

AGREEMENT
BETWEEN THE
OREGON DEPARTMENT OF FISH AND WILDLIFE
AND THE
CENTRAL OREGON IRRIGATION DISTRICT

This Agreement is between the Oregon Department of Fish and Wildlife ("Department") and the Central Oregon Irrigation District ("District").

A. Purpose.

The District desires to construct and operate the Central Oregon Siphon Power Project ("Project") for generation and sale of hydroelectric power. The Project would be located appurtenant to the District's existing siphon and canal on the Deschutes River, Deschutes County, Oregon. The Deschutes River supports numerous wild game fish species and recreation opportunities. The purpose of this Agreement is to ensure that no net loss of wild game fish or fish and wildlife-related recreation opportunities results from construction and operation of the Project.

B. Authority.

The Department is authorized to enter this Agreement under ORS 496.124 and 190.110. The District is authorized to enter this Agreement by ORS 545.064 and 190.110.

C. Consideration.

The District shall maintain a minimum stream flow and make mitigation and enhancement payments to the Department as set forth in this Agreement. The Department shall recommend to the Oregon Water Resources Commission and the Federal Energy Regulatory Commission that, by virtue of this Agreement, the Project meets state fish and wildlife laws, policies, and objectives.

D. Conditions Precedent.

Conditions precedent to this Agreement are that:

1. The Application for Permit to Appropriate Surface Waters for Hydroelectric Power No. 62831, is approved by the Water Resources Department and the minimum stream flow of 400 cfs set forth in this Agreement is approved by the Water Resources Commission under ORS 536.370.

2. The Project (FERC License Application No. 3571) is licensed by the Federal Energy Regulatory Commission (FERC), such license including as a condition of licensing the performance by the District of the provisions of this Agreement.

3. Construction and operation of the Project receives all licenses, permits, and other approval required by affected federal, state, and local governmental entities. This Agreement does not constitute approval on behalf of such other entities.

4. The Department reviews and approves the design, siting, and operational characteristics of all Project facilities to ensure adequate protection for fish and wildlife resources.

5. The District receives financing necessary for design, construction, and operation of the Project.

6. The District has in force and effect an agreement for the purchase of power from the Project.

E. Minimum Stream Flow.

The District shall maintain a continuous streamflow of at least 400 cfs in the diversion reach of the Project, from the Project intake to the powerhouse discharge. The streamflow shall be measured in a manner and at a location approved by the Department and/or the Oregon Water Resources Department.

F. Payment Schedule.

1. The District shall make payments to the Department according to the schedule set forth below. The Department shall apply the payments to mitigation and enhancement as set forth in Section G.

(a) After execution of this Agreement, and within thirty (30) days of securing initial project financing, one payment of Seventy-Five Thousand Dollars (\$75,000).

(b) Upon commencement of project construction, and then upon the anniversary date of such commencement for the two (2) succeeding years, Seventy-Five Thousand Dollars (\$75,000), for a total of three (3) payments of Seventy-Five Thousand Dollars (\$75,000) under this subsection(b).

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(c) Upon commencement of commercial operation of the Project, annual payments due and payable on or before January 1 of each year, in the following amounts:

Year 1-\$45,000	Year 17-\$62,000
Year 2-\$46,000	Year 18-\$64,000
Year 3-\$47,000	Year 19-\$66,000
Year 4-\$48,000-1993	Year 20-\$68,000
Year 5-\$49,000-1994	Year 21-\$70,000
Year 6-\$50,000	Year 22-\$72,000
Year 7-\$51,000	Year 23-\$74,000
Year 8-\$52,000	Year 24-\$76,000
Year 9-\$53,000	Year 25-\$78,000
Year 10-\$54,000	Year 26-\$80,000
Year 11-\$55,000	Year 27-\$82,000
Year 12-\$56,000	Year 28-\$84,000
Year 13-\$57,000	Year 29-\$86,000
Year 14-\$58,000	Year 30-\$89,000
Year 15-\$59,000	Year 31-\$92,000
Year 16-\$60,000	Year 32-\$95,000

2. Payments under Section F.1.(c) shall be in addition to payments under Section F.1(b) should the respective payment schedules overlap. Annual payment amounts for the year 2021 through the remainder of this Agreement shall be negotiated and mutually agreed to before January 1, 2021; provided, no annual payment for the year 2021 through the remainder of the Agreement shall be less than Ninety-Five Thousand Dollars (\$95,000).

G. Mitigation and Enhancement.

1. The Department retains jurisdiction, subject to the general categories and priorities set forth in this section, and subject to Section H, to determine the appropriate scope, specifications, and location of the mitigation and enhancement. All mitigation and enhancement work shall be consistent with applicable state and federal laws and with Department management objectives. Mitigation and enhancement work may include biological and physical habitat inventory, engineering design of mitigation facilities, construction and maintenance of mitigation facilities, mitigation reports, annual progress reports, administrative overhead, and all other work necessary for the purposes of this Agreement.

2. The Department shall apply monies paid it by the District, subject to legislative approval, to all work necessary to accomplish the following mitigation and enhancement (a) within the diversion reach of the Project and (b) within the Deschutes River Basin.

(a) Diversion Reach:

- (1) Construction of instream submerged weirs to reduce velocity and maintain wetted stream perimeter;
- (2) Purchase and placement of gravel for spawning and increased invertebrate production;
- (3) Purchase and placement of instream boulders and/or woody debris for cover and spawning habitat;
- (4) Construction of wing dikes for cover and spawning habitat;
- (5) Development and maintenance of public access;
- (6) Modification of existing project intake louver, if necessary.

(b) Deschutes River Basin:

- (1) Construction of instream submerged weirs to reduce velocity and maintain wetted stream perimeter;
- (2) Purchase and placement of gravel for spawning and increased invertebrate production;
- (3) Purchase and placement of instream boulders and/or woody debris for cover and spawning habitat;
- (4) Construction of wing dikes for cover and spawning habitat;
- (5) Development and maintenance of public access;
- (6) Fish screening at Wickiup Dam;
- (7) Bank stabilization to reduce erosion and subsequent siltation of river substrate;
- (8) Rehabilitation of spawning areas between Bend and Wickiup Dam.

3. Completion of mitigation and enhancement work within the diversion reach shall be the first priority, and, as far as practicable, shall be completed prior to the end of the third year of payments under Section F. Other mitigation and enhancement work shall be performed, in general order of priority:

- (a) Immediately upstream and downstream of the diversion reach;
- (b) Within the Deschutes River Basin upstream of the Project; and
- (c) Within the Deschutes River Basin downstream of the Project.

4. The Department shall maintain mitigation facilities constructed pursuant to this Agreement, insofar as revenues from this Agreement allow.

H. Consultation and Reports.

1. The Department shall consult with the District and interested federal, state, and local governmental entities in determining the appropriate scope, specifications, and location of mitigation and enhancement work and facilities, both within the diversion reach and within the Deschutes River Basin.

2. The Department shall report annually, or more frequently if it deems appropriate, to the District and the Oregon Fish and Wildlife Commission regarding expenditures, work, evaluations, and recommendations made pursuant to this Agreement.

I. Cooperation.

The parties shall cooperate as necessary to implement mitigation and enhancement work. The District shall allow the Department access to the Project and District property and lend whatever assistance is necessary to perform the mitigation and enhancement work and implement this Agreement.

J. Duration; Renewal; Modification.

1. This Agreement shall expire upon expiration or termination of the FERC license for the Project.

2. If the FERC license is renewed, this Agreement shall be renewed subject to renegotiation of terms and conditions; provided, no renegotiation shall result in a minimum streamflow or payments less than those set forth in this Agreement.

3. This Agreement may be modified upon mutual written consent.

4. This Agreement is binding upon the District's successors, assigns, and agents.

OREGON DEPARTMENT OF FISH AND WILDLIFE

By: [Signature]

Date: 3/16/87

CENTRAL OREGON IRRIGATION DISTRICT

By: Kerry B. Lewis

By: Thomas Koberger

By: Frank Simmons

By: Robert Hutchinson

By: Neil Davis

By: Low Nelson

Secretary-Manager

Date: March 24, 1987