

Second Extension – IDAHO / ACTION AGENCIES Accord

Second Extension of the Columbia Basin Fish Accord Agreement

among

the State of Idaho (“Idaho”)

and

Bonneville Power Administration (“Bonneville”),

U.S. Army Corps of Engineers (“Corps”), and Bureau of Reclamation (“Reclamation”)

RECITALS

Whereas, Idaho, Bonneville, Corps, and Reclamation are Parties to the 2008 Columbia Basin Fish Accord Memorandum of Agreement (“2008 Accord”), including the Accord Extension signed in 2018 (collectively, together with this Second Extension, “**the Accord**”),;

Whereas, the 2018 Accord Extension, as amended by the Parties in 2020, is set to expire on September 30, 2022;

Whereas, the Parties share an interest in pursuing prompt negotiation of a potential new long-term agreement (“**long-term successor agreement**”) to succeed and replace the Accord and that preserves and advances the mutual benefits of the Accord relationship that the Parties have cultivated over more than a decade;

Whereas, pending matters relating to Columbia River System operation, maintenance, configuration, and mitigation (including non-operational conservation measures), the substance of final agency decisions for the Columbia River System Operations (“**CRSO**”) Environmental Impact Statement (“**EIS**”) and associated Endangered Species Act (“**ESA**”) consultations in particular, litigation over the CRSO EIS Record of Decision (“**ROD**”) and associated biological opinions, and related settlement discussions are material to the Parties’ consideration of and willingness to enter into a potential successor agreement;

Whereas, the pendency of such matters makes it impractical for the Parties to consider and discuss all information germane to the substance of a potential long-term successor agreement on a timeframe that would allow the Parties to complete negotiation and execution of such agreement prior to Sep. 30, 2022;

Whereas, the Parties believe that maintaining continuity and stability in their Accord relationship as they pursue a long-term successor agreement will promote more effective and productive negotiation;

Now, therefore, the Parties agree as follows:

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Except as expressly stated in this Second Extension of the Accord (hereinafter, “**Second Extension**”), all terms of the 2018 Accord Extension, including but not limited to any remaining operative provisions of the 2008 Accord, fish and wildlife project portfolios, planned budgets, and off-ramps, remain in effect; however, this Agreement supersedes the 2020 Accord Extension Amendment.

A. AMENDMENTS to the Accord

1. The term provision of the 2018 Accord Extension, Section IV.C, is amended as follows:

Unless otherwise decided by a Party pursuant to this Section IV, this Extension *as amended*, will be in force until the earlier of September 30, 2025 or such time that the Parties enter into a successor agreement replacing this Accord Extension.

2. Idaho and Bonneville renegotiated project descriptions and budgets for the term of this Second Extension. Bonneville’s project funding commitments for fiscal years 23-25 are as shown in Attachment A, which is incorporated into this Second Extension.
3. Idaho and Bonneville agree to the following modification of Section III.D.4 of the 2018 Accord Extension:

~~The total amount of funds from any prior fiscal years that can be spent in a single fiscal year—including unspent carryforward funds from any prior fiscal years—shall not exceed 120% of the budgeted amount for that year set forth in Attachment A, unless Bonneville and Idaho agree otherwise. This cap governs request for changes in the timing of implementation and distribution of Accord dollars, may be adjusted through preschedules, reschedules, or budget transfers, as defined below.~~

This modification eliminates the 120% single fiscal year spending cap of the 2018 Accord Extension, and as a result, in any given fiscal year of this 2022 Accord Extension, the full carry-forward balance will be available for allocation across Idaho’s Accord project portfolio to supplement the project portfolio base budgets identified in Attachment A.

4. The Parties understand that with the Action Agencies’ Record of Decision (“**CRSO EIS ROD**”) in September 2020, operation of the Columbia River System will be as provided in the CRSO ROD and in accordance with associated biological opinions, court orders, and

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other agreements. Therefore, Attachment C of the 2018 Accord Extension, that covered Columbia River System Operations, is superseded and stricken.

5. Under the Accord the Parties have agreed on the adequacy of the Action Agencies' compliance with relevant laws as to the Columbia River System. The Action Agencies assert that their actions continue to comply with their legal responsibilities under the ESA, Northwest Power Act ("**NWPA**"), Clean Water Act ("**CWA**"), and National Environmental Policy Act ("**NEPA**"). Nonetheless, for the duration of this Second Extension, the Action Agencies agree that Idaho is not obligated to affirm the adequacy of the Action Agencies' compliance with those laws under Section IV.B of the 2018 Accord Extension.
6. The Parties desire to negotiate and execute a long-term successor agreement that includes Idaho's affirmation of adequacy and ongoing forbearance, and the Parties intend to work collaboratively and expeditiously towards that shared goal. Therefore, during the term of this Second Extension, Idaho will forbear from initiating, joining in, or supporting litigation against any Action Agency, National Oceanic and Atmospheric Administration Fisheries ("**NOAA**"), and U.S. Fish and Wildlife Service ("**USFWS**") under the ESA, NWPA, NEPA, CWA, or Administrative Procedure Act regarding the Columbia River System.
7. Notwithstanding Section A.6, above, the Parties agree to the addition of the following off-ramps to the Accord:
 - a. In the event that Idaho finds it necessary to initiate, join in, or support litigation precluded by Section A.6, above, Idaho shall provide written notice of its withdrawal under this provision to the other Parties. A Party withdrawing under this off-ramp need not follow the withdrawal procedures provided in the 2018 Accord Extension. Rather, the Idaho Accord will terminate automatically upon provision of such written notice of its withdrawal.
 - b. In addition, any Party may withdraw from the Accord if changed circumstances arising after the Effective Date of this Second Extension (1) necessitate a material change in the operation, maintenance, configuration, or mitigation of the Columbia River System, (2) such change is actually implemented during the term of this Second Extension, and (3) such change harms the withdrawing Party's interests or expectations (including biological interests or expectations) related to the Columbia River System.

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All other applicable off-ramps under the 2018 Accord Extension remain available to the Parties.

8. By agreeing to this Second Extension, no Party waives its right to assert any claims, arguments, or defenses in the future.
9. Each Party reserves the right to pursue legislation and settlement to address concerns related to Columbia River System operation, maintenance, configuration, mitigation (including non-operational conservation measures) or infrastructure funding, and other related matters.

B. NEGOTIATION OF SUCCESSOR AGREEMENT

The Action Agencies have an interest in developing a long-term successor agreement that preserves and promotes collaborative relationships with Idaho and that includes commitments sufficient to support Idaho's (1) affirmation of adequacy as to the federal legal compliance with respect to Columbia River System operation, maintenance, configuration and mitigation (including non-operational conservation measures), and (2) forbearance from initiating or joining in suits or regulatory actions challenging such compliance.

The Action Agencies acknowledge that Idaho's willingness to enter into a long-term successor agreement, including affirmation of adequacy and forbearance provisions, is predicated on numerous considerations, such as agreement with the Action Agencies on long-term successor agreement terms that reasonably account for certain Idaho priorities and objectives.

The Parties understand that such matters are beyond the scope of this Second Extension, but the Parties agree to good-faith discussion of these matters in their pursuit and negotiation of a potential long-term successor agreement.

C. EFFECTIVE DATE of SECOND EXTENSION

This Second Extension will take effect once all Parties have signed below.

D. SIGNATURES

BONNEVILLE POWER ADMINISTRATION:

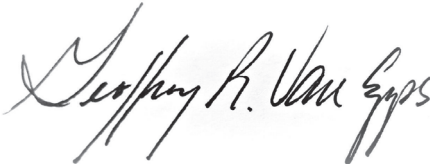
**JOHN
HAIRSTON**

Digitally signed by
JOHN HAIRSTON
Date: 2022.09.30
14:17:59 -07'00'

By: John L. Hairston
Title: Administrator and Chief Executive Officer

_____ Date

U.S. ARMY CORPS OF ENGINEERS:



02 Oct 2022

By: Geoffrey R. Van Epps
Title: Colonel, U.S. Army
Division Commander

Date

BUREAU OF RECLAMATION:

**JENNIFER
CARRINGTON**

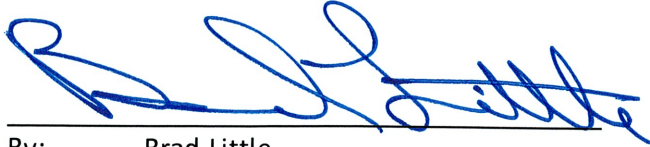
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JENNIFER CARRINGTON
Date: 2022.10.03
21:30:49 -06'00'

By: Jennifer J. Carrington
Title: Regional Director
Columbia-Pacific Northwest Region

Date

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STATE OF IDAHO:



By: Brad Little
Title: Governor

SEP 29 2022
Date

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Attachment A: Idaho Project Portfolios

PROJECT No.*	PROJECT NAME	2022 (Base Value)	2023	2024	2025	TOTAL 2023-2025 (Base)	2023	2024	2025	TOTAL 2023-2025 (Base+ Inflation)	Comments
Expense								2.5%	2.5%		
1	199608600 Clearwater Focus Program	\$ 105,551	\$ 142,212	\$ 142,212	\$ 142,212	\$ 426,636	\$ 142,212	\$ 145,767	\$ 149,411	\$ 437,391	
2	200739400 Upper Salmon Basin Habitat Restoration	\$ 461,693	\$ 559,082	\$ 559,082	\$ 559,082	\$ 1,677,246	\$ 559,082	\$ 573,059	\$ 587,386	\$ 1,719,527	
3	200860300 Pahsimeroi River Habitat	\$ 1,186,601	\$ 1,113,647	\$ 1,113,647	\$ 1,113,647	\$ 3,340,941	\$ 1,113,647	\$ 1,141,488	\$ 1,170,025	\$ 3,425,161	
4	200860400 Lower Clearwater and Pottlatch Watersheds Habitat Improvements	\$ 1,085,847	\$ 1,024,926	\$ 1,024,926	\$ 1,024,926	\$ 3,074,778	\$ 1,024,926	\$ 1,050,549	\$ 1,076,813	\$ 3,152,288	
5	200860800 Idaho MDA/Fish Accord Water Transactions	\$ 307,547	\$ 307,547	\$ 307,547	\$ 307,547	\$ 922,641	\$ 307,547	\$ 315,236	\$ 323,117	\$ 945,899	
6	200902300 Accord Administration - Idaho	\$ 102,516	\$ 175,294	\$ 175,294	\$ 175,294	\$ 525,882	\$ 175,294	\$ 179,676	\$ 184,168	\$ 539,139	
7	201007200 Lemhi River Restoration	\$ 1,324,872	\$ 1,376,918	\$ 1,376,918	\$ 1,376,918	\$ 4,130,754	\$ 1,376,918	\$ 1,411,341	\$ 1,446,624	\$ 4,234,883	
IOSC Total		\$ 4,574,626	\$ 4,699,626	\$ 4,699,626	\$ 4,699,626	\$ 14,098,878	\$ 4,699,626	\$ 4,817,117	\$ 4,937,545	\$ 14,454,287	
8	198806500 Kootenai River Fishery Investigations	\$ 965,614	\$ 1,031,791	\$ 1,031,791	\$ 1,031,791	\$ 3,095,373	\$ 1,031,791	\$ 1,057,586	\$ 1,084,025	\$ 3,173,402	
9	199005500 Idaho Steelhead Monitoring and Evaluation (M&E) Studies	\$ 3,126,890	\$ 3,552,870	\$ 3,552,870	\$ 3,552,870	\$ 10,658,610	\$ 3,552,870	\$ 3,641,692	\$ 3,732,734	\$ 10,927,296	Base includes \$1,735,969 originating from 1991-073-00 Idaho Natural Production M&E
10	199005500 Idaho Steelhead Monitoring and Evaluation (M&E) Studies	\$ 77,890	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	Funds were previously non-Accord
11	199401500 Idaho Fish Screening Improvement	\$ 445,567	\$ 479,668	\$ 479,668	\$ 479,668	\$ 1,439,005	\$ 479,668	\$ 491,660	\$ 503,952	\$ 1,475,280	
12	200101700 Idaho Conservation Data Center	\$ 5,126	\$ 5,126	\$ 5,126	\$ 5,126	\$ 15,377	\$ 5,126	\$ 5,254	\$ 5,385	\$ 15,765	
13	200717000 South Fork Snake River Yellowstone Cutthroat Trout Recruitment and Survival Improvement	\$ 178,999	\$ 231,469	\$ 231,469	\$ 231,469	\$ 694,406	\$ 231,469	\$ 237,256	\$ 243,187	\$ 711,911	
14	200739900 Upper Salmon Screen Tributary Passage	\$ 1,025,156	\$ 1,145,850	\$ 1,145,850	\$ 1,145,850	\$ 3,437,549	\$ 1,145,850	\$ 1,174,496	\$ 1,203,858	\$ 3,524,204	
15	200740200 Springfield Hatchery -- Snake River Sockeye Captive Propagation	\$ 1,039,313	\$ 1,098,923	\$ 1,098,923	\$ 1,098,923	\$ 3,296,769	\$ 1,098,923	\$ 1,126,396	\$ 1,154,556	\$ 3,379,876	
16	200740200 Eagle Hatchery -- Snake River Sockeye Captive Propagation	\$ 1,822,325	\$ 1,966,367	\$ 1,966,367	\$ 1,966,367	\$ 5,899,100	\$ 1,966,367	\$ 2,015,526	\$ 2,065,914	\$ 6,047,807	
17	201003100 Snake River Chinook and Steelhead Parental Based Tagging	\$ 1,790,622	\$ 1,814,006	\$ 1,814,006	\$ 1,814,006	\$ 5,442,018	\$ 1,814,006	\$ 1,859,356	\$ 1,905,840	\$ 5,579,202	Base includes \$682,188 originating from 2010-026-00 Chinook/Steelhead Genotyping for GSI at Lower Granite Dam
18	201900500 Lake Pend Oreille/Dworshak	\$ 1,214,381	\$ 1,265,969	\$ 1,265,969	\$ 1,265,969	\$ 3,797,907	\$ 1,265,969	\$ 1,297,618	\$ 1,330,059	\$ 3,893,646	Base includes \$943,856 originating from 1994-047-00 Lake Pend Oreille Kokanee Mitigation and \$270,525 from 2007-003-00 Dworshak Dam Resident Fish Mitigation
IDFG Total		\$ 11,691,883	\$ 12,592,039	\$ 12,592,039	\$ 12,592,039	\$ 37,776,116	\$ 12,592,039	\$ 12,906,840	\$ 13,229,511	\$ 38,728,389	
Reinstatement of 2018 Extension Reduction		\$ 1,025,156	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
YEARLY EXPENSE TOTAL:		\$ 17,291,665	\$ 17,291,665	\$ 17,291,665	\$ 17,291,665	\$ 51,874,994	\$ 17,291,665	\$ 17,723,956	\$ 18,167,055	\$ 53,182,677	

PROJECT No.*	PROJECT NAME	2022	2023	2024	2025	TOTAL 2023-2025 (Base)	2023	2024	2025	TOTAL 2023-2025 (Base+ Inflation)	Comments
Capital											
YEARLY CAPITAL TOTAL:											

Note: BPA Project numbers may change over time
 Note: BPA/Idaho are working to combine projects 2008-603-00 and 2010-072-00