

AGREEMENT BETWEEN

**THE STATE OF IDAHO, DEPARTMENT OF PARKS AND
RECREATION**

AND

COEUR D'ALENE TRIBE, LAKE MANAGEMENT DEPARTMENT

REGARDING

TRANSFER, OWNERSHIP AND MANAGEMENT

OF THE

**UNION PACIFIC
WALLACE-MULLAN BRANCH
RIGHT OF WAY**

AS

THE TRAIL OF THE COEUR D'ALENES

I. TITLE

This "Agreement Between the State of Idaho, Department of Parks and Recreation and Coeur d'Alene Tribe, Lake Management Department Regarding Transfer, Ownership and Management of the Union Pacific Wallace-Mullan Branch Right-Of-Way as the Trail of the Coeur d'Alenes" is referred to as the "Agreement."

II. PARTIES AND AUTHORITIES

This Agreement is made and entered into by the State of Idaho, Department of Parks and Recreation ("State" or "IDPR") through IDPR's Director as authorized by the Idaho Parks and Recreation Board ("IPRB") and the Coeur d'Alene Tribe, Lake Management Department ("Tribe" or "TLMD") through TLMD's Director as authorized by the Tribal Council (collectively, "Parties").

The State enters this Agreement pursuant to the Idaho Constitution and statutes, including title 67, chapters 40 and 42, Idaho Code. IDPR is the executive department of the State of Idaho responsible for management of parks, recreation areas and trails, through its Director under authority of the IPRB.

The Tribe enters this Agreement pursuant to its inherent tribal sovereignty and Article VII, Section 1 of the Constitution and Bylaws of the Coeur d'Alene Tribe. The TLMD is the tribal department responsible for the management of water and recreation resources of the Coeur d'Alene Reservation, including parks, recreation areas and trails, through its Director under authority of the governing body of the Coeur d'Alene Tribe.

III. INTRODUCTION

Since time immemorial, the Coeur d'Alene people used and occupied lands within the Coeur d'Alene River basin. The Coeur d'Alene Indian Reservation was established by Executive Order on November 8, 1873 and modified by subsequent congressionally ratified Agreements.

In 1888, subject to the Secretary of the United States Department of the Interior obtaining the prior consent of the Tribe, Congress granted a railroad right-of-way within the boundary of the 1873 Coeur d'Alene Indian Reservation. A section of the Wallace-Mullan Branch right-of-way between Plummer and Cataldo, Idaho includes the right-of-way originally granted by act of Congress (PL-109).

The Idaho Territory was admitted into the Union on July 3, 1890 as the forty-third state. In 1908, Congress authorized the Secretary of the Interior to convey lands within the 1873 Reservation boundary to the State of Idaho to be held, used and maintained as a public park ("Heyburn Park").

In 1991, the Tribe filed a lawsuit against the Union Pacific Railroad ("UPRR") and several mining companies seeking to address releases of hazardous substances in the

Coeur d'Alene basin including contamination along the 71.5 mile right-of-way between Mullan and Plummer, Idaho ("ROW").

In 1995, the UPRR submitted a good faith offer to settle environmental claims of the United States, State and Tribe. UPRR and the governments subsequently engaged in four years of investigations and negotiations to address the contamination of the ROW in order to protect public health and the environment.

In 1999, the UPRR, United States, State and Tribe entered into a Consent Decree requiring UPRR to undertake certain cleanup, trail construction and other obligations concerning the ROW and to transfer the ROW to the State and Tribe for use as a recreational trail. Consent Decree *United States of America and State of Idaho v. Union Pacific Railroad Company* and *Coeur d'Alene Tribe v. Union Pacific Railroad Company* (Case number 99-0606-N-EJL) entered August 25, 2000 by the United States District Court for the District of Idaho (Consent Decree). The Consent Decree is incorporated herein.

In 2000, the federal Surface Transportation Board issued a Certificate of Interim Trail Use (or "CITU") authorizing Union Pacific to transfer the ROW to the State and Tribe for interim trail use/rail-banking under federal law, provided an agreement was reached between the UPRR, State and Tribe.

In 2001, UPRR, the State and Tribe entered into an Interim Trail Use/Railbanking Agreement ("Interim Trail Agreement," incorporated herein) requiring UPRR to transfer the ROW to the State and Tribe upon satisfactory completion of UPRR's response actions and other obligations provided for in the Consent Decree.

The course of the ROW follows the historic trail used by the Coeur d'Alene people since time immemorial. The ROW abuts the Coeur d'Alene mountains, parallels the south fork and main stem of the Coeur d'Alene River, travels the shores of, and crosses, Coeur d'Alene Lake and runs through the Coeur d'Alene Reservation. Accordingly, the recreational trail within the ROW shall be named the "Trail of the Coeur d'Alenes" ("Trail" which includes the trail surface and all associated trail amenities).

The Trail/ROW traverses lakeshore, wetlands, river valleys and forests as well as farmland, residential tracts and industrial areas. Through creation of the Trail, communities in the Coeur d'Alene Basin will be more closely linked to each other and to the lakes, river and parks.

In addition to linking communities, the Trail/ROW will serve multiple purposes including protection of public health and the environment, recreation and conservation of open space, plants and wildlife. The Trail/ROW will also promote historic preservation and provide for cultural continuity.

IV. GOAL AND PURPOSE

The goal of this Agreement is to establish a long-term cooperative partnership between the State and the Tribe with respect to ownership, management and operation of the Trail/ROW.

In addition to contributing an essential component to the successful resolution of claims in settlement of litigation, the specific purposes of this Agreement include the following:

1. providing for State and Tribe ownership of the Trail/ROW;
2. ensuring unified State and Tribe management and operation of the Trail/ROW;
3. defining the Parties' respective duties and responsibilities for maintenance and operation of the Trail/ROW;
4. protecting public health and the environment;
5. fostering recreational and economic development opportunities in the area;
6. promoting important cultural and historical values; and
7. providing for the involvement of local governments, adjacent landowners and the public.

Any leases between the State and UPRR for use of the ROW for Heyburn Park purposes shall be terminated upon conveyance of the ROW to the Parties.

V. TRANSFER AND OWNERSHIP OF UPRR'S INTEREST

Upon completion by UPRR of response actions, including trail construction, pursuant to the Consent Decree, the CITU and Interim Trail Agreement, the Parties shall direct UPRR to convey all of its right, title and interest in the ROW, including the Trail and any amenities within the ROW, to the State and Tribe as follows:

1. the State-owned and managed portion of the ROW outside of the boundaries of the Reservation;
2. the Tribe-owned and managed portion of the ROW within the boundaries of the Reservation, but outside Heyburn Park; and,
3. the jointly-owned and co-managed section of the ROW through Heyburn Park.

VI. COORDINATED MANAGEMENT

This Agreement provides for ownership and coordinated management and operation of the Trail/ROW consistent with the "single-trail" principle. The single-trail principle means that:

1. the State and Tribe will exercise separate and/or joint management authority over portions of the Trail/ROW; and

2. activities will be coordinated by a Trail Commission to achieve agreed upon management principles and implemented according to general operating guidelines for maintaining the Trail/ROW as a seamless and consistent whole ("General Management Principles and Operating Guidelines" attached and incorporated herein).

The State and Tribe will also oversee the maintenance of the response actions consistent with the Response Action Maintenance Plan, attached and incorporated herein.

A. TRAIL COMMISSION

The Parties will establish a six-member Trail Commission ("Commission"). Three members of the Commission will be appointed by the State and shall include the State's Trail Manager. Three members of the Commission will be appointed by the Tribe and shall include the Tribe's Trail Manager.

A quorum of the Commission shall exist when not less than four members are present and those four members consist of two State and two Tribe representatives. The Commission will operate by consensus of those members present. A consensus of the Commission requires that, for any proposed decision, no member present at a meeting votes in opposition.

In establishing the Commission, the Parties' intent is to ensure that all aspects of the development, funding, management and operation of the entire Trail/ROW are coordinated across the Parties separate and joint management areas, consistent with implementation of the Consent Decree, CITU and the Interim Trail Agreement.

The Trail Commission shall, as necessary, review, modify and adapt the General Management Principles and Operating Guidelines to meet the management and operating requirements of the Parties. Changes may include, but are not limited to, design standards for public access, permitted uses and fees, interpretation, promotion of economic benefits, support for appropriate cultural and historical values and other matters which affect the overall character of the Trail/ROW.

In addition to overseeing the General Management Principles and Operating Guidelines, the specific duties and responsibilities of the Commission shall include the following:

1. coordinate efforts between the Parties to ensure consistency with the single-trail management concept and encourage cost savings and efficiency with respect to budgets for personnel and administration, leasing, general operation, training and maintenance of the Trail/ROW;
2. oversee management of the Trail/ROW to ensure protection of public health and the environment;
3. ~~manage, plan and economic development opportunities in the area~~

4. promote and protect important cultural and historical values associated with the Trail/ROW;
5. review UPRR's activities and the Parties' oversight and management activities to ensure performance by UPRR of its Trail/ROW maintenance and repair obligations pursuant to the Consent Decree;
6. coordinate efforts between the Parties to seek and secure additional funding for development, operation, maintenance and repair of the Trail/ROW; and
7. consider input from the public regarding Trail/ROW management issues as set forth in Part VI.B of this Agreement.

The Parties will also utilize the Trail Commission to collaborate on numerous other matters associated with operation and management of the Trail/ROW. For example, by combining efforts at fundraising, the Parties will work in good faith through the Trail Commission to secure additional resources for development, operation and maintenance in the form of user fees, federal assistance (rivers, trail, transportation and conservation programs), technical assistance, private donations and volunteer work.

B. MEETINGS AND PUBLIC INVOLVEMENT

The Trail Commission will meet not less than bi-annually in the Spring and Fall and as necessary for effective oversight of the management and operation of the Trail/ROW. Adequate notice of the time and meeting place shall be provided to the public prior to such meetings. The bi-annual meetings shall provide an opportunity for public input and comment.

In addition to bi-annual meetings, the Trail Commission may also meet formally or informally from time to time, including meetings with individual communities connected via the Trail, individuals or groups of adjacent residents and landowners, local governments, as well as other interest groups and/or members of the general public to provide information and solicit input.

The Trail Commission will also engage in a range of outreach activities. This may include involving the public in general matters of trail development, implementing strategies for minimizing conflicts which may arise between user groups, resolving concerns of adjacent landowners and leaseholders with respect to matters such as public health and safety, developing and coordinating adopt-a-trail volunteers and community watch groups, supporting economic development opportunities, promoting historical and cultural values associated with the Trail/ROW and developing programs for encouraging health and fitness through recreational use of the Trail/ROW.

The Parties intend to provide direct, meaningful and timely opportunities for the public and stakeholders to access staff and management of the TLMD and IDPR, thereby ensuring that decisions regarding management and operation of the Trail/ROW are informed by a broad consideration of views and are widely supported.

C. MANAGEMENT AREAS

The Parties' separate and joint management authorities and responsibilities for the Trail/ROW are geographically defined and set forth below in Parts C.1, C.2 and C.3 of the Agreement. Within these management areas, the Parties' respective management authorities will be exercised consistent with the single-trail principle. The Parties may assign or contract any or all of their respective management authorities and responsibilities to each other upon terms and conditions approved by the Trail Commission.

1. MANAGEMENT OF THE TRAIL/ROW OUTSIDE OF THE BOUNDARIES OF THE COEUR D'ALENE RESERVATION

The State will exercise management authority over the Trail/ROW outside the boundaries of the Coeur d'Alene Reservation. This area generally includes the Trail/ROW from Mullan to Harrison.

2. MANAGEMENT OF THE TRAIL/ROW WITHIN THE BOUNDARIES OF THE COEUR D'ALENE RESERVATION, BUT OUTSIDE HEYBURN PARK

The Tribe will exercise management authority over the Trail/ROW within the boundaries of the Coeur d'Alene Reservation, but outside Heyburn Park. This area generally includes the Trail/ROW from Harrison to Plummer, but outside Heyburn Park which is to be jointly managed as described below. This area also includes the Trail Extension located in Plummer, Idaho.

3. CO-MANAGEMENT OF THE TRAIL/ROW THROUGH HEYBURN PARK

The Parties will exercise joint management authority over the Trail/ROW through Heyburn Park as a truly coordinated and cooperative effort, consistent with the "Heyburn Park Trail/ROW Long-Term Management Plan" and the "Heyburn Park Trail/ROW Operations Plan" attached and incorporated herein. Both Plans will address management and operation of all lands and uses of the Trail/ROW through Heyburn Park including but not limited to the marina, boat launch, parking, restroom facilities, concessions and other facilities and improvements.

The Heyburn Park Trail/ROW Long-term Management Plan describes the long-term "vision" of the Parties for the Trail/ROW through Heyburn Park and establishes a long-term planning framework that will be utilized to manage the Trail/ROW through Heyburn Park for the benefit of future generations consistent with that vision.

The Heyburn Park Trail/ROW Operations Plan sets forth the respective duties and responsibilities of the Parties for routine management and operation of the Trail/ROW through the Park.

Any modification of the Plans shall require the approval of the Trail Commission.

D. FUNDING

1. THE CONSENT DECREE

The Consent Decree provides funding to the Parties from UPRR for various aspects of establishing, operating and maintaining the Trail/ROW including general operations and maintenance (para.78), privacy screening (para.79), and upgrading existing community facilities (para.80), educational activities (para.81), and operation and maintenance of the Chatcolet Bridge (para.85).

2. THE STATE-TRIBE ESCROW AGREEMENT

UPRR funding for general operations and maintenance is held in an interest-bearing escrow account pursuant to the State-Tribe Escrow Agreement and Instructions as attached and incorporated herein. Disbursement of these funds may be authorized by joint written direction of the Parties prior to UPRR's completion of the Trail and conveyance of the ROW.

Disbursement of the remaining funds, including operation and maintenance funds, as well as any interest accrued thereon shall be authorized in accordance with joint written instructions of the Parties as follows: An amount equal to \$400,000 of such general operations and maintenance funds plus interest accrued thereon shall be disbursed to the Tribe for maintenance, operation, repair and replacement of the Chatcolet Bridge/Trestle excluding those obligations of UPRR as provided in the revised M&R Plan, Attachment E to the Statement of Work (SOW). Disbursement of the remaining funds shall be divided between the Parties with the State receiving 75% and the Tribe receiving 25%.

3. OTHER FUNDING

The Parties shall, in good faith and to the extent possible, seek and secure additional funding from other sources as may be available for both routine annual operation and maintenance as well as non-routine or extraordinary Trail/ROW expenditures. In addition, the Parties shall seek funds for capital improvement to the Trail/ROW and shall whenever possible file joint applications for such funds or otherwise cooperate in securing funding and other benefits for the Trail/ROW.

E. DISPUTE RESOLUTION

The Parties shall use their best efforts to coordinate at comparable staff levels between IDPR and the TLMD in order to foster consensus decision making and problem solving regarding management and operation of the Trail/ROW.

If disputes arise with respect to planning, development, management or operations that the staffs of IDPR and TLMD are unable to resolve by consensus, they will refer the dispute to the Trail Commission.

If the Trail Commission is unable to resolve the dispute, they shall refer the dispute to the Director of the IDPR and the Director of the TLMD. If the Directors of IDPR and TLMD cannot resolve the dispute, they shall refer the dispute to the Governor of the State of Idaho and the Chairman of the Coeur d'Alene Tribe for final resolution.

VII. RESERVATION OF RIGHTS

Nothing in this Agreement or actions of the Parties hereunder, including but not limited to the transfer, management or operation of all or any portion of the Trail/ROW by either or both Parties, is or shall be construed to be a waiver of the sovereignty, jurisdiction, ownership or any claim of the Coeur d'Alene Tribe or the State of Idaho.

The Agreement also does not and is not intended to:

1. alter or affect the rights of either Party;
2. create any right to administrative or judicial review by either Party or by any person or entity not party to this Agreement
3. create, diminish or in any way alter the trust responsibilities and obligations of the United States to the Coeur d'Alene Tribe; or
4. preclude the Parties from modifying this Agreement in the future.

VIII. MODIFICATION

The terms of the Agreement may only be modified by written agreement by both Parties. In the event that such modifications are deemed necessary by one or both Parties, the Directors and staff of IDPR and TLMD shall be creative, positive problem-solvers who build upon their prior experience in managing the Trail/ROW and who learn by doing, recognizing that the terms of this Agreement are intended to provide structure and a degree of certainty for both Parties while maintaining sufficient flexibility to allow for management plans and activities to adapt over time.

IX. SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and assigns.

X. EFFECTIVE DATE

This Agreement becomes effective upon execution by the State, through the Director of IDPR and by the Tribe, through the Director of the TLMD.

IDAHO DEPARTMENT OF PARKS & RECREATION

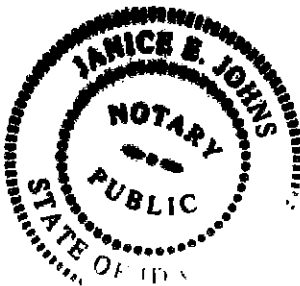
12/29/06
DATE

Robert L. Meinen, Director
IDAHO PARKS AND RECREATION

STATE OF IDAHO)
County of Ada) ss.

On the 29 day of December 2006, before me, the undersigned Notary Public in and for said state, personally appeared Robert L. Meinen, known or identified to me to be the Director of the IDAHO DEPARTMENT OF PARKS AND RECREATION, and acknowledged to me that the IDAHO DEPARTMENT OF PARKS AND RECREATION executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this first above written.



Janice E. Johns
Notary Public
Residing at Boise Idaho
My commission expires: 7/25/2010

TRIBE LAKE MANAGEMENT DEPARTMENT

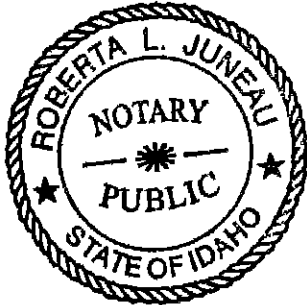
Jan 8, 2007
DATE

Phillip J. Cerna
TRIBE LAKE MANAGEMENT DEPARTMENT

STATE OF IDAHO)
) ss.
County of Benevolence)

On the 8th day of January, 2007, before me, the undersigned Notary Public in and for said state, personally appeared Phillip J. Cerna, known or identified to me to be the Director of the COEUR D'ALENE TRIBE LAKE MANAGEMENT DEPARTMENT, and acknowledged to me that the COEUR D'ALENE TRIBE LAKE MANAGEMENT DEPARTMENT executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this first above written.



Roberta L. Juneau
Notary Public.
Residing at Plummer, Idaho
My commission expires: 10/10/07