

Appendix 1

MEMORANDUM OF AGREEMENT BETWEEN THE SWAN ECOSYSTEM CENTER, THE CONFEDERATED SALISH AND KOOTENAI TRIBES, THE STATE OF MONTANA AND THE BONNEVILLE POWER ADMINISTRATION FOR RESIDENT FISH MITIGATION (HUNGRY HORSE DAM AND RESERVOIR)

This Memorandum of Agreement is made by and between **the SWAN ECOSYSTEM CENTER (SEC)**, the **CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION (CSKT or Tribes)**, the **STATE OF MONTANA**, acting through the Montana Department of Fish, Wildlife, and Parks (MFWP), and the **UNITED STATES OF AMERICA**, acting through the Department of Energy, Bonneville Power Administration (BPA). SEC, CSKT, MFWP, and BPA are separately and jointly referred to as “Party” and “Parties,” respectively.

RECITALS

A. The Swan Ecosystem Center (SEC) is a nonprofit corporation located at 6887 Hwy 83 Condon, Montana 59826, exempt under Section 501(c)(3) of the Internal Revenue Code for the purpose of maintaining a strong, vital community in the Swan Valley, Montana, through partnerships that encourage sustainable use and care of public and private lands. As a Montana corporation SEC is entitled to own land under Montana Code Ann. §§ 35-2-117 and 35-2-118.

B. CSKT is an Indian tribal government organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 461 et seq. (2004). CSKT has a unique interest in the land, water and other natural resources of the Flathead Indian Reservation as the Tribal homeland and in the land, water and other natural resources of the Tribes’ aboriginal territory for hunting, fishing and gathering purposes, all as guaranteed by the Treaty of Hellgate, 12, Stat. 975, July 16, 1855. With regard to resident fish, pursuant to Article III of the Hellgate Treaty, the Tribes reserved the right to protect, preserve and utilize the fishery in common with the citizens of Montana, the right to access, protect, and utilize the usual and accustomed places where they practiced their traditional fishing activities, and the right to the quantum and quality of water necessary to make the fishing right meaningful. The Tribes regulate fishing by Tribal members. The Tribes regulate and manage the Flathead Reservation fishery and its attendant habitat. The Tribes participate with other state and federal agencies in preserving and protecting fish and fish habitat throughout the Tribes’ aboriginal territory. Fish habitat and populations the Tribes relied upon historically have been profoundly impacted by the construction and operation of, and inundation resulting from, federal hydroelectric projects on the Columbia River and its

tributaries.

C. MFWP is an executive state agency established as the state fish and wildlife agency pursuant to state law, Mont. Code Ann. §2-15-3401, entrusted with responsibility for protecting, preserving, managing, and propagating fish within the State of Montana. Mont. Code Ann. §87-1-201. MFWP is further authorized to acquire real property interests suitable for protecting, preserving, managing, and propagating fish, by gift, purchase or exchange, Mont. Code Ann. §87-1-209, to cooperate with the CSKT in matters involving hunting and fishing, Mont. Code Ann. §87-1-228, and to administer a river restoration program cooperatively with tribal and federal organizations. Mont. Code Ann. §87-1-257. The Montana Fish, Wildlife and Parks Commission established by Mont. Code Ann. § 2-15-3402, and the Montana Board of Land Commissioners, established by Art. X, sec. 4, Mont. Const., have the authority to and are required by Mont. Code Ann. § 87-1-209 to approve acquisitions of land or interests in land by MFWP.

D. BPA is a power-marketing agency within the United States Department of Energy (DOE). The Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h (Northwest Power Act) directs BPA to protect, mitigate, and enhance fish and wildlife affected by the development and operation of federal hydroelectric projects on the Columbia River and its tributaries in a manner consistent with the purposes of the Act, the fish and wildlife program (Program) adopted by the Pacific Northwest Electric Power Planning and Conservation Council (Council) under subsection 4(h) of the Act, and other laws. Federal law places a trust responsibility on the Federal Government, which includes the responsibility to protect the sovereignty of the Tribal government and to preserve Tribal culture and trust resources. DOE's American Indian and Alaska Native Tribal Government Policy and BPA's Tribal Policy recognize and commit to a government to government relationship with the Tribes (<http://www.em.doe.gov/public/tribal/policy2.html>; <http://www.bpa.gov/corporate/kt/trblpolicy.pdf>).

E. The CSKT and MFWP are co-trustees for the Flathead River Basin fishery and have each developed a resident fish mitigation program to assist BPA in fulfilling its fish mitigation obligation under the Northwest Power Act associated with the construction of, and inundation created by Hungry Horse Dam. The acquisition and subsequent management of real property made pursuant to this agreement by SEC shall follow the terms of this Agreement.

F. BPA has completed the Wildlife Mitigation Programmatic Environmental Impact Statement (EIS) and Record of Decision (ROD) and the Watershed Program Management EIS and ROD under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370c, pursuant to Federal law, and these documents provide the basis for BPA's NEPA compliance for this Agreement.

G. The purpose of this Agreement generally is to provide a mechanism for BPA to fund, and SEC, on behalf of MFWP, to implement the permanent protection and mitigation of resident fish and especially bull trout staging, spawning, and rearing habitat to partially mitigate the direct construction and inundation impacts of Hungry Horse Dam based on the *Fisheries Mitigation Plan for Losses Attributable to the Construction and Operation of Hungry Horse Dam*, March 1991; and *Determination of Fishery Losses in the Flathead System Resulting from the*

Construction of Hungry Horse Dam, January 1986. The Council adopted the losses for Hungry Horse into the Council's program in 1993.

H. The purpose of this Agreement specifically is to memorialize SEC's role, responsibilities, and duties with respect to a parcel of land it acquired using BPA resident fish mitigation funding in September 2006 as a result of a Memorandum of Agreement between CSKT, MFWP, and BPA dated March 28, 2006 (referred to herein as the "2006 MOA"). The parcel of land is more particularly described as the west ½ of Section 35, T21N, R17W, P.M.M., Missoula County, Montana (referred to herein as the "Property"). This Agreement, and the terms contained herein, are intended to govern only actions to be taken with respect to the Property and not any other site.

I. The east ½ of Section 35, T21N, R17W, P.M.M., Missoula County, Montana abuts the Property and was simultaneously purchased by the CSKT pursuant to the 2006 MOA. This Agreement does not alter the Tribe's role, responsibilities, and duties under the 2006 MOA.

J. The east ½ and the west ½ of Section 35, T21N, R17W, P.M.M., Missoula County, Montana are referred to collectively in this Agreement as the "Elk Creek Parcel."

TERMS AND CONDITIONS

1. Funding. MFWP, in September 2006, requested and ultimately received approval from BPA for a \$6,100,000 within in-year capital budget amendment; \$4,800,000 of which was applied by MFWP to purchase the Property in the name of SEC; \$200,000 of which was applied by CKST to acquire the east half of the Elk Creek Parcel; and the \$1,100,000 balance was applied by MFWP toward purchase of a conservation easement on another parcel. The Northwest Power Planning Council and BPA both approved the funding for acquisition of the Elk Creek Parcel in September 2006. The entirety of the Elk Creek Parcel was purchased for \$9,600,000 using BPA funding, with \$5,000,000 in funding from MFWP's allocated Council-recommended BPA project budget (including the within-year modification) and the balance from CSKT's 2005 and 2006 Council-recommended BPA project budget, less capital funds used by both BPA and the CSKT for project-related costs.

2. Elk Creek Parcel Description. The east half of Section 35 T21N, R17W, P.M.M., Missoula County, Montana (approximately 320 acres), is now owned by the CSKT while the west half of Section 35 T21N, R17W, P.M.M., Missoula County, Montana (approximately 320 acres), is now owned by SEC. Closing took place on September 15, 2006 in Seattle, Washington.

3. Due Diligence. During 2006, the Parties completed the required NEPA, cultural, hazardous waste, appraisal, and all other due diligence work required by BPA prior to the closing on the Elk Creek Parcel.

4. Title and Conservation Easements. To ensure that the Property is protected permanently as mitigation for resident fish habitat losses, SEC shall grant and deliver to BPA a deed of conservation easement substantially in the form found in Attachment A, incorporated herein by this reference as the Deed of Conservation Easement for the West Half of the Elk

Creek Property. This conservation easement shall be conveyed to BPA in conjunction with the signing of this Agreement.

5. Fisheries Credits.

A. BPA is obligated by law to protect, mitigate and enhance fish affected by the development of federal hydroelectric projects pursuant to section 4(h)(10)(A) of the Northwest Power Act, 16 U.S.C. 839b(h)(10)(A). The Parties hereto agree that the quantum of resident fish habitat directly affected by construction and inundation of Hungry Horse Dam is:

1. Fifty-seven (57) kilometers of the South Fork Flathead River; and
2. Sixty-eight and eight tenths (68.8) kilometers of tributary habitat

as described in the *Fisheries Mitigation Plan for Losses Attributable to the Construction and Operation of Hungry Horse Dam*, March 1991, and *Determination of Fishery Losses in the Flathead System Resulting from the Construction of Hungry Horse Dam*, January 1986 pages 15 and page 11 of Appendix B of that document, respectively.

B. The Parties hereto agree that the Elk Creek Parcel yields 4.18 km of tributary resident fish habitat and that the corresponding 4.18 km of resident fish habitat mitigation credit shall vest in BPA against tributary resident fish losses associated with the construction of and inundation by Hungry Horse Dam. The Parties hereto further agree that the amount of resident fish habitat mitigation credit quantified and taken by BPA pursuant to this Agreement is irreducible, and cannot be diminished as a result of any failure by SEC, the Tribes, or MFWP to carry out their obligations under this Agreement, so long as a court has not found BPA in breach of this Agreement and BPA has not cured its breach.

6. Operations and Maintenance. SEC shall be responsible for all future operations and maintenance costs associated with the Property.

7. Management Plan. SEC and CSKT agree to produce a joint draft Management Plan for the Elk Creek Parcel (640 acres) on or before September 15, 2007 and submit said Management Plan to BPA for review and approval. BPA shall have 60 days to review the Plan for approval and ensure it conforms to the terms of the 2006 MOA, this Agreement, Elk Creek Parcel conservation easements, pertinent NEPA documents, and other BPA legal obligations. Once approved, the Management Plan shall be deemed incorporated into and made a part of the 2006 MOA and this Agreement.

The draft Management Plan shall be based upon and consistent with the eight standard planning process steps and the nine resource specific mitigation measures contained in the Wildlife EIS and/or Watershed EIS Records of Decision (see Recital D of 2006 MOA).

The Management Plan will provide for management actions that preserve, restore, enhance and/or create naturally self-sustaining native habitat or native-like habitat that supports indigenous resident fish species of the area, particularly loss assessment target species and ESA-listed species.

SEC shall request participation from other local resource managers in reviewing and commenting on the draft Management Plan. SEC shall also request participation from the public, and private landowners in the immediate area as is appropriate and helpful in developing the draft Management Plan, and all subsequent amendments to it.

SEC shall undertake only those management activities on the Property that are allowed by this Agreement until a Management Plan is executed for the Property.

8. Incidents of Ownership. SEC shall have all management and operational control of the Property and will, therefore, be responsible for all incidents of ownership.

9. Environmental Liability. SEC shall hold BPA harmless for any environmental liabilities or costs which may arise at the Property after closing and BPA will not provide funding to support such costs, unless BPA is directly responsible for the liability or costs in accordance with applicable law.

10. Assurances; Prohibited Uses. SEC will ensure that all the habitat acquired and/or managed pursuant to this Agreement is permanently protected and managed for resident fish on behalf of BPA and the United States by means of a perpetual conservation easement attached hereto as Attachment A, and will take all actions within its powers to prevent any and all uses that are inconsistent with this Agreement, the Pacific Northwest Power and Conservation Planning Council's Program, the Northwest Power Act, the Management Plan required by Section 7 of this Agreement, and the ESA to the extent allowable by law, taking into consideration any encumbrances from pre-existing rights or first-in-time rights held by non-fee title third parties, including, but not limited to, encumbrances related to (i) third party ownership of oil and gas rights and (ii) validly recorded easements burdening the property. The Parties intend that any activity that violates the purposes of this Agreement, or unduly limits additional resident fish mitigation credit accruing to BPA from natural regrowth and regeneration of the habitat, is prohibited, and therefore the list identified below is not exhaustive. Prohibited uses include:

A. All residential, commercial, or industrial uses of the properties, except as permitted in the Management Plan;

B. Erecting of any building, billboard, or sign except as approved in the Management Plan;

C. Depositing of soil, trash, ashes, garbage, waste, bio-solids or any other material, except as allowed under applicable federal, state, and local laws at locations approved in the Management Plan;

D. Excavating, dredging, or removing of loam, gravel, soil, rock, minerals, sand, hydrocarbons or other materials, except as permitted in the Management Plan;

E. Otherwise altering the general topography of any property acquired or managed pursuant to this Agreement, including but not limited to building of roads and flood control work, except for work related to restoration or enhancement projects identified in the Management Plan;

F. Granting any easement, lien, or other property interest for any purpose (without the written consent of BPA), over any property (including water rights) acquired or managed pursuant to this Agreement;

G. Any other use that is not included in the management plan, and that BPA determines has a material negative impact to the conservation values identified in Attachment A.

H. Livestock grazing, timber harvest, removal of other shrubbery or vegetation unless those actions are specifically provided in the Management Plan for purposes which include, but are not limited to protecting resident fish, protecting against wildfire, preventing disease, or protecting persons or property.

11. Permanent Resident Fish Habitat Protection. Unless otherwise agreed by the Parties in writing, SEC will dedicate the Property to resident fish habitat protection and will manage the Property according to the terms of this Agreement, and the Management Plan required under Section 7.

12. Electrical Transmission Easement. If BPA needs a transmission line right-of-way over the Property, then SEC shall grant BPA such a perpetual easement at no cost. Upon BPA's request for such an easement, SEC and BPA will negotiate an agreement for the easement that will recognize the purposes for which the underlying fee of the Property was acquired, and include appropriate mitigation measures consistent with this Agreement and otherwise identified as part of the environmental analysis for the transmission right of way under the NEPA, the ESA and the Clean Water Act or any other applicable federal laws. Transmission right-of-way easements shall be for the sole purpose of transmission of electrical power and ancillary transmission communications.

13. Remedies.

A. Notice of Failure. If BPA determines that SEC is in violation of the terms of this Agreement (including any and all Conservation Easements acquired pursuant to this Agreement) or that a violation is threatened, BPA shall give written notice to SEC of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Agreement to restore the portion of the Property so injured.

- B. SEC's Failure to Respond. Providing that SEC has not initiated Alternative Dispute Resolution actions to which the parties are subject to as set forth in Section 20 below regarding the alleged violation, BPA may bring an action as provided in subsection 13.C.3 below, if SEC:
1. Fails to cure the violation within thirty (30) days after receipt of notice from BPA; or
 2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue to diligently cure such violation until finally cured.
- C. BPA's Action. Providing that SEC has not initiated Alternative Dispute Resolution actions to which the parties are subject to as set forth in Section 20 below regarding the alleged violation, if BPA determines that SEC is in violation of the terms of this Agreement, or that a violation is threatened, it may bring an action at law or in equity to enforce the terms of this Agreement to enjoin the violation, to recover any damages to which it may be entitled for such violation, and to require the restoration of the Property to the condition existing before the violation, or to undertake such restoration as required by the terms of this Agreement if SEC does not and be reimbursed by SEC for such effort.
- D. Immediate Action Required. If BPA determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, BPA may pursue its remedies under this section without prior notice to SEC without waiting for the period provided for cure to expire.
- E. Acts of God. Nothing contained in this Agreement shall be construed to entitle BPA to bring any action against SEC for any injury to or change in the Property resulting from causes beyond SEC's control, including, without limitation, naturally caused fire, flood, storm, and earth movement, or from any prudent action taken by SEC under emergency conditions to prevent, abate, or mitigate significant injury to a the Property resulting from such causes. Such excuse from performance shall only be allowed if such catastrophic event or other event beyond the SEC's control has caused a substantial degradation of the habitat. The Parties will make all reasonable efforts to resume performance promptly once the force majeure is eliminated.
- F. SEC Action. The Parties to this Agreement acknowledge that the terms of this Agreement are unique, apply only to the Property, and are being agreed to in order to facilitate the operation and maintenance of the Property. If SEC determines that BPA is in violation of the terms of this Agreement for acts or omissions of BPA directly related to the Property, then it may bring an action against BPA at law or in equity to enforce the terms of this Agreement to enjoin the violation, to recover any damages, and to seek any other remedy to which it

may be entitled for violation of the terms of this Agreement. SEC shall not use any provision of this Agreement or the 2006 MOA against the CSKT in any proceeding or litigation, as an admission or otherwise, except in a proceeding or litigation to enforce the terms of this Agreement. SEC shall not use any provision of this Agreement or the 2006 MOA to challenge any act or omission of the CSKT at any site other than the Property.

14. Future Conveyance of the Property

- A. If SEC determines that a sale or exchange of the Property would provide no net loss in resident fish habitat or stream kilometers (from conditions at the time of the proposed sale or exchange), or aid in the fulfillment of the management objectives as stated in this Agreement, then SEC may sell or exchange the Property ensuring the following conditions are met:
1. Any newly acquired real property interests shall be of equal or greater resident fish habitat value to the habitat existing on the Property, or aid in fulfillment of the joint BPA/MFWP/CSKT resident fish mitigation project or facilitate management of real property already acquired.
 2. If SEC desires to sell the Property, then SEC shall first offer the property to MFWP for the price and on the terms of the intended sale. MFWP shall have sixty days from the date of such offer to accept or reject it.
 3. SEC must consult with BPA, CSKT, and MFWP regarding any proposed sale or exchange, and can only proceed to consummate any such transaction with approval of BPA, CSKT, and MFWP. Approval shall not be unreasonably withheld.
- B. Notwithstanding any other terms of this Agreement to the contrary, if SEC determines that it may no longer act in the capacity as the steward for this property, for whatever reason, it may divest itself of fee title to the Property for no consideration by deeding the Property to:
1. a successor organization in the form of another 501(c)(3) conservation organization that meets the standards required to fulfill the intended stewardship over this property and that is approved in writing by BPA, MFWP and CSKT, which shall not be unreasonably withheld; or
 2. MFWP if MFWP, in its sole discretion, consents to acquisition of the Property; or
 3. CSKT, if CSKT, in its sole discretion, consents to acquisition of the Property.

Each Party represents that it will work cooperatively with each of the other Parties to find an appropriate and satisfactory successor if SEC determines that it may no longer act in the capacity as the steward for this property, for whatever reason.

15. Public Access. The public shall have reasonable access to the Property. The Management Plan will define the scope of public access. Until the Management Plan is adopted, the scope of public access is deemed to be consistent with the existing condition (i.e. Plum Creek's Open Land Policy). SEC shall not provide access or use that will result in material adverse impacts to resident fish, a material reduction of habitat values, or the material alteration of other natural resource values for which the Property is managed, or impede any anticipated increase in habitat values. Nothing in this Agreement limits the authority or ability of SEC to manage the Property for public safety and fish and wildlife habitat conservation, or to preserve and protect cultural, historic, and religious sites.

16. Tribal Access. The parties acknowledge that the Hungry Horse Hydropower Project and the Property are both located within the aboriginal territory of the Tribes. The Parties further acknowledge that the Tribes retain certain interests in and rights to land and resources within their aboriginal territories pursuant to treaty agreement with the United States. For purposes of this Agreement, it is the Parties' mutual intent that members of the Tribes have access to and use of the Property for the purpose of exercising their treaty-reserved fishing rights so long as said activities are consistent with the purposes of the 2007 MOA and the Joint Management Plan, however, nothing in this Agreement is intended to nor shall abrogate or define any federally protected or reserved Indian right.

17. Reporting. SEC shall provide BPA with an annual written report generally describing the condition of the Property and management activities required in the Management Plan. If requested, SEC shall provide BPA with access to all related financial records, and allow BPA to seek answers to any questions it may have related to the Property and compliance with this Agreement.

18. Right To Enter. BPA shall have the right to enter upon the Property at reasonable times and upon reasonable notice to monitor SEC's compliance with this Agreement and to enforce its terms.

19. Binding Effect. This Agreement shall be binding on the Parties and their assigns and successors. Each Party shall have the right to enforce the terms of this Agreement in any court of competent jurisdiction.

20. Alternative Dispute Resolution. These dispute resolution provisions may be triggered by any Party to address issues directly related to the Property and arising in the implementation of this Agreement with regard to the Property, particularly sections regarding management plan development and approval, termination, and crediting. Providing that litigation has not been initiated with regard to a particular dispute, the Parties may either mediate or arbitrate said dispute, but they may not do both.

A. If no Party has initiated litigation or mediation, then subject to and consistent with the Administrative Disputes Resolution Act of 1996, 5 U.S.C. §§ 571-583, any

Party may initiate arbitration for a controversy or claim arising out of or relating to this contract, or the breach thereof. The Parties must agree to the arbitration, and must agree in advance whether the arbitration will be binding or non-binding. Arbitration shall be administered by the American Arbitration Association Seattle, Washington, office in accordance with its Commercial Arbitration Rules, unless the Parties otherwise agree to different rules. The arbitration will be done using a single arbitrator—unless the Parties agree to more than one arbitrator, follow the Federal Rules of Civil Procedure, and with each Party paying its own costs and attorney fees and -sharing equally in all arbitration costs. There will be limited discovery allowed, as determined by the arbitrator, consistent with the goal of delivering a just, speedy, and cost-effective resolution of the dispute. In determining appropriate discovery, the arbitrator shall take into account any responses made by BPA or the Department of Energy to a Party in response to a Freedom of Information Act request. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

- B. If no Party has initiated litigation or arbitration, any Party may initiate mediation. The Parties agree that a controversy arising out of or relating to this Agreement shall be submitted to Judicial Arbitration and Mediation Service (JAMS), or its successor, for mediation. The Parties may commence mediation by providing to JAMS a written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs and fees. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties. There will be limited discovery allowed as determined by the mediator, consistent with the goal of assisting the Parties to obtain a just, speedy, and cost-effective resolution of the dispute. In determining appropriate discovery, the mediator shall take into account any responses made by BPA or the Department of Energy to a Party in response to Freedom of Information Act request.

21. Effective Date & Counterpart Signatures. This Agreement shall be effective when signed by a duly-authorized representative of SEC; by the Chairmen of the Tribes pursuant to a Tribal Resolution (Attachment B); by the Director, MFWP; by BPA's Manager, Real Property Services; and by BPA's Vice President for Environment, Fish and Wildlife. This Agreement shall be executed in counterparts, each of which is deemed to be an executed original even if all signatures do not appear on the same counterpart. Facsimile copies and photo copies of this Agreement will have the same force and effect as an original.

22. Modification. The Parties by mutual agreement may modify the terms of this Agreement. Any such modification shall be in writing signed by all Parties.

23. Applicable Law. All activities undertaken pursuant to this Agreement must be in compliance with applicable laws and regulations. Federal law shall govern the implementation of this Agreement and any action, whether arbitrated, mediated, or litigated, brought or enforced. In full knowledge of the provisions of this Agreement, SEC, CSKT and MFWP waive any claim or defense they may have against BPA or its successors in interest under or pertaining to this Agreement based upon waiver, laches, estoppel, adverse possession, prescription, or sovereign immunity. Any payments from SEC, CSKT or MFWP shall be payable only from monies, assets, or real or personal properties derived from this Agreement or the benefits of this Agreement. All other monies, assets or properties of SEC, CSKT, or MFWP shall be unavailable to satisfy a judgment. The waivers of sovereign immunity by the United States bind BPA and can be found generally in the statutes establishing the jurisdiction of the United States District Courts, 28 U.S.C. § 1346, the Court of Claims, 28 U.S.C. § 1491, and the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 1402, 2401, 2402, 2411, 2412, 2671 *et seq.*

24. Attorney Fees. In the event of litigation, arbitration or mediation involving this Agreement each Party shall bear its own costs and attorney fees, including those incurred on appeal, unless expressly provided otherwise herein.

25. Waiver. The failure of any Party to require strict performance of any term of this Agreement or a Party's waiver of performance shall not be a waiver of any future performance or of a Party's right to require strict performance in the future.

26. Assignment. During such time SEC is the fee title holder of the Property, SEC may not assign or transfer its rights or delegate its responsibilities under this Agreement without written approval from BPA, MFWP, and CSKT. Such written approval shall not be unreasonably withheld and shall mirror the written approval governing SEC exchanging or selling the Property as provided in Section 14 above. At such time SEC is not the fee title holder to the Property, SEC shall have no further responsibility regarding the Property pursuant to this Agreement.

27. Notice. Any notice permitted or required by this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. The addresses listed below can be modified at any time through written notification to the other Party.

Notices to BPA:

Manager, Fish & Wildlife
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208

Notices to SEC:

Swan Ecosystem Center
6887 Hwy 83
Condon, MT 59826

Notices to MFWP:

Montana Dept. of Fish, Wildlife & Parks
P.O. Box 200701
Helena, MT 59620-0701

Notices to CSKT

Chairman - Tribal Council
Confederated Salish and Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

IN WITNESS WHEREOF, the parties have signed this Agreement below:

BONNEVILLE POWER ADMINISTRATION

By: _____
Gregory K. Delwiche
Vice President
Environment, Fish and Wildlife

Date: _____

By: _____
Margareth H. Wolcott
Manager, Real Property Services

Date: _____

CONFEDERATED SALISH AND KOOTENAI TRIBES

By: _____
James Steele, Jr.
Chairman – Tribal Council

Date: _____

MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

By: _____
M. Jeff Hagener
Director

Date: _____

SWAN ECOSYSTEM CENTER

By: _____

Date: _____

Name: _____

Title: _____