

FISHERIES MITIGATION IRREVOCABLE TRUST FUND

This trust agreement is made on the 30<sup>x</sup> day of October, 1997, between the Northern Wasco County Peoples Utility District, referred to as "Trustor", and the Northern Wasco County Peoples Utility District, referred to as "Trustee". This trust has been created by the Trustor for the purpose of providing compensation for unmitigatable losses to juvenile anadromous fish caused by the Northern Wasco County Peoples Utility District McNary Dam Washington Shore Fish Way Attraction Water System Hydroelectric Project (FERC Project No. 1024) pursuant to that certain FISHERY SETTLEMENT AGREEMENT FOR McNARY DAM WASHINGTON SHORE FISH WAY ATTRACTION WATER SYSTEM HYDROELECTRIC PROJECT, attached hereto as Exhibit "A" and by this reference incorporated herein. The trust fund shall be held by the Trustee and disbursed solely as directed by the Fishery Compensation Committee as defined and set forth in Exhibit "A" after it has reviewed and selected mitigation activities to which monies in the fund shall be applied. Measures funded from the trust fund shall be determined by the Fishery Compensation Committee in accordance with Exhibit "A".

Simultaneously with the execution of this agreement, Trustor shall transfer and convey to Trustee a sum of money being the initial amount required to be paid by Trustor pursuant to said Exhibit "A".

1. ASSETS: The assets, designated the trust estate, shall be held by Trustee in trust for the uses and purposes and on the terms and conditions set forth in Exhibit "A".

2. ADDITIONS TO TRUST. Trustor shall transfer and convey to Trustee an annual amount as set forth in the Settlement Agreement.

3. DISPOSITION OF PRINCIPAL AND INCOME. Trustee shall distribute the principal and the income of the trust upon direction by the Fisheries Compensation Committee as set forth in Exhibit "A".

4. TERM OF TRUST. This trust shall terminate only upon the terms set forth in Exhibit "A" and shall otherwise be irrevocable and shall not be revoked, or terminated by Trustee or any other person or entity. Securities held by the Trustee under this agreement are irrevocably held in escrow for the purposes herein specified and those specified in Exhibit "A".

5. INVESTMENTS. All monies held by the Trustee pursuant to the terms of this trust shall be invested by the Trustee in its name or its nominee's name, in the Oregon State Local Government Investment Pool ("Pool") and any direct obligations of the U.S. Government or its agencies or in any other investment security as allowed by the laws of the state of Oregon.

6. BOOKS AND RECORDS. Trustee shall maintain books and records regarding its administration of the fund, and the deposit, investment, receipts and disbursements or transfer of securities,

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it shall retain copies of all written notices and direction sent or received by it in the performance of its duties hereunder, and shall afford the Trustor and the Fisheries Compensation Committee reasonable access, during regular business hours, to review and make photocopies (at the requestor's expense) of the same. Trustee shall not co-mingle investments of the fund with other investments of the Trustor or Trustee and shall separately account for said funds from any other assets or investments of the Trustee or Trustor. Trustee shall provide the NMFS member of the Fish Committee quarterly statements of income earnings for the fund.

7. COURT ORDERS OR PROCESS. Trustee is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the fund, securities or this agreement, without determination by Trustee of such court's jurisdiction in the matter. If any securities are at any time attached, garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by a court order, or in case any order, judgment or decree shall be made or entered by any court effecting such property or any part thereof, then in any of such events, Trustee is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it, and if Trustee complies with any such order, writ, judgment or

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decree, it shall not be liable to the Trustor or the Fisheries Compensation Committee or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

8. TRUSTEE'S FEES AND DUTIES: Trustee shall charge no fee for carrying out its duties as set forth herein. Trustee shall administer and manage the trust estate, collect the income from it, apply and dispose the net income and principal of the trust estate as follows: (a) no disbursement shall be made from this trust without and until the Trustee receives a request from the Fisheries Compensation Committee showing that a majority of the Fishery Compensation Committee has selected an activity to be funded from a disbursement of the trust fund monies. The Fishery Compensation Committee shall be comprised of members in accordance with the Settlement Agreement and shall follow the criteria in the Settlement Agreement in determining the appropriate activities to be funded.

9. GOVERNING LAW. This agreement shall be construed, enforced and administered in accordance with the law of the state of Oregon. The validity, construction and affect of this agreement and the trust created under it and its enforcement shall be determined by the law of Oregon.

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The undersigned Trustee hereby agrees to hold, deal with and dispose of securities at any time deposit into the fund in accordance with the foregoing agreement and its attached Exhibit "A".

TRUSTOR  
Northern Wasco County Peoples  
Utility District

TRUSTEE  
Northern Wasco County Peoples  
Utility District

By James Johnson  
Title, General Manager  
Acting G.M.

By James Johnson  
Title, General Manager  
Acting G.M.