

**AFTER RECORDING, RETURN TO:**

Bonneville Power Administration
Real Property Services, TERR
Re: YKMRD-WL-1
P.O. Box 3621
Portland, OR 97208-3621



325306AM
DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is executed between the Kittitas Conservation Trust, a nonprofit Washington corporation (“Grantor”), in favor of the United States of America (“United States”), acting by and through the Department of Energy, Bonneville Power Administration (“BPA” or “Grantee”), headquartered in Portland, Oregon, at P.O. Box 3621, Portland, OR 97208-3621. The Grantor and Grantee together are referred to as the “Parties.”

RECITALS

- A. Grantor is a 501(c)3 nonprofit environmental corporation and is the sole owner in fee simple of certain real property, the Eagle Pond property located in the County of Kittitas, State of Washington.
- B. BPA is a power-marketing agency having legal obligations under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h (“Northwest Power Act”) to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of Federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Northwest Power Act, the Fish and Wildlife Program adopted by the Pacific Northwest Electric Power and Conservation Planning Council under subsection 4(h) of the Northwest Power Act (16 U.S.C. § 839b(h)), and other environmental laws, including the Endangered Species Act, 16 U.S.C. §§ 1531-1544 (“ESA”); BPA has the authority pursuant to the Northwest Power Act, 16 U.S.C. §§ 839b(h) and 839f(a), the Federal Columbia River Transmission System Act, 16 U.S.C. § 838i(b), or the Bonneville Project Act, 16 U.S.C. §§ 832a(c) through (f), to acquire real estate or to assist in the acquisition and transfer of real property interests.
- C. This Conservation Easement provides conservation measures and mitigation for wetland impacts associated with groundwater withdrawals for operation of the Cle Elum Supplementation and Research Facility (“hatchery”), a BPA-funded Yakama Nation fish hatchery on the Yakima River located in the City of Cle Elum, County of Kittitas, State of Washington. The Washington Department of Ecology (“Ecology”)

determined that withdrawals from one of the hatchery's wells resulted in a loss of function at a 1.46-acre wetland at the hatchery site, which BPA agreed to mitigate. BPA mitigated 0.52 acres of those wetland impacts through the Tillman Creek mitigation project, completed and recognized as successful by Ecology in 2008.

- D. BPA provided funding to the Grantor to acquire fee title ownership of the Eagle Bend property. The terms and protections of this Conservation Easement complete compensatory mitigation for the remaining 0.94 acres of impacted wetland at the hatchery site by preserving the 40.33 acre Eagle Bend property (hereinafter the "**Protected Property**"), including 25.86 acres of Category I wetland, in perpetuity. BPA's funding to acquire the Protected Property, together with the perpetual wetland preservation provided by the terms of this Conservation Easement, fully resolve any and all of BPA's mitigation obligations for impacts to the wetland at the hatchery site, in accordance with the **Wetland Mitigation Plan (Exhibit D)** and as confirmed by a **Letter from Ecology (Exhibit G)**.

THEREFORE the Parties agree as follows:

- A. **Conveyance and Consideration.** The Grantor, for and in consideration of the funding in the amount of FOUR HUNDRED AND TWELVE THOUSAND (\$412,000.00) in U.S. dollars which BPA provided to the Grantor to acquire fee title ownership of the Protected Property, hereby voluntarily conveys and warrants to the United States of America and its assigns a perpetual easement for conservation purposes ("**Conservation Easement**") in, over, under, upon and across the Protected Property, legally described in **Exhibit A ("Legal Description")** and shown in **Exhibit B ("Map")**, together with the right of access and entry, created and implemented under applicable state and federal law, and creating an interest in property intended to be a conservation easement under RCW § 64.04.130. The Parties intend this Conservation Easement to be a perpetual and irrevocable easement in gross, and further intend that its terms and conditions, set forth below, create equitable servitudes and covenants running with the land, binding the Grantor and the Grantor's successors and assigns for the benefit of the United States.
- B. **Purpose.** The purpose ("**Purpose**") of this Conservation Easement is to protect, conserve, and maintain the **Conservation Values** (Section C, below) of the Protected Property, as such Conservation Values may change by natural occurrence and activities consistent with this Conservation Easement over time. As such, the Purpose of this Conservation Easement includes the prevention of any use of the Protected Property that will materially harm or materially interfere with any of the Conservation Values of the Protected Property. The Grantor intends that this Conservation Easement will confine the use of the Protected Property to activities that comply with the Conservation Easement, including the approved Management Plan. BPA shall have the right, but not the obligation, to enforce any and all terms of this Conservation Easement. The Grantor shall only conduct activities on the Protected Property which are consistent with the Purpose of this Conservation Easement. In the event that there is a conflict between the Grantor's uses or activities and the Purpose

of Conservation Easement, the Purpose of the Conservation Easement shall be construed broadly and shall prevail over any conflicting uses or activities of the Grantor.

- C. Conservation Values.** The Protected Property, in its present state, comprises approximately 40.33 acres which include Yakima River floodplain, historic side channels, riparian forest, riverine wetlands, and off-channel aquatic habitat important to fish and wildlife, including ESA listed fish species. The Protected Property provides year-round habitat for a range of wildlife species, refugia and foraging habitat for juvenile salmonids, and side channel and backwater habitat for migrating salmonids.

The Parties agree that the Protected Property includes important species, habitat, and ecosystem attributes. The Conservation Values of the Protected Property that currently exist specifically include the following, recognizing that such Conservation Values may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, floods, interdecadal climate events, and long-term climate change, as well as human-initiated enhancement or restoration actions, either on or off the Protected Property.

1. The wetland within the Protected Property totals 25.86 acres of riverine wetland (palustrine emergent, palustrine unconsolidated bottom, and palustrine forested), includes two ponds, and is dominated by balsam poplar (*Populus balsamifera*) and Scouler's willow (*Salix scouleriana*) with an understory of narrow-leaf willow (*Salix exigua*), common cattail (*Typha latifolia*), rushes (*Juncus* sp.) and reed canarygrass (*Phalaris arundinacea*). The wetland within the Protected Property is considered a Category I wetland based on the Wetland Rating System for Eastern Washington (Hruby 2014). Category I wetlands are those that either: represent a unique or rare wetland type; are more sensitive to disturbance than most wetlands; are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or provide a high level of functions. The wetland within the Protected Property is considered a Category I wetland because it has an aspen stand within its bounds. Aspen stands are considered a special characteristic of Eastern Washington wetlands because these stands contribute a great amount of habitat and represent the intersection of two different Priority Habitats: aspen stands and wetlands. The Washington Department of Fish and Wildlife ("WDFW") defines Priority Habitat as "those habitat types or elements with unique or significant value to a diverse assemblage of species (WDFW 2016)." In addition, aspen stands are considered a special characteristic of Eastern Washington wetlands because their underground root systems may be difficult to reproduce.
2. The Protected Property allows connectivity between other areas of known fish and wildlife habitat by way of connections with the Yakima River, including its side channels, back channels, and intermittent streams, all of which serve as winter and summer refuges, as well as spawning and rearing habitat for several native salmonids including spring/summer Chinook (*Oncorhynchus tshawytscha*), coho (*Oncorhynchus kisutch*), summer steelhead (*Oncorhynchus mykiss*), rainbow

trout (*Oncorhynchus mykiss*), and bull trout (*Salvelinus confluentus*). The Protected Property also provides potentially suitable habitat for other species, including Pacific lamprey (*Entosphenus tridentatus*), fall Chinook (*Oncorhynchus tshawytscha*), west slope cutthroat trout (*Oncorhynchus clarkii lewisi*).

3. There is a variety of wildlife species present within the Protected Property, including but not limited to mallard (*Anas platyrhynchos*) and common merganser (*Mergus merganser*). There is a bald eagle (*Haliaeetus leucocephalus*) nest located south of the small pond. In addition, the Protected Property is utilized by great blue heron (*Ardea herodias*) for breeding and the Protected Property is within the range of northern spotted owls (*Strix occidentalis caurina*). There is a wide range of migratory birds whose range overlap with the Protected Property. WDFW has identified fish and wildlife species that are a priority for management and conservation and require protective measures due to their population status, sensitivity to habitat alteration, or recreational, commercial, or tribal importance (WDFW 2016). The Columbia spotted frog (*Rana luteiventris*) is a Priority Species that may use the ponds within the Protected Property. Sharp-tailed snakes (*Contia tenuis*) and gray wolves (*Canis lupus*), which are also Priority Species, may also utilize the habitat within the Protected Property.
4. The Protected Property is rich in fish and wildlife habitat and includes terrestrial and aquatic Priority Habitats, as identified by WDFW, as well as some Priority Habitat features. For terrestrial Priority Habitats, the Protected Property includes a 3.24-acre aspen stand (in two patches, one a wetland) in the southern corner of the Protected Property. The Protected Property also provides riparian habitat and is part of a biodiversity area/corridor connecting the Priority Habitats of the Yakima River within the City of Cle Elum. The upland riparian habitat within the Protected Property is dominated by ponderosa pine (*Pinus ponderosa*) and balsam poplar (*Populus balsamifera*) with an understory composed largely of common snowberry (*Symphoricarpos albus*), nootka rose (*Rosa nutkana*), and Oregon grape (*Mahonia nervosa*).
5. Aquatic Priority Habitats within the Protected Property include instream and freshwater wetlands/fresh deep water. Connections from the ponds to the instream habitat of the Yakima River provide a variety of fish and wildlife habitat. The Yakima River and the portion of the Protected Property below the Ordinary High Water Mark is designated Critical Habitat for the Middle Columbia River steelhead Distinct Population Segment (summer-run) and bull trout.
6. Protection of the existing aquatic and riparian habitats on the Protected Property allows for focus on recovering listed and at-risk species and providing habitat for native wildlife and fish. The Conservation Values include important habitat, generally characterized by the biological or physical components that support fish and wildlife species, including but not limited to space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring, and migration; and often identified as

important through regulatory categorical designations such as ESA-designated critical habitat or other important environmental areas identified by local, tribal, state, or federal law. The Protected Property's riparian location contributes to open space, biodiversity, clean air and water, and also provides a scenic resource.

- D. Water Rights.** As of the Effective Date (Section W), there are no water rights appurtenant to the Protected Property. To the extent the Grantor acquires water rights appurtenant to the Protected Property, the Grantor shall change the use of appurtenant water rights to instream flow purposes in a timely manner in accordance with applicable law. Should that change not be appropriate or feasible, the Grantor shall use the amount of water to which it is legally entitled in the place and manner to which it is legally entitled, for a beneficial purpose without waste, for the Purpose of this Conservation Easement. The Grantor shall not abandon any of the water rights appurtenant to the Protected Property by virtue of non-use. The Grantor shall not transfer, change the point of diversion, change the purpose of use, or otherwise significantly change any Protected Property water right without receiving prior written approval from BPA.
- E. Baseline Documentation.** The Grantor and BPA agree that certain characteristics and conditions of the Protected Property at the Effective Date (Section W) are documented in a Baseline Documentation Report, signed and acknowledged by the Parties; the acknowledgment is **Exhibit C ("Acknowledgement of Baseline Documentation Report")**, attached and incorporated by reference.
- F. Reserved Uses.** The Grantor reserves, for itself and its successors, and assigns the right to use the Protected Property in any and all ways which are consistent with the Purpose of this Conservation Easement and which are not otherwise prohibited by this Conservation Easement, including but not limited to: the right to record title, the right to convey, transfer, and otherwise alienate title to these reserved rights in accordance with Sections K.14 and R; the right of quiet enjoyment of the rights reserved in Protected Property; and the right to prevent trespass and control access.
- G. Management Plan.** Within 18 months of the Effective Date (Section W), the Grantor shall develop a Management Plan for the Protected Property to describe the uses and activities that the Grantor expects to undertake or allow to be undertaken on the Protected Property, including any operation and maintenance or other management actions necessary to maintain the Conservation Values. The Grantor and Grantee expect that management of the Protected Property will be focused on passive protection rather than active management, and intend for the Management Plan to reflect that focus. The Grantor shall include in the Management Plan any limitations or prescriptions for these uses and activities necessary to ensure the Purpose of this Conservation Easement. The Grantor shall also identify in the Management Plan the allowable use and access by the public of the Protected Property if public access is appropriate.

In developing the draft Management Plan, Grantor will solicit and incorporate as Grantor deems appropriate the views of interested natural resource management

agencies, local governments, and parties. Grantor will submit documentation showing the nature and extent of such coordination with any draft plan to BPA. BPA shall review that Management Plan and any proposed amendments for conformance with this Conservation Easement, and applicable laws. BPA must review the Management Plan or any amendments prior to its implementation for consistency with the Purpose of the acquisition and this Conservation Easement. The Grantor shall make the final Management Plan, and any amendments, available to the public upon request.

H. Public Access. The Grantor may provide reasonable public access to the Protected Property (for example, for undeveloped recreational uses, such as hiking, bird watching, and fishing) unless the Grantor and BPA determine such access may materially impair one or more of the Conservation Values of the Protected Property. The Grantor will address public access in the Management Plan. Grantor agrees that Ecology may access the Protected Property, with prior notice to Grantor and Bonneville, during the five year monitoring period described in the Wetland Mitigation Plan (**Exhibit D**), for purposes of inspection relating to such monitoring period.

I. Annual Report. The Grantor shall annually submit a report to BPA that describes, at a minimum, any: changes in real property interests (including water rights) in the Protected Property; revenues generated from the Protected Property and how used; uses or activities undertaken, in progress, or planned; violations or threatened violations of the Conservation Easement; and enforcement actions taken relating to Grantor's ownership of the Protected Property and obligations under this Conservation Easement, such as preventing Prohibited Uses, controlling public access, and managing the Protected Property consistent with the Management Plan. The Grantor shall provide the initial annual report by the first April 15th after the Effective Date (Section W), and then annually by April 15th thereafter, unless otherwise agreed by BPA.

J. RIGHTS CONVEYED TO GRANTEE

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

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

Values, including but not limited to wetland features and fish and wildlife habitat;

- c) Prevent any activity on the Protected Property inconsistent with this Conservation Easement, and to require the restoration of areas or features of the Protected Property that are damaged by any inconsistent activity; and
 - d) Should the Grantor fail to do so, to retain and maintain the right to use any and all of the water rights, if any, associated with the Protected Property, and to protect those rights from threat of abandonment or forfeiture under relevant law; Grantee may, after providing 90 days advance written notice to the Grantor enter upon the Protected Property and take actions reasonably necessary to maintain the validity of the water rights.
2. **Transmission Facilities.** The Grantor conveys the following rights to the United States: to construct, locate, operate, maintain, repair, reconstruct, upgrade, keep clear, access and patrol future transmission facilities including ancillary transmission communications facilities within the Conservation Easement at no additional cost for securing the transmission easement for these purposes. Should such a perpetual transmission easement be needed, the Parties shall negotiate the final terms and conditions of the transmission easement in a form substantially similar to **Exhibit E, Form Transmission Easement**. Such transmission easement shall not be presumptively precluded by the terms of this Conservation Easement. The Parties shall seek to negotiate terms and conditions of the transmission easement that reflect the Purpose of this Conservation Easement, and may include mitigation measures identified as part of an environmental analysis for the transmission easement under the National Environmental Policy Act, ESA, or any other applicable laws. Transmission easements shall be for the sole purpose of transmission of electrical power and ancillary communications.

K. PROHIBITED USES

The Grantor shall manage the Protected Property to protect its Conservation Values on behalf of BPA, preventing any and all uses of the Protected Property that are inconsistent with the Purpose of this Conservation Easement. Prohibited uses of the Protected Property include those specifically listed below. However, the Parties intend that any activity that may materially harm or materially interfere with one or more of the Conservation Values is prohibited, and therefore the list identified below is not exhaustive.

Uses or activities otherwise prohibited under this Section K may be allowed but only if the use or activity is consistent with the Purpose of this Conservation Easement and any necessary limits or prescriptions are agreed to by BPA in advance, either in a final Management Plan or by written agreement. If Grantor is uncertain whether an activity is consistent with the Purpose of the Conservation Easement, Grantor shall consult with Grantee and the Grantee will document the results of the consultation.

1. *Residential, Commercial or Industrial Uses.* Any residential, commercial, or

industrial uses of the Protected Property is prohibited, including timber harvesting, grazing of livestock, and agricultural production.

2. *Construction of Buildings, Facilities, Fences or Other Structures.* Construction of new buildings, facilities, fences other than wildlife-friendly boundary fences (meaning wildlife-friendly fencing techniques that allow free passage of daily wildlife movement and seasonal migration, or increase visibility to prevent entanglement and mortality) or other structures is prohibited. Repair, maintenance, or replacement of existing buildings, facilities, fences or other structures identified in the Baseline Documentation Report are permitted at the same location and within the existing footprint of such structures. If existing fences are repaired or replaced, then the fences must be wildlife-friendly, which allow for the safe passage of wildlife, increased fence visibility, and wildlife access to food, shelter, and water.
3. *Utilities.* Except as provided for in Section J.2, the installation or relocation of new public or private utilities, including electric, telephone, or other communications services is prohibited. Existing utilities on, over, or under the Protected Property may be maintained, repaired, removed or replaced at their current location as that location is documented in the Baseline Documentation Report.
4. *Signs.* Except for no trespassing, private property and no hunting signs, for sale signs, signs identifying the owner of the Protected Property, signs associated with any public access permitted on the Protected Property described in the Management Plan and signs that may be erected by the Grantee identifying the Purpose of the Protected Property, all other signs, advertisements, and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet in size.
5. *Waste.* Dumping, accumulating, or long-term storage of trash, refuse, waste, sewage, bio-solids, or other debris is prohibited.
6. *Mining.* Subject to valid existing rights, if any, held by third parties at the granting of this Conservation Easement, the exploration, development, mining or extraction of soil, sand, loam, gravel, mineral, oil, gas, or other substance from the surface or subsurface of the Protected Property is prohibited. Grantor shall notify the Grantee of any planned exploration, development, mining or extraction of any substances by third parties with valid existing rights as soon as possible, and at least 60 days before commencement of the action.
7. *Topography.* Altering the existing topography of the Protected Property by digging, plowing, disking, or otherwise disturbing the surface or subsurface is prohibited.
8. *Watercourses/Wetlands.* Draining, dredging, channeling, filling, leveling,

pumping, diking, impounding or any other alteration of any watercourses, ponds, seeps, bogs, springs, wetlands, or any seasonally wet area is prohibited, as is altering or tampering with existing water control structures or devices.

9. *Erosion or Water Pollution.* Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters of the Protected Property.
10. *Vegetation.* The cutting, trimming, shaping, killing, or removal of any vegetation from the Protected Property, except for exotic or invasive plant species and pruning or removal of hazard trees creating dangerous conditions near existing roads or established public access sites, is prohibited. The prohibitions in this provision do not apply to maintenance of transmission easements as conveyed to the United States in Section J.2.
11. *Exotic or Invasive Species.* The introduction, cultivation, or use of exotic or invasive plant or animal species on the Protected Property is prohibited.
12. *Roads and Impervious Surfaces.* Existing roads identified in the Baseline Documentation Report may be maintained and repaired in their current condition and within their existing footprint as identified in the Report. Maintenance and repair of existing roads shall not be construed to permit the paving of any existing road not already paved or otherwise covered in an impervious material as of the date of this Conservation Easement.
13. *Vehicle Use.* The use of motorized vehicles is prohibited, except as necessary to carry out activities approved by the Grantee, or for limited, de-minimus, non-commercial recreational uses such as hunting or bird watching if those activities are approved uses in the Management Plan.
14. *Subdivision.* The legal or “de facto” division, subdivision, partitioning of the Protected Property, or any attempt to convey the Property except as a single property in its current configuration, which is documented in Exhibit A and shown in Exhibit B, is prohibited.

L. Grant of Rights. The granting of any property interest or rights in the Protected Property, including easements, permits, licenses, and leases, without the prior written agreement of the Grantee is prohibited. Grantee’s agreement is contingent on Grantee’s determination that the grant of interest or rights is consistent with the Purpose of the acquisition and this Conservation Easement.

M. Enforcement.

1. **Notice of Violation, Corrective Action.** If Grantee determines that the Grantor or its representatives, contractors, successors, or assigns violates or threatens to

violate this Conservation Easement, and if such determination or dispute is not resolved by negotiation as set forth in Section N, Grantee will give written notice to the Grantor and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose, sufficient to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

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

N. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Conservation Easement by negotiation between executives or officials who have authority to settle the controversy.

O. Acts of God/Force Majeure. Nothing contained in this Conservation Easement entitles the Grantee to bring any action against the Grantor for any injury to or change

in the Protected Property resulting from causes beyond the Grantor's control, including, without limitation, naturally caused fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Such excuse from performance will be allowed only if such catastrophic event or other event beyond the Grantor's control has caused a substantial degradation of the Conservation Values. The Parties shall make all reasonable efforts to resume performance promptly once the force majeure is eliminated

- P. Acts of Third Parties.** Grantor shall monitor the Protected Property to ensure that the Conservation Values are not materially harmed or interfered with by third parties unrelated to Grantor or beyond Grantor's reasonable control ("**Third Parties**"). Grantor shall not be liable for the commission of any Prohibited Uses under Section K, above, by Third Parties unless Grantor has actual knowledge of Third Parties' commission of or threat to commit such Prohibited Uses and fails to take reasonable action to prevent or mitigate such Prohibited Uses or repair harm to the Protected Property or its Conservation Values associated with such uses. If Grantor is unable to prevent, mitigate, or repair the Protected Property or its Conservation Values with funding available for such purposes in the Protected Property's stewardship account (including any interest or revenue) or with other resources reasonably available to Grantor and not otherwise committed to or required for Grantor's other conservation properties or activities, the Parties shall cooperate to pursue corrective action by responsible Third Parties or otherwise coordinate to develop an appropriate response consistent with the Purpose of this Conservation Easement.
- Q. Waiver.** The failure of any Party to require strict performance of any term of this Conservation Easement or a Party's waiver of performance shall not be a waiver of any future performance or of a Party's right to require strict performance in the future.
- R. Conveyance and Assignment.** The Grantor may not convey, assign, or transfer its rights to the Protected Property, or delegate its responsibilities under this Conservation Easement, without receiving prior written approval from BPA, which shall not be unreasonably withheld. Any such conveyance, assignment, transfer, or delegation will be approved only if it is to another qualified entity. As a condition of conveyance, assignment, or transfer of the Protected Property, the Grantor will ensure that the new owner, assignee, or transferee acknowledges the Conservation Easement in writing, including acknowledgement that the Management Plan will continue to apply unless and until the new owner, assignee, or transferee develops a new management plan that is reviewed and acknowledged by BPA.
- S. Termination or Amendment.**
1. **Termination Standard.** This Conservation Easement may be voluntarily terminated by agreement of the Parties only if:

- a) a subsequent, unexpected change in the conditions of the Protected Property or the surrounding area makes impossible the continued use of the Protected Property for the Purpose of this Conservation Easement (except that changed environmental conditions related to climate change, or other natural events, for example, wildfire, river channel migration, erosion or avulsion, shall not be grounds for termination); or
 - b) BPA agrees to exchange this Protected Property for another property proposed by the Grantor; factors that BPA will consider in determining whether to agree to an exchange include whether the new property is at the time of the proposed exchange determined by BPA to supply equal or better Conservation Values to meet BPA's mitigation needs as compared with the Protected Property; whether the property will be permanently protected pursuant to a conservation easement granted to BPA on terms substantially similar to this Conservation Easement; and the costs to BPA of undertaking the acquisition of the new property, if any.
2. **Termination Process.** If the Parties agree to voluntarily terminate this Conservation Easement and have met the above termination standard, the Parties shall terminate this Conservation Easement by executing and recording an instrument appropriate for the purpose. In the event of termination through an exchange for another property, the Parties must agree on the new property and its conservation easement before this Conservation Easement will be terminated.
 3. **Proceeds after any Termination.** If this Conservation Easement is terminated in whole or in part either voluntarily by the Parties, or by involuntary extinguishment by a court of competent jurisdiction and the termination results in proceeds, in whole or in part, BPA is entitled to either (1) a share of such proceeds in proportion to the amount BPA contributed to the fee title acquisition, which is 100% or (2) at BPA's election, to review and approve use of the proceeds by the Grantor to acquire new fish and wildlife habitat for BPA mitigation.
 4. **Amendment.** This Conservation Easement may only be amended by agreement of the Parties, and any such amendment shall be properly documented, executed, and recorded. Amendments based on changed conditions may be made only when the effect of the amendment is to benefit the Conservation Values (for example, amending the Conservation Easement to place further restrictions on the use of or activities on the Protected Property). The Parties may not use amendments to impliedly terminate the Conservation Easement or remove any portion of the Protected Property from its terms, except to the extent consistent with the Purpose of the Conservation Easement.
 - S. Control.** The Grantor has ownership and control of the Protected Property and is responsible for all incidents of ownership, to the extent required under applicable laws. Such incidents of ownership include, but are not limited to, maintenance and

repair of existing structures, hazardous waste response, cultural or historic resource mitigation or preservation, endangered species protection, noxious weed and invasive species response, tort liability, compliance with applicable laws, and payment of applicable taxes and assessments.

- T. Hazardous Substances.** Grantor has no notice of any pending or threatened investigation or remedial action by any governmental agency regarding the release of hazardous substances or the violation of any environmental law on the Protected Property. To the Grantor's knowledge, there are no hazardous substances present in, on, or under the Protected Property, including without limitation, in the soil, air, or groundwater, and there are no underground storage tanks located on the Protected Property. If, at any time, there occurs, or has occurred a release in, on, or about the Protected Property of any hazardous substances, the Grantor agrees to take all steps necessary to assure its containment and remediation without cost to Grantee, including any cleanup that may be required. If any release is caused by Grantee, its employees, agents or contractors, Grantee will be responsible for remediation in accordance with applicable law. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Grantor's activities on the Protected Property, or otherwise become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"). The Grantor specifically agrees to release and hold harmless Grantee from and against all liabilities for violations or alleged violations of, or other failure to comply with, any federal state or local environmental law or regulation relating to hazardous substances, including, without limitation, CERCLA, by the Grantor in any way affecting, involving, or relating to the Protected Property, except to the extent such violations or alleged violations are caused by the acts or omissions of Grantee.
- U. Notice.** Any notice permitted or required by this Conservation Easement, unless otherwise specified, must be in writing, delivered personally to the persons listed below, or will be deemed given on the date deposited in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. The addresses listed below can be modified at any time through written notification to the other Party.

Notices to BPA should be sent to:

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

and to BPA's Real Property
Services:

Manager, Real Property Services
RE: YKMRD-WL-1
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

**Notices to the Grantor should be
sent to:**

Conservation Director
Kittitas Conservation Trust
PO Box 428
Roslyn, WA 98941

- V. Cultural Resources.** The Grantor is responsible for cultural or historic resource mitigation or preservation on the Protected Property in accordance with applicable cultural resource laws.
- W. Effective Date.** This Conservation Easement vests when signed by the Grantor, and accepted by the Grantee.
- X. Schedule of Exhibits.** All exhibits are incorporated and made part of this Conservation Easement.

Exhibit A – Legal Description
Exhibit B – Map
Exhibit C – Acknowledgement of Baseline Documentation Report
Exhibit D – Wetland Mitigation Plan
Exhibit E – Form Transmission Easement
Exhibit F – Acceptable Encumbrances
Exhibit G– Letter From Ecology

**Y. GRANT, COVENANTS AND WARRANTIES, SIGNATURE AND
ACKNOWLEDGMENTS**

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

The Grantor warrants and covenants to and with the United States that the Grantor is lawfully seized and possessed of the Protected Property in fee simple, with a good and lawful right to grant the same, including a good and lawful right to grant this Conservation Easement; that the Protected Property is free and clear of all encumbrances and restrictions except the encumbrances and restrictions specifically set forth in **Exhibit F**, that the United States and its assigns shall have the use of and

enjoy all the benefits derived from and arising out of this Conservation Easement; that the Grantor shall at the request of the United States execute or obtain any reasonable further assurances of the title to the Property; and that the Grantor will forever warrant the title to the Property and defend the United States against all persons who claim a lawful interest in the Property, except for persons who claim interests under the exceptions described in Exhibit F.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 31 day of December, 2019.

GRANTOR:

Kittitas Conservation Trust, a Washington nonprofit corporation



Mitchell Long
Executive Director

GRANTEE:

Acceptance by the United States of America:



Hala H. Teeny

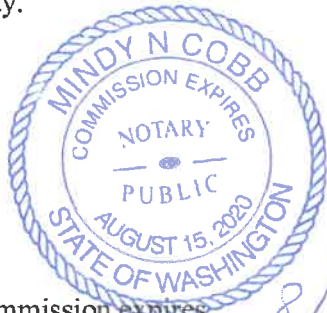
12/30/19
Date

Acting Supervisory Realty Specialist, Bonneville Power Administration

ACKNOWLEDGMENT

STATE OF Washington)
County of Kittitas) ss.
)

On this 31 day of December, 2019, before me personally appeared **Mitchell Long**, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the **Executive Director of Kittitas Conservation Trust, a Washington nonprofit corporation**, acknowledged to me that he executed the same freely and voluntarily in such capacity; and on oath stated that he was authorized to execute said instrument in such official or representative capacity.



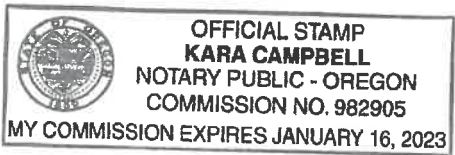
Notary Public in and for the
State of Washington
Signed Mindy N Cobb

My commission expires 8/15/2020.

ACKNOWLEDGMENT

STATE OF Oregon)
County of Multnomah) ss.
)

On this 30th day of December, 2019, before me personally appeared **Hala H. Teeny**, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as **Acting Supervisory Realty Specialist, Bonneville Power Administration**, acknowledged to me that she executed the same freely and voluntarily in such capacity; and on oath stated that she was authorized to execute said instrument in such official or representative capacity.



Notary Public in and for the
State of Oregon
Signed Kara Campbell

My commission expires January 16, 2023.

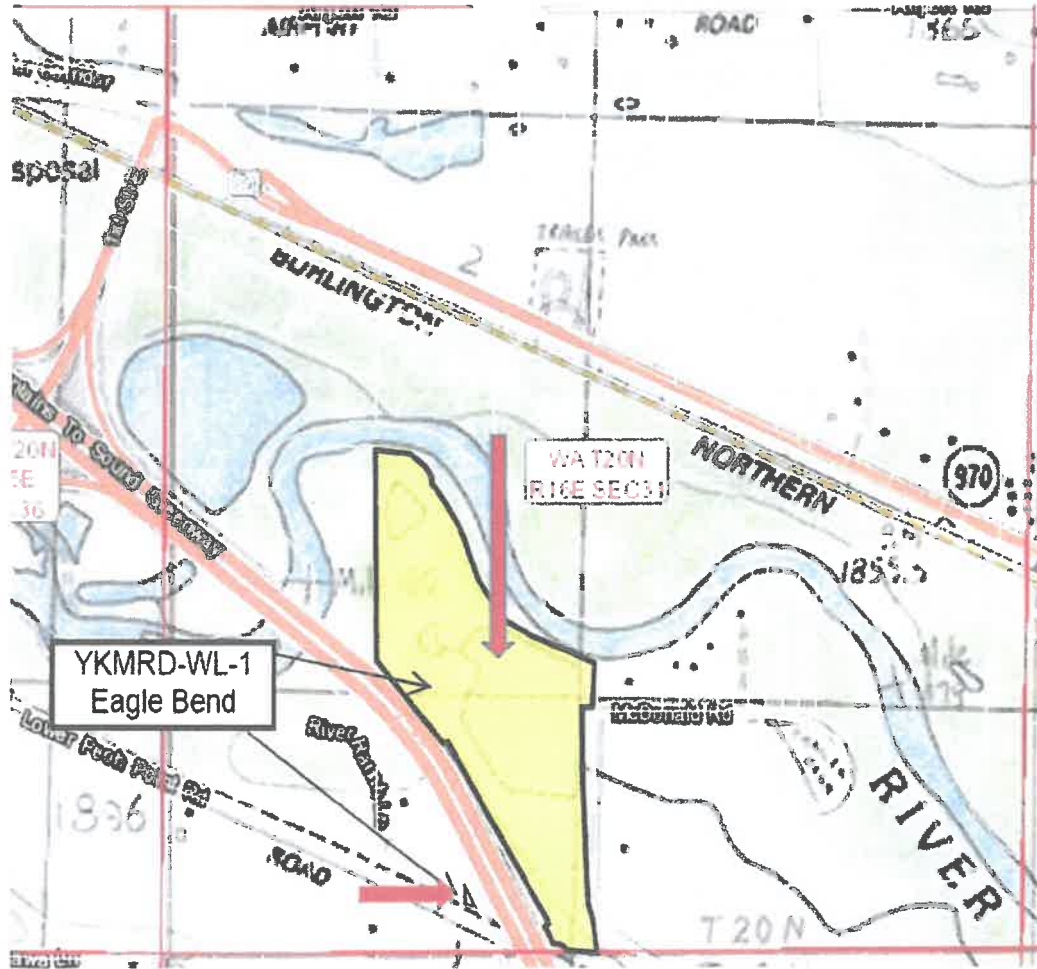
EXHIBIT A

LEGAL DESCRIPTION

Parcels 1, 2, 3, 4 and 5 of that certain Survey as recorded July 15, 2004, in Book 30 of Surveys, page 92, under Auditor's File No. 200407150004, records of Kittitas County, Washington; being a portion of the West Half of Section 31, Township 20 North, Range 16 East, W.M., in the County of Kittitas, State of Washington.

EXHIBIT B

MAP



Section 31, Township 20 North, Range 16 East, W.M., Kittitas County, Washington

EXHIBIT C

**ACCEPTANCE AND ACKNOWLEDGEMENT
OF
BASELINE DOCUMENTATION REPORT**

The undersigned hereby acknowledge and agree that the Baseline Documentation Report for the Boone Property in Kittitas County, Washington, prepared by Lisa Younger, Consulting Ecologist for Kittitas Conservation Trust and dated September 2019, is an accurate representation of the biological, physical and historical conditions of the subject property as of the Effective Date of the Conservation Easement. All of the undersigned parties have received copies of the Baseline Documentation and is on file with the Bonneville Power Administration.

Grantor: Kittitas Conservation Trust




By: Mitchell Long
Its: Executive Director
Kittitas Conservation Trust

12/31/19

Date

Bonneville Power Administration:



Heidi Haserot
Realty Specialist
Bonneville Power Administration

12/30/19

Date

EXHIBIT D
WETLAND MITIGATION PLAN

Eagle Bend Property

Wetland Mitigation Plan

December 2018



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ATTACHMENTS

- Attachment 1 – Boone Property Wetland Delineation Report
- Attachment 2 – Eagle Bend Property Draft Conservation Easement Document

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1.0 INTRODUCTION

The Cle Elum Supplementation and Research Facility (CESRF) is a hatchery along the Yakima River constructed for the Yakama/Klickitat Fisheries Project with funding provided by the Bonneville Power Administration (BPA). The CESRF, which started operating in 1997, relies on groundwater withdrawal for operations, and one of its groundwater wells (Well 3) has impacted the hydrology of a nearby wetland (Well 3 Wetland). The Washington State Department of Ecology (Ecology) determined that many of the functions of the Well 3 Wetland appeared to be lost as a result of the groundwater withdrawal from Well 3.

As initial compensatory mitigation for the loss of the Well 3 Wetland functions, BPA funded 0.52 acre of wetland creation at a site in South Cle Elum along Tillman Creek in 2003. Wetland creation at the Tillman Creek site focused on providing wetland functions that had been impacted at the Well 3 Wetland. Ecology recognized the Tillman Creek mitigation effort as successful in 2008.

Since that time, changes to the Well 3 Wetland hydrology have resulted in the loss of wetland character across the entire wetland, which is a total of 1.46 acres. Therefore, Cathy Reed, a former employee of Ecology, determined that BPA needs to mitigate for the entire Well 3 Wetland. Mitigation, in the form of wetland creation, of 0.52 acre has already been completed at Tillman Creek, but additional mitigation for approximately 0.94 acre of remaining wetland impact must be provided to fully and permanently offset the loss of wetland function at the Well 3 Wetland.

In order to complete the remaining 0.94 acre of mitigation responsibility for wetland impact, BPA proposes to preserve an existing wetland on property east of Cle Elum along the Yakima River by acquiring a perpetual conservation easement on the property, to be held by the Kittitas Land Trust. The property consists of 5 parcels (Kittitas County Assessor Parcel Numbers 20475, 365135, 385135, 20473, and 20474) and totals 40.33 acres, 25.86 acres of which are Category I wetland (Wetland A).

2.0 WELL 3 WETLAND DESCRIPTION

The CESRF is located adjacent to the Yakima River in South Cle Elum, Kittitas County, WA. The facility is situated adjacent to a Yakima River oxbow channel that surrounds the facility. The Well 3 Wetland is located on the north side of the fisheries access road approximately an eighth of a mile east of the facility entrance at the bridge crossing the oxbow channel.

The Well 3 Wetland was identified as a predominantly palustrine scrub/shrub (PSS) wetland in a wetland characterization report (Sheldon and Associates 2002), with a forested and emergent wetland component. The shrub layer was dominated by Pacific willow (*Salix lasiandra*), red osier dogwood (*Cornus alba*), and twinberry (*Lonicera* sp.). Balsam poplar (*Populus balsamifera*) and the occasional Sitka spruce (*Picea sitchensis*) comprised the forested community, and bulrush (*Scirpus* sp.), cattail (*Typha latifolia*), reed canary grass (*Phalaris arundinacea*), and rush (*Juncus* sp.) comprised an herbaceous, emergent wetland component.

Wetland functions were evaluated in 2002, using the Washington Department of Transportation (WSDOT) Wetland Functions Characterization Tool for Linear Projects (WSDOT 2000). The functions provided by the Well 3 Wetland were limited or absent due to the seasonal nature of inundation and the groundwater-fed hydrology of the system. Flood storage and nutrient/pollutant removal were limited and native plant richness and habitat complexity were rated as low (Sheldon & Associates 2002). The wetland did provide functions that included

seasonal aquatic invertebrate and amphibian habitat due to the presence of surface water during a portion of the year. As groundwater levels decreased with the groundwater withdrawals of Well 3, the lack of surface water impacted the aquatic habitat potential and the wetland vegetative community began to transition from one that included obligate species to one dominated by facultative plants.

Since 2002, the methodology for evaluating the wetland rating and functions has changed significantly as a result of further study and an expanded understanding of how wetlands function and what is needed to protect them. The current methodology utilized is the *Washington State Wetland Rating System for Eastern Washington: 2014 Update* (Hruby 2014). In addition to changes in the rating system, it is likely that the functions of the Well 3 Wetland have continued to change. Therefore, this document focuses more on the abundance of functions and net benefit of the proposed mitigation site and less on the specific Well 3 Wetland functions that were impacted starting approximately 20 years ago.

As previously stated, the entire wetland area (1.46 acres) of the Well 3 Wetland was impacted by the groundwater withdrawals of the CESRF and therefore, mitigation is necessary for a remaining 0.94 acre of wetland, taking into account the 0.52 acre that was already mitigated for in the form of wetland creation at the Tillman Creek mitigation site.

3.0 PROPOSED MITIGATION SITE

The proposed mitigation site ("Eagle Bend Property") is located just east of Cle Elum in Kittitas County, Washington along the Upper Yakima River, approximately 9.3 miles downstream from its confluence with the Cle Elum River. The legal description of the site is: Township 20 North, Range 16 East, Section 31, SW ¼. A map of the site location is shown in Figure 1 of the attached Wetland Delineation Report.

The Eagle Bend Property (called the "Boone Property" in the Wetland Delineation Report) lies within the 100-year floodplain of the Upper Yakima River (within the Upper Yakima Water Resource Inventory Area [WRIA #39]) and a portion of its eastern border consists of the river itself. About one-third of the site entails a large pond that is surrounded by wetland area to the north, west, and south. North of the pond there is an arm of the wetland that connects to another smaller pond. In the southern corner of the mitigation site there is a 3-acre aspen stand.

The Eagle Bend Property is zoned Rural 5 (residential) and Forest and Range. The large pond within the study area was created during past gravel mining at the site. Upon cessation of mining, the gravel pit filled with water. The pond was used by the Washington Department of Fish and Wildlife (WDFW) as a salmon acclimation pond in recent years; however, this project was unsuccessful and has since ended.

4.0 WETLAND A BASELINE

Wetland A is the 25.86-acre wetland complex within the mitigation site. Wetland A has a hydrogeomorphic (HGM) classification of riverine impounding based on its hydrologic connectivity to the Yakima River (NRCS 2008). There are several Cowardin classes present within Wetland A: palustrine emergent (PEM); palustrine unconsolidated bottom (PUB); and palustrine forested (PFO) (Cowardin et al. 1977).

4.1 Hydrology

Hydrology at the site is largely driven by the flows of the Yakima River. These flows are controlled by upstream dams, including the Keechelus, Kachess, and Cle Elum dams. Water stored in these reservoirs (Keechelus, Kachess, and Cle Elum lakes) is released during the growing season in order to support irrigation of crops downstream. As a result, the hydrology peaks during the summer months within the study area.

In addition, there are several culverts that discharge surface water into Wetland A. There is a culvert on the east side of Wetland A that discharges water into the study area from the east side of MacDonald Road. On the south side of Wetland A, there is an irrigation ditch that daylights within the study area and discharges into a large box culvert, which discharges into Wetland A. In addition, there is a culvert under I-90 that discharges into that same box culvert before draining to Wetland A. There are two more culverts along I-90 that discharge surface water into Wetland A: one discharges into Ditch 3 (Attachment 1, Figure 5); and one is located to the west of the mitigation site.

4.2 Soils

Soils within Wetland A are sand and clays with a less dominant texture of silt. Lower in the soil profile, there are large gravels, a result of deposition within the Yakima River floodplain. The Soil Survey of Kittitas County Area, Washington (Gentry 2003) identifies the northern half of the study area soil as Xerofluvents, 0 to 5 percent slopes (Attachment 1, Figure 4), which is hydric. Within the southern half of the study area, there is an area that is lower in topography and is mapped as Patnish-Mippon-Myzel complex, 0 to 3 percent slopes, which is not hydric. An area in the southern and western corner of the study that is higher in topography is mapped as Quicksell loam, 0 to 5 percent slopes, which is also not hydric.

4.3 Vegetative Community

The uplands within the study area are dominated by ponderosa pine (*Pinus ponderosa*, FACU) and balsam poplar (*Populus balsamifera*, FACW) with an understory composed largely of common snowberry (*Symphoricarpos albus*, FACU), nootka rose (*Rosa nutkana*, FACU), and Oregon grape (*Mahonia nervosa*, FACU). The wetlands within the study area are dominated by balsam poplar and Scouler's willow (*Salix scouleriana*, FAC) with an understory of narrow-leaf willow (*Salix exigua*, FACW), common cattail (*Typha latifolia*, OBL), rushes (*Juncus* sp., FACW-OBL est.), and reed canarygrass (*Phalaris arundinacea*, FACW).

In the southern corner of the study area there is a 3.24-acre aspen stand (in two patches), a portion of which is within Wetland A (Attachment 1, Figure 5).

4.4 Fish and Wildlife

Wetland A provides habitat for many fish and wildlife species. Juvenile salmonids were observed during the field investigation in the wide area of open water just north of the river's connection within Wetland A. Mallard and merganser ducks were observed in both the large and small ponds. There is a bald eagle nest located south of the small pond within the study area. In addition, the Priority Habitat and Species (PHS) data (WDFW 2017) shows that Wetland A provides habitat for great blue heron within the study area. Within the Yakima River, adjacent to the study area, there are bull trout, cutthroat, coho, Chinook, steelhead, and rainbow trout.

4.5 Functional Assessment

BPA assessed Wetland A using the Washington State Wetland Rating System for Eastern Washington (Hruby 2014). Table 1 shows the scores for each wetland function obtained from the rating system. The rating forms are included in Appendix C of Attachment 1.

Table 1. Wetland Rating System for Eastern Washington

Mapping ID	HGM Class	Water Quality Functions	Hydrologic Functions	Habitat Functions	Total Score	Category
Wetland A	Riverine	8	8	9	25	I

Wetland A qualifies as a Category I wetland based on the rating (Table 2), as well as based on its special characteristics of having an "Aspen Forest" within its bounds.

4.6 Buffers

The proposed action is preservation of the Eagle Bend Property, which is larger than the area of the existing Wetland A and includes wetland buffers. Generally, the buffers are of high quality: along the northeastern edge of the wetland there is an upland berm dominated by ponderosa pines and shrubs and the Yakima River beyond the berm; along the northwestern edge of the wetland there is a large buffer of forested area, which includes a known bald eagle nest; and along the southern edge of the wetland there is another buffer much higher in elevation than the wetland dominated by ponderosa pines, balsam poplar, and aspen. The wetland buffers along the east and southwestern edges of the wetland are of lower quality: the buffer along MacDonald Road along the eastern edge of the wetland is very narrow to immediately adjacent to the road; and the buffer along the southwestern edge is adjacent to I-90 and sparsely vegetated since it consists largely of road prism fill. The buffer that will be preserved around Wetland A is less than 50 feet in places, such as portions adjacent to I-90, but is as large as possible given the property's physical attributes and other constraints such as the location of I-90 or other roads.

Since the main goal of the project is to preserve the existing functions of Wetland A and no development is proposed at the Eagle Bend Property, the buffers will remain in their current state as a result of this project.

5.0 MITIGATION APPROACH

BPA proposes to preserve a 40-acre property east of Cle Elum along the Yakima River by acquiring a perpetual conservation easement. This property includes Wetland A, a 25.86-acre wetland complex as well as a 3.24-acre aspen stand. This action will fulfill BPA's obligation for the remaining 0.94 acre of required compensatory wetland mitigation for the hydrologic impacts to the Well 3 Wetland at the CESRF.

BPA believes that preservation of the Eagle Bend Property is more than adequate to mitigate for the 0.94 acre of wetland impacts following reasons:

- The Eagle Bend Property is comprised of high-value wetland and riparian habitat including priority habitat and species.
- The property is zoned for residential development (Rural 5) and Forest and Range. Preservation of the site would prevent future development impacts.
- Buffers around the existing wetland area within the Eagle Bend Property would remain intact.
- Adjacent uplands (14.47 acres), including riparian and wetland buffers and the upland portion of the aspen stand, would also be preserved.
- The main function of the impacted Well 3 Wetland included seasonal invertebrate and amphibian habitat. The Eagle Bend Property provides year-round aquatic invertebrate and amphibian habitat, refugia and foraging habitat for juvenile salmonids, and side channel/backwater habitat.
- Preserving the Eagle Bend Property would contribute to the future health of the Yakima River watershed.

5.1 Preservation Credit Calculations

The wetland area at the Eagle Bend property has a preliminary rating of Category I. The following table outlines the credit calculations for preserving the Eagle Bend Property. These calculations demonstrate that this mitigation approach will more than offset the outstanding 0.94-acre wetland mitigation obligation. As shown in the table below, this mitigation proposal reflects a more than 20:1 ratio.

Table 2. Credit Calculations – Preservation of Existing Wetlands

	Improving Water Quality	Hydrologic Functions	Habitat Functions
Scores of wetland being preserved	8	8	9
Acres of preservation	25.86		
Basic Score = score X acres of wetland preserved	206.88	206.88	232.74
Scaling Factors:			
Wetland Category	0.05		
Location	0.025		
Threat	0.025		
Sum of scaling factors	0.10		
CREDITS AVAILABLE (Basic Score) X (Sum of Scaling Factors) = Acre Points	20.69	20.69	23.27

6.0 SITE SPECIFIC GOALS, OBJECTIVES, AND PERFORMANCE STANDARDS

The goal of this mitigation project is shown below with its associated objectives.

6.1 Goal

The Goal of this project is to preserve 40.33 acres of riparian habitat along the Yakima River, 25.86 acres of which are Category 1 wetland and 3.24 acres are an aspen stand.

6.1.1 Objectives

- Purchase 5 parcels (145035, 365135, 385135, 20473, and 20474)
- Protect property under conservation easement
- Keep fences at site intact
- The Kittitas Conservation Trust (KCT) will hold the deed of the property and perform monitoring.

7.0 PERFORMANCE STANDARDS AND MONITORING

The KCT will perform monitoring in Year 1 and Year 5 after the property has been purchased and the conservation easement recorded. Monitoring shall consist of approximately 10 photo-points, the locations of which will be determined by the KCT. These locations will be marked in the field, either by labeled and flagged t-bar stakes or by a Global Positioning System (GPS) unit, so that the same locations will be used in Year 5. From these photo-points, multiple photos in particular directions may be taken to document the state of the mitigation site and Wetland A. The purpose of these photos is to demonstrate that the site, including Wetland A, is being preserved successfully. A monitoring report will be prepared by KCT and provided to Ecology by BPA in years 1 and 5. The report will include monitoring photos and provide a summary of any site conditions noted during the monitoring event. If there is any deleterious impact to the site this will be of particular note and reported to BPA and Ecology immediately as well as mentioned in the annual report. Natural fluctuations in the size and shape of the wetland at the mitigation site are not considered deleterious impacts. Since the mitigation site lies within the Yakima River floodplain, changes to the wetland as a result of flooding and related hydraulic effects will be reported in the annual report but will not require further mitigation or analysis. After the Year 5 monitoring report is submitted to Ecology, and if the site is being perpetually protected by the Conservation Easement, BPA's mitigation for impacts to the Well 3 Wetland will be complete. This will be confirmed in a letter signed by Ecology and provided to BPA at that time.

8.0 SITE PROTECTION

There are currently fences along the east side and a portion of the south side of the mitigation site. These fences will be left intact as a deterrent to human activity at the site. Other areas are protected by topographical/geographical boundaries at the site: the I-90 corridor along the south and west sides; the Yakima River along the northern edge of the mitigation site; and a steep slope along the southern edge of the aspen stand.

BPA will fund the KCT to acquire fee title ownership of the Eagle Bend Property. In exchange, KCT will convey a perpetual conservation easement over the property to BPA. KCT will own and manage the property, ensuring that the mitigation site is preserved in perpetuity, according to the terms of the conservation easement. A draft version of the conservation easement document is included with this mitigation plan as Attachment 2. Prior to recording the final conservation easement, BPA will send an updated version of the conservation easement deed to Ecology for review.

9.0 REFERENCES

- Cowardin, L. M., C. Carter, F. C. Golet, and E. T. LaRoe. 1979. *Classification of Wetlands and Deepwater Habitats of the United States*. FWS/OBS-78/31. US Department of the Interior, Fish and Wildlife Service, Office of Biological Services, Washington, D.C.
- Gentry, H. 2003. *Soil Survey of Kittitas County Area, Washington*. United States Department of Agriculture. Natural Resource Conservation Service. Washington, DC.
- Hruby, T. 2014. *Washington State Wetland Rating System for Eastern Washington: 2014 Update*. (Publication #14-06-030). Olympia, WA: Washington Department of Ecology.
- NRCS (Natural Resources Conservation Service). 2008. *Hydrogeomorphic Wetland Classification System: An Overview and Modification to Better Meet the Needs of the Natural Resources Conservation Service*. Technical Note No. 190-8-76. February 2008.
- Sheldon & Associates, Inc. 2002. *Cle Elum Supplementation and Research Facility Well 3 Wetland Delineation Report*. Seattle, WA. March 26, 2002.
- WSDOT (Washington Department of Transportation). 2000. *Wetland Functions Characterization Tool for Linear Projects*. WSDOT Environmental Affairs Office. Wetland Strategic Plan Implementation Project. June 2000.

EXHIBIT E

FORM TRANSMISSION EASEMENT

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

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

BPA Tract
No(s):

U.S. DEPARTMENT OF ENERGY-BONNEVILLE POWER ADMINISTRATION

**EXCLUSIVE EASEMENT
Transmission Line and Danger Trees**

THIS AGREEMENT, made between _____, the Grantor, and the UNITED STATES OF AMERICA, Department of Energy, Bonneville Power Administration (Grantee), pursuant to the Bonneville Project Act, of August 20, 1937, as amended, 16 U.S.C. §§ 832 et seq.; the Federal Columbia River Transmission System Act of October 18, 1974, as amended, 16 U.S.C. §§ 838 et seq; the Department of Energy Organization Act, of August 4, 1977, as amended, 42 U.S.C. § 7152; and the Pacific Northwest Electric Power Planning and Conservation Act, of December 5, 1980, as amended 16 U.S.C. §§ 839 et seq,

WITNESSETH:

That the parties hereto covenant and agree as follows:

The Grantor, for and in consideration of the sum of the funding Grantee provided to the Grantor to acquire fee title and the provisions contained in this agreement, hereby grants and conveys to the United States of America and its assigns a perpetual easement and right-of-way for electric power transmission purposes in, upon, over and under the following described land (Easement Area), to-wit:

As described in Exhibit(s) _____, attached hereto and by this reference made a part hereof.

The grant shall include the right to enter and to locate, construct, operate, maintain, repair, reconstruct, upgrade, remove and patrol one or more lines of poles or structures and appurtenances thereto, supporting conductors of one or more electric circuits of any voltage (collectively "Transmission Facilities") and any communication lines or equipment and appurtenances thereto (collectively "Communication Facilities"), together with the present and future right to clear the Easement Area and to keep it clear of all trees, shrubs, brush and other vegetation (collectively "Vegetation"), structures, above and below ground improvements or infrastructures, and fire and electrical hazards. All Vegetation, structures, and fire and electrical hazards presently within the Easement Area shall become the property of the United States on the date of acceptance hereof and may be disposed of by the United States in any manner it deems suitable.

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

The Grantor covenants to and with the United States and its assigns that the title to (1) Vegetation cut or hereinafter growing within said Easement Area and (2) to all Danger Trees identified, now or in the future, or cut from Grantor's land adjacent to said Easement Area is and shall be vested in the United States and its assigns; and that the consideration paid for conveying said easement and rights herein described is accepted as full compensation for all damages incidental to the exercise of any said rights. At the United States' election title to Danger Trees may revert to the Grantor.

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

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

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

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

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

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

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

FORM ONLY – SIGNATURES NOT REQUIRED

EXHIBIT F

ACCEPTABLE ENCUMBRANCES

1. Reservation of oil, gas, minerals or other hydrocarbons, including the terms and provisions contained therein, in deed from Northwestern Improvement Company, a corporation.
Recorded: October 11, 1929
Instrument No.: 97604, in Book 48 of Deeds, Page 2

Notice of Abandonment and Extinguishment and Affidavit of Publication of Notice of Intention to file a Claim of Abandonment and Extinguishment of Mineral Rights, recorded November 7, 2019 under Auditor's File No. 201911070024.
2. An easement including the terms and provisions thereof for the purpose shown below and rights incidental thereto as set forth in instrument.

In favor of: Puget Sound Power & Light Company, a Massachusetts corporation
Purpose: Electric transmission and distribution line
Recorded: November 4, 1949
Instrument No.: 211686
Volume 83, Page 233
3. The provisions contained in deed from Angus McDonald and Dorothy McDonald, husband and wife, to State of Washington:

Dated: January 9, 1964
Instrument No.: 310707
Book 114 of Deeds, Page 510

As follows: "The grantors herein convey and warrant to the State of Washington all rights of ingress and (including all existing, future or potential easements of access, light, view and air) to, from and between Primary State Highway No. 3, Yakima River to West Side Canal and the remainder of the above said Parcel "A". EXCEPT, that as part of the consideration of this transaction, the State agrees to construct an access road along the Easterly side of said Parcel "A", and to which access road only, the grantors, their heirs, successors and assigns reserve a right of reasonable access."
4. An easement including the terms and provisions thereof for the purpose shown below and rights incidental thereto as set forth in instrument.

In favor of: State of Washington
Purpose: Irrigation Ditch
Recorded: February 24, 1963
Instrument No.: 310708
Book 114 of Deeds, Page 512
5. Agreement and the terms and conditions contained therein
Between: R. Bruce McDonald and Doris D. McDonald
And: Public Utility District No. 1 of Kittitas County, Washington
Purpose: Electric service
Recorded: April 17, 1964
Instrument No.: 311923

6. An easement including the terms and provisions thereof for the purpose shown below and rights incidental thereto as set forth in deed from Bruce McDonald and Doris McDonald, husband and wife, to Angus McDonald and Dorothy, husband and wife:
Purpose: Road
Recorded: October 22, 1964
Instrument No.: 316387
Book 116 of Deeds, Page 741
7. The provisions contained in Instrument
Recorded: August 24, 1973
Instrument No.: 384717
As follows: "In the event facilities are constructed, maintained or otherwise operated on the said property for the accommodation of the traveling public or business users of any federal-aid highway (such as eating, sleeping, rest, recreation and vehicle servicing), It will not discriminate on the grounds of race, color, or national origin against such traveling public or highway users in their access to and use of the facilities and services so constructed, maintained or otherwise operated, and that the grantee shall maintain and operate such facilities and services in the compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary of Transportation, Part 21 (49 C.F.R., Part 21) and as said regulations may be amended."
8. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as reserved in instrument:

In favor of: State of Washington, its successors and assigns
Recorded: August 24, 1973
Instrument No.: 384717
Volume 42, Page 548
Affects: A strip of land 60 feet in width parallel with and contiguous to the Southerly and Southwesterly lines of Parcel A and extending from the Easterly and Westerly lines thereof.
9. Relinquishment of all existing, future or potential easements for access, light, view and air, and all rights of ingress, egress to, from and between said premises and the highway or highways to be constructed, under terms of deed
In favor of: Kittitas County
Dated: August 24, 1973
Recorded: Volume 42, Page 548
Auditor's File No.: 384717
10. Pendency of Yakima County Superior Court Cause No. 77-2-01484-5, State of Washington, Department of Ecology, Plaintiff, vs. James J. Acquavella, et al, Defendants; notice of which is given by Lis Pendens recorded on October 14, 1977, in Volume 90, Page 589, under Kittitas County recording number 417302, and supplemental notice of Lis Pendens recorded June 4, 1980, in Volume 131, Page 63, under Auditor's File No. 442263; being an action for the determination of the rights to divert, withdraw, or otherwise make use of the surface waters of the Yakima River Drainage Basin, in accordance with the provisions of Chapters 90.03 and 90.44 Revised Code of Washington.

11. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as reserved in instrument:

In favor of: Kittitas County
Recorded: August 24, 1982
Instrument No.: 466746
Volume 175, Page 577

12. Any rights, interests, or claims which may exist or arise by reason of the following matter(s) disclosed by survey.

Recorded: July 15, 2004
Book 30 of Surveys, page 92
Instrument No.: 200407150004
Matters shown: No apparent access for Parcels 1, 2 and 3 lying Northeast of I-90 and that portion of Parcel 3 lying Southwest of I-90.

13. Easement, and the terms and conditions thereof, affecting a portion of said premises and for the purposes hereafter stated

In favor of: AT&T Corp. and AT&T Communications – East, Inc.
Recorded: May 16, 2008
Instrument No.: 200805160046.
Purpose: Existing cable and fiber technology
Affects: A strip of land sixteen and one-half feet (16 ½') in width

14. Rights of the State of Washington in and to that portion of said premises, if any, lying in the bed or former bed of the Yakima River, if it is navigable.
15. Any question of location, boundary or area related to the Yakima River, including, but not limited to, any past or future changes in it.
16. Rights of the State of Washington in and to that portion of said premises, if any, lying in the beds or former beds of the unnamed creeks or streams, if they are navigable.
17. Any question of location, boundary or area related to the unnamed creeks or streams, including, but not limited to, any past or future changes in them.
18. Any questions that may arise due to shifting or change of the line of high water of the ponds or due to the ponds having shifted or changed their line of high water.
19. Any question of location, boundary or area related to the ponds, including, but not limited to, any past or future changes in them.
20. Any prohibition or limitation on the use, occupancy, or improvements of the Land resulting from the rights of the public, appropriators, or riparian owners to use any waters, which may now cover the Land or to use any portion of the Land which is now or may formerly have been covered by water.

EXHIBIT G
LETTER FROM ECOLOGY



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
1250 W Alder St • Union Gap, WA 98907-0009 • (509) 575-2490

December 24, 2019

Bonneville Power Administration
Peter Lofy
Washington Implementation Manager
EWU-4
PO Box 3621
Portland, OR 97208-3621

RE: Bonneville Power Administration, Eagle Bend Preservation Site

Dear Peter Lofy:

The Department of Ecology (Ecology) has received a mitigation proposal dated December 19, 2019, for the preservation of 25.86 acres of Category I wetland on the Eagle Bend Property in Kittitas County, to mitigate 0.94 acres of impacts to wetland due to groundwater withdrawals at Well 3 of the Cle Elum Supplementation and Research Facility for Water Right Applications S4-30622, S4-0624, G4-32414, G4-32504.

While authorization and mitigation for impacts to wetlands and Waters of the State should have been proposed and authorized prior to impacting a Water of the State, Ecology has reviewed the mitigation proposal, including a conservation easement, and determined the project will sufficiently offset impacts resulting from the previous groundwater withdrawals at Well 3.

If there are any changes to your proposed mitigation plan please notify Ecology immediately, so we can work with you to ensure that the changes continue to offset the impacts.

Please contact Lori White, Project Manager, if you have any questions regarding this letter at (509)575-2616 or e-mail lori.white@ecy.wa.gov.

Sincerely,

Gary Graff, PWS
Regional Section Manager
Shorelands and Environmental Assistance Program
Central Regional Office Ecology
State of Washington

cc: ccyrefedpermits@ccy.wa.gov
Loree Randall, ECY
Lori White, ECY
Tucker Miles, BPA
Sandra Fife, BPA
Elizabeth Klumpp, BPA
Peter Lofy, BPA
Heidi Haserot, BPA
Kara Campbell, BPA