

## Appendix 2

### DEED OF CONSERVATION EASEMENT

[ *WEST HALF OF THE ELK CREEK PROPERTY* ]

THIS DEED OF CONSERVATION EASEMENT is made by The Swan Ecosystem Center, a nonprofit corporation organized pursuant to Montana law and doing business at 6887 Hwy 83 Condon, Montana 59826 (“SEC”), in favor of the United States of America, acting by and through the Department of Energy, Bonneville Power Administration (“BPA”), based in Portland, Oregon. SEC and the United States are jointly referred to herein as the Parties.

#### WITNESSETH

Purposes and Intent. BPA and SEC entered into a Memorandum of Agreement Between the Swan Ecosystem Center, Confederated Salish and Kootenai Tribes, the State of Montana and the Bonneville Power Administration for Resident Fish Mitigation (2007)(hereinafter the “2007 MOA”). The 2007 MOA allows BPA to fund and SEC to acquire the west half of the Elk Creek Property to mitigate for the impacts to resident fish from construction and inundation of the Hungry Horse federal hydroelectric project. A copy of the 2007 MOA is on file with the BPA Manager, Real Property Services, P.O. Box 3621, Portland, OR 97208-3621. In accordance with the 2007 MOA, BPA seeks, and SEC seeks to provide, a conservation easement on the west half of the Elk Creek Property, a parcel of land located in Missoula County, Montana and owned in fee by SEC. The purpose of this easement is to preserve, create, enhance, restore, and protect the functional values of riparian lands, wetlands and other lands, and for the conservation of natural values including fish and wildlife habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values and environmental education consistent with the 2007 MOA.

Authority. This acquisition of Easement Deed by the BPA is authorized by the Northwest Power Act, 16 U.S.C., §§ 839b(h) and 839f(a), the Federal Columbia River Transmission System Act, 16 U.S.C. §838i(b), or the Bonneville Project Act, 16 U.S.C. §§ 832a, which allow BPA to acquire real property interests for meeting fish and wildlife obligations under the Northwest Power Act.

NOW THEREFORE, for and in consideration of funding BPA provided to fund SEC’s acquisition of the west half of the Elk Creek Property as recommended and supported by the Montana Department of Fish, Wildlife and Parks, SEC, hereby grants and conveys to the United States of America and its assigns, in perpetuity, a conservation easement in the real property (“land” or “lands”) comprising the easement area described in Part I below, but reserving to SEC, those rights, title and interest expressly enumerated in Part II. This easement shall constitute a servitude upon the land so encumbered, shall run with the land in perpetuity and shall bind SEC, its heirs, successors, assigns, lessees, and any other person or entity claiming under them.

SUBJECT, however, to all valid rights of record, if any.

PART I. Description of the Easement Area. The lands encumbered by this easement deed, referred to herein as the easement area, are described as:

West ½ of Section 35, T.21N., R.17W., P.M.M., Missoula County, Montana, containing 320 acres, more or less.

PART II. Reservations in SEC on the Easement Area. Subject to the rights and interest conveyed by this easement deed to BPA SEC reserves:

Title. Record title, along with SEC's right to convey, transfer, and otherwise alienate title to these reserved rights.

Quiet Enjoyment. The right of quiet enjoyment of the rights reserved on the easement area.

Control of Access. The right to prevent trespass and control access consistent with the 2007 MOA.

Rights Not Granted. All rights and interests not expressly granted by this easement deed.

PART III. Obligations of the Landowner. SEC shall comply with the following:

A. Prohibitions. Unless authorized as a compatible use under Part IV, it is expressly understood that the following activities and uses are prohibited on the easement area to the extent such prohibitions are allowed by law, including encumbrances against the property arising from pre-existing valid rights of record held by third parties:

1. Haying, and/or mowing;
2. Altering of grassland, woodland, wildlife habitat or other natural features by burning digging, plowing, disking, cutting or otherwise destroying the vegetative cover;
3. Dumping refuse, wastes, sewage or other debris;
4. Harvesting wood products;
5. Draining, dredging, channeling, filling, leveling, pumping, diking, impounding or related activities, as well as altering or tampering with water control structures or devices;
6. Diverting or causing or permitting the diversion of surface water into, or out of the easement area surface by any means;
7. Building or placing buildings or structures on the easement area;
8. Planting or harvesting any crop;
9. Grazing or allowing livestock on the easement area;
10. Mining—excavation, dredging, or removal of soil, sand, gravel, rock, minerals or other surface or subsurface materials;
11. Incompatible Uses—surface use except for such purposes necessary to preserve,

12. enhance, restore or create wetlands and riparian resource functions and values; Acts Detrimental to Conservation—activities detrimental to fish and wildlife habitat, flood control, erosion control, water quality protection and enhancement, traditional cultural materials production, aesthetics, and low impact recreation; and
13. Subdivision—subdivision of land into multiple independently platted parcels.

B. Noxious plants. SEC is responsible for control of noxious weeds.

C. Fences. Costs involved in maintenance of fences and related improvements to exclude livestock shall be the responsibility of SEC.

D. Taxes. SEC shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land by an agency with jurisdiction for such tax or assessment.

E. Reporting. SEC shall report to the BPA any conditions or events which may adversely affect the riparian, wetland, wildlife, and other natural values of the easement area.

#### PART IV. Allowance of Compatible Uses by SEC.

General. The use of the easement area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing may be allowed if addressed and approved by BPA in the management plan for the property required by the 2007 MOA. Once the management plan is completed and approved by both Parties, the Parties may agree to record a copy in the county or other appropriate land records office, and substitute the restrictions in the plan for those in Part III, above.

Limitations. Compatible use authorization in the management plan will only be made if such use is consistent with the long-term protection and enhancement of the conservation purposes of the easement area.

#### PART V. Rights of the BPA. The rights of the BPA include:

A. Regulatory activities. BPA shall have the right to enter onto the easement area to undertake, at its own expense, any regulatory activity reasonably necessary to assure SEC's compliance with the terms of this Deed of Conservation Easement, including but not limited to conducting inventories to confirm the conservation values of the property, such as for fish and wildlife habitat.

B. Access / Inspection. The authorized representatives of the BPA may utilize light vehicles and other reasonable modes of transportation for access purposes. Representatives of the BPA may enter the easement area in a reasonable manner and at reasonable times to assure compliance.

C. Violations and Remedies - Enforcement.

1. Remedies. If there is any failure of SEC to comply with any of the provisions of this Deed of Conservation Easement, then the United States shall have injunctive and equitable remedies available to it to enjoin any activity on, or use of, the easement area which is inconsistent with this Deed of Conservation Easement and to enforce the reasonable restoration of such areas or features of the easement area as may be damaged by such activities, including the right to enter upon the easement area to perform necessary work for prevention of or remediation of damage to wetland or other natural values and the right to assess all related expenses incurred by BPA against SEC.
2. Forum. This Deed of Conservation Easement may be enforced in any court of competent jurisdiction.
3. Stipulation. The Parties agree that this Deed of Conservation Easement may be introduced in any enforcement proceeding brought before a court of competent jurisdiction as the stipulation of the Parties hereto.

PART VI. General Provisions.

A. Successors in Interest. The rights granted to the United States shall accrue only to the United States and its assigns. All obligations of SEC under this Deed of Conservation Easement shall also bind SEC's heirs, successors, agents, assigns, lessees, and any other person claiming under it.

B. Rules of Construction. All rights and interests in the easement area not acquired by the United States shall be deemed reserved by SEC. Any ambiguities in this Deed of Conservation Easement shall be construed in favor of the United States to affect the habitat and conservation purposes for which this Deed of Conservation Easement is being acquired.

C. Termination of SEC Obligations and Responsibilities. At such time SEC divests itself of the property by transfer, exchange, sale or other transaction, all duties, obligations and responsibilities of SEC under this Deed of Conservation Easement shall terminate.

TO HAVE AND TO HOLD the easement granted herein to the United States and its assigns in perpetuity. SEC covenants to comply with the terms and conditions enumerated in this document for the use of the easement area and adjacent public roadway for access, and to refrain from any activity that is inconsistent with the purposes of this Deed of Conservation Easement.

**FOR SWAN ECOSYSTEM CENTER:**

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[NAME ]

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[TITLE ]

