties. Nothing in this Agreement is intended to nor shall
18 it abrogate or expand any federally protected or reserved Indian right.
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1 f. Execution. This Agreement may be executed in counterparts.
2 A copy with all original executed signature pages affixed may
3 constitute the original Agreement. The date of execution shall be the
4 date of the last Party's signature.

5
6 IN WITNESS WHEREOF, the Parties have executed this
7 Agreement.

Randall W. Hardy 4/15/93
Randall W. Hardy Date
Administrator
Bonneville Power Administration

Mike Lowry 4/15/93
Mike Lowry Date
Governor
State of Washington

Curt Smith 4/2/93
Curt Smith, Director Date
Washington Dept. of Wildlife

E. Palmanteer Jr. 4/6/93
Eddie Palmanteer Jr., Date
Chairperson
Colville Business Council
Confederated Tribes of the
Colville Reservation

Elwood Patawa _____
Elwood Patawa, Chairperson Date
Confederated Tribes of the Umatilla Indian Reservation 4/7/93

Wilfred Yallup _____
Wilfred Yallup, Chairperson Date
Yakima Indian Nation 4-9-93

Marvin Plenert 4/7/93
Marvin Plenert Date
Regional Director
U.S. Fish & Wildlife Service

Bruce Wynne 4-5-93
Bruce Wynne, Chairperson Date
Spokane Tribe of Indians