

2022 Extension of the Columbia Basin Fish Accord Agreement
among
Confederated Tribes of the Colville Reservation (“Colville Tribes”)
and
Bonneville Power Administration (“Bonneville”),
U.S. Army Corps of Engineers (“Corps”), and Bureau of Reclamation (“Reclamation”)

RECITALS

Whereas, the Colville Tribes is a sovereign nation comprised of 12 constituent tribes – Chelan, Chief Joseph Band of Nez Perce, Colville, Entiat, Lakes, Methow, Moses-Columbia, Nespelem, Okanogan, Palus, San Poil, and Wenatchi – which have inhabited, stewarded, and relied for physical, cultural and spiritual subsistence on the Columbia River and its tributaries since time immemorial;

Whereas, the Colville Tribes, Bonneville, Corps, and Reclamation are Parties to the 2008 Columbia Basin Fish Accords Memorandum of Agreement (“**2008 Accord**”), including the Accord Extension signed in 2018 (“**2018 Accord Extension**”) (collectively, together with this 2022 Accord Extension, “**the Accord**”);

Whereas, the 2018 Accord Extension, as amended by the Accord Extension Amendment signed in 2020 (“**2020 Accord Extension Amendment**”), is set to expire on September 30, 2022;

Whereas, the Parties share an interest in continuing their negotiation of a potential new long-term successor agreement to succeed and replace the Accord and to preserve and advance 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, litigation over the CRSO EIS Record of Decision (“**ROD**”) and associated biological opinions, related settlement discussions, and tribal consultation with the Biden-Harris administration regarding a comprehensive long-term strategy for the Columbia River Basin, 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 a potential successor agreement on a timeframe that would

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allow the Parties to complete negotiation and execution of such agreement prior to September 30, 2022; and

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

Now, therefore, the Parties agree as follows:

Except as expressly stated in this extension of the Accord (“**2022 Accord Extension**”), all terms of the 2018 Accord Extension, including but not limited to any remaining operative provisions of the 2008 Accord, remain in effect; however, this 2022 Accord Extension supersedes the 2020 Accord Extension Amendment as of the Effective Date of this 2022 Accord Extension.

A. AMENDMENTS to the Accord

1. The term provision of the 2018 Accord Extension, Section IV.C.2, is amended as follows:

Unless otherwise decided by a Party pursuant to this Section IV, *as amended*, this 2022 Accord Extension will be in force until the earlier of ~~when the Action Agencies issue their final decisions on the CRSO EIS and any associated consultation under the ESA for the Columbia River System, or September 30, 2022~~25 *or such time that the Parties enter into a successor agreement replacing this Accord Extension.*

2. The Colville Tribes, Reclamation, and Bonneville have agreed to certain provisions regarding Accord projects for this 2022 Accord Extension.
 - a. The Colville Tribes and Bonneville renegotiated project descriptions and budgets for the term of this 2022 Accord Extension. Bonneville’s project funding commitments for fiscal years 2023-2025 are as shown in Attachment A, which has been updated and is incorporated into the Accord.
 - b. During the term of this extension, the parties agree that enhanced flexibility with respect to the amount of funds that can be spent in a single fiscal year would allow the Colville Tribes and Bonneville to advance their shared mitigation goals by the Colville Tribes identifying and implementing additional on-the-ground mitigation throughout Colville traditional territories, *see* 2018 Accord Extension at page 4, footnote 1. In addition, this enhanced flexibility is intended to promote the spending down of the Colville Tribes’ balance of unspent funds

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from prior fiscal years (“**carry-forward balance**”) during the three years of this 2022 Accord Extension.

The Colville Tribes and Bonneville agree to the following modification of Section III.C.4 of the 2018 Accord Extension:

~~The amount of funds that can be spent in a single fiscal year—including any unspent carried forward 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 the Tribes agree otherwise. Bonneville agrees to make best efforts to fulfill timely requests from the Colville Tribes to shift unspent funds from habitat acquisition and enhancement projects to other projects listed in Attachment A, on a case-by-case basis, as funds allow. This cap governs requests 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 the Colville Tribes’ Accord project portfolio to supplement the project portfolio base budgets identified in Attachment A.

For fiscal year 2023, Bonneville agrees to meet promptly, upon the Colville Tribes’ request, to plan for the Colville Tribes’ proposed allocation of the available carry-forward balance across the Attachment A project portfolio budgets and any necessary contract modifications to implement such allocations. For fiscal years 2024 and 2025, the Colville Tribes and Bonneville agree to meet beginning no later than May 1 of the prior fiscal year to plan the allocation of available carry-forward balance across the next fiscal year’s Attachment A project portfolio budgets.

- c. The Colville Tribes and Reclamation agreed to the following relative to Salmon Creek.
 - i. Reclamation will continue to work closely with the Colville Tribes to improve survival of Upper Columbia River (“**UCR**”) steelhead in Salmon Creek, a tributary to the Okanogan River, relative to streamflow and the irrigation diversion fish screen, as described below.

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- a) **Salmon Creek Flows.** As outlined in the “Supplemental Instream Flow Funding Agreement (Agreement No. R20MR13708),” between Reclamation and the Okanogan Irrigation District (“**OID**”), Reclamation intends to lease a maximum of 1,800 acre-feet (“**AF**”) of instream flow releases delivered to Salmon Creek. This 1,800 AF is in addition to up to 1,800 AF (dependent on reservoir storage and snow water equivalent (“**SWE**”) thresholds) already secured by an agreement between the Colville Tribes and OID, to assist with the restoration of instream flow in lower Salmon Creek to allow for viable natural production of UCR steelhead.
 - b) **Salmon Creek Fish Screen.** In conjunction with the Colville Tribes, Reclamation will evaluate the Salmon Creek fish screen to determine whether a modification of the screen or a full screen replacement is necessary to reduce steelhead entrainment risk. Reclamation will pursue funding to modify or replace the fish screen once a course of action is identified in coordination with the Colville Tribes.
 - c) **Salmon Lake Storage.** Reclamation will pursue funding during the term of the 2022 Accord Extension to assess the potential for storing additional water in Salmon Lake that could be used to supplement flows in Salmon Creek to benefit UCR steelhead.
3. The Parties understand that with the issuance of the Record of Decision (“**CRSO EIS ROD**”) in September 2020 by Bonneville, the Corps, and Reclamation (together the “**Action Agencies**”), operation of the Columbia River System will continue as provided in the CRSO ROD and in accordance with associated biological opinions, court orders, and other agreements. Therefore, Attachment C of the 2018 Accord Extension, that covered Columbia River System operation, is superseded and stricken.
4. Under the Accord, the Parties have previously 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, as under the 2020 Accord Extension Amendment, for the term of this 2022 Accord Extension (see Section A.1, above), the Action Agencies agree that the Colville Tribes is not obligated to affirm the adequacy of the Action Agencies’ compliance with such laws under Section IV.B of the 2018 Accord Extension.

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5. The Parties desire to negotiate and execute a successor agreement that includes the Colville Tribes' affirmation of adequacy, ongoing forbearance, the Action Agencies' continuing funding of the Colville Tribes' fish and wildlife mitigation projects, and the Action Agencies' commitment to certain Columbia River System operation, maintenance, configuration, and mitigation (including non-operational conservation measures). The Parties have begun and intend to continue working collaboratively and expeditiously towards those shared goals. Therefore, during the term of this 2022 Accord Extension, the Colville Tribes 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, CWA, NEPA, or Administrative Procedure Act regarding the Columbia River System; *provided*, that the Parties agree that any action pertaining to the exercise or enforcement of the Colville Tribes' regulatory authority under the CWA is not encompassed by the foregoing forbearance commitment.
6. Notwithstanding Section A.5, above, the Parties agree to the addition of the following off-ramps to the Accord, amending Section IV.D of the 2018 Accord Extension:
 - a. In the event that the Colville Tribes finds it necessary to initiate, join in, or support litigation precluded by Amendment Section A.5, above, to preserve its interests with respect to the legal adequacy of Columbia River System operation, maintenance, configuration, and mitigation (including non-operational conservation measures), the Colville Tribes shall first withdraw from the Accord prior to initiating, joining in, or supporting such litigation. The Parties agree that the Colville Tribes may effect withdrawal for this purpose by: (1) providing written notice to the Action Agencies of its intent to withdraw; and (2) making reasonable efforts for the Parties to meet and confer within 15 days of such notice. If the Parties are not able to resolve their differences in this timeframe and do not extend such time for withdrawal, the Colville Tribes' withdrawal from the Accord shall be effective immediately.
 - b. Any Party may withdraw from the Accord if: (1) changed circumstances arising after the Effective Date of this 2022 Accord Extension necessitate a material change in the operation, maintenance, configuration, or mitigation of the Columbia River System (including non-operational conservation measures); (2) such change is actually implemented during the term of this 2022 Accord Extension; and (3) such change harms the withdrawing Party's interests or expectations (including biological interests or expectations) related to the Columbia River System. A Party may effect withdrawal from the Accord

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pursuant to this Section A.6.b by: (1) providing written notice to the other Parties of its intent to withdraw; and (2) making reasonable efforts for the Parties to meet and confer within 90 days of such notice. If the Parties are not able to resolve their differences in this timeframe and do not extend such time for withdrawal, the withdrawing Party's withdrawal from the Accord shall be effective immediately.

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

7. By agreeing to this 2022 Accord Extension, no Party waives its right to assert any claims, arguments, or defenses in the future.
8. Each Party reserves the right to pursue legislation to address concerns related to Columbia River System operation, maintenance, configuration, mitigation (including non-operational conservation measures) or infrastructure funding, and other related matters.
 - a. Specifically, Bonneville and the Colville Tribes agree to continuing their current good-faith efforts to develop an acceptable framework for extending the authorization of Chief Joseph Hatchery to include its use in the Colville Tribes' activities related to placement of anadromous fish above Chief Joseph and Grand Coulee dams. If the Colville Tribes and Bonneville reach agreement on such a framework and Congress enacts any associated legislation during the term of this 2022 Accord Extension, the Colville Tribes may begin implementing the actions provided under the framework immediately upon completion of applicable environmental review and compliance processes (*e.g.*, NEPA), which Bonneville and the Colville Tribes agree to undertake expeditiously. Such framework and any associated legislation, following agreement and enactment, respectively, shall supersede the limitations in Section III.H.4 of the 2018 Accord Extension.

B. NEGOTIATION OF LONG-TERM SUCCESSOR AGREEMENT

1. The Parties share a mutual goal of continuing to negotiate a potential new, standalone long-term successor agreement ("**LTSA**"). Accordingly, the Parties agree to continue timely and good-faith negotiations initiated in January 2021 regarding an LTSA by meeting on a regular basis following execution of this 2022 Accord Extension to advance those negotiations.

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2. The Parties understand that the matters enumerated in this Section B.2 are beyond the scope of this 2022 Accord Extension, but the Parties agree to good-faith discussion of these matters in their continued negotiation of an LTSA.
 - a. The Action Agencies have an interest in developing an LTSA that preserves and promotes collaborative relationships with the Colville Tribes and that includes commitments sufficient to support the Colville Tribes': (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.
 - b. The Colville Tribes have an interest in developing an LTSA with a term of 10 years or longer that preserves and promotes collaborative relationships with the Action Agencies and that includes commitments by the Action Agencies addressing the priorities identified by the Colville Tribes in a memorandum shared and discussed with the Action Agencies beginning in March 2021, including: (1) funding of studies and implementation of passage and reintroduction of salmon in the blocked areas above Chief Joseph Dam and Grand Coulee Dam; (2) funding expansion of the geographic scope of fish and wildlife projects by the Colville Tribes to include all Colville traditional territories; (3) mitigation of resident fish impacts from implementation of delayed fall refill of Lake Roosevelt; (4) mitigation of operational losses to wildlife; (5) funding of continuing and emerging priorities of the Colville Tribes, including relief-tunnel water supply for Chief Joseph Hatchery and rearing ponds for the Colville Tribal Hatchery; and (6) coordination with the Corps regarding spring and summer spill at Chief Joseph Dam and mitigation of impacts from spill to the Colville Tribes' fishery below the dam.

C. EFFECTIVE DATE OF EXTENSION

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

D. SIGNATURES

BONNEVILLE POWER ADMINISTRATION:

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

Date

U.S. ARMY CORPS OF ENGINEERS:

By: Geoff Van Epps, P.E.
Title: Colonel, U.S. Army
Division Commander

Date

BUREAU OF RECLAMATION:

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

Date

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION:

By: Jarred-Michael Erickson
Title: Chairman
Colville Business Council

Date

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Attachment A: Colville Tribes Project Portfolio

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	198503800 Colville Hatchery Operation and Maintenance (O&M/M&E)	\$ 1,805,765	\$ 1,805,765	\$ 1,805,765	\$ 1,805,765	\$ 5,417,294	\$ 1,805,765	\$ 1,850,909	\$ 1,897,181	\$ 5,553,855	
2	199001800 Lake Roosevelt Rainbow Trout Habitat and Passage Improvement	\$ 811,980	\$ 811,980	\$ 811,980	\$ 811,980	\$ 2,435,940	\$ 811,980	\$ 832,280	\$ 853,087	\$ 2,497,346	
3	199204800 Hellgate Big Game Winter Range	\$ 1,594,730	\$ 1,629,730	\$ 1,629,730	\$ 1,629,730	\$ 4,889,190	\$ 1,629,730	\$ 1,670,473	\$ 1,712,235	\$ 5,012,438	
4	199501100 Chief Joseph Kokanee Enhancement	\$ 595,453	\$ 595,453	\$ 595,453	\$ 595,453	\$ 1,786,358	\$ 595,453	\$ 610,339	\$ 625,598	\$ 1,831,389	
5	200302200 Okanogan Basin Monitoring & Evaluation Program (OBMEP)	\$ 1,259,031	\$ 1,259,031	\$ 1,259,031	\$ 1,259,031	\$ 3,777,094	\$ 1,259,031	\$ 1,290,507	\$ 1,322,770	\$ 3,872,308	
6	200302300 Chief Joseph Hatchery Program	\$ 2,654,636	\$ 2,919,636	\$ 2,919,636	\$ 2,919,636	\$ 8,758,908	\$ 2,919,636	\$ 2,992,627	\$ 3,067,443	\$ 8,979,705	
7	200740500 Rufus Woods Habitat/Passage Improvement, Creel and Triploid Supplementation	\$ 270,661	\$ 315,661	\$ 315,661	\$ 315,661	\$ 946,982	\$ 315,661	\$ 323,552	\$ 331,641	\$ 970,854	
8	200810200 Okanogan Habitat Acquisition and Restoration	\$ 429,597	\$ 429,597	\$ 429,597	\$ 429,597	\$ 1,288,791	\$ 429,597	\$ 440,337	\$ 451,345	\$ 1,321,279	
9	200810400 Land Acquisition	\$ 1,668,549	\$ 1,668,549	\$ 1,668,549	\$ 1,668,549	\$ 5,005,648	\$ 1,668,549	\$ 1,710,263	\$ 1,753,020	\$ 5,131,832	
10	200810500 Selective Gear Deployment	\$ 375,677	\$ 497,677	\$ 497,677	\$ 497,677	\$ 1,493,030	\$ 497,677	\$ 510,119	\$ 522,872	\$ 1,530,667	
11	200810600 Tribal Conservation Enforcement-Colville Tribe	\$ 164,875	\$ 164,875	\$ 164,875	\$ 164,875	\$ 494,625	\$ 164,875	\$ 168,997	\$ 173,222	\$ 507,093	
12	200810900 Resident Fish Research, Monitoring and Evaluation (RM&E)	\$ 270,661	\$ 300,661	\$ 300,661	\$ 300,661	\$ 901,982	\$ 300,661	\$ 308,177	\$ 315,882	\$ 924,720	
13	200811500 Lake Roosevelt Burbot Population Assessment	\$ 400,577	\$ 400,577	\$ 400,577	\$ 400,577	\$ 1,201,730	\$ 400,577	\$ 410,591	\$ 420,856	\$ 1,232,024	
14	200811600 White Sturgeon Enhancement	\$ 562,974	\$ 562,974	\$ 562,974	\$ 562,974	\$ 1,688,921	\$ 562,974	\$ 577,048	\$ 591,474	\$ 1,731,496	
15	200900700 CCT Accord Administration Coordination	\$ 2,084,412	\$ 2,084,412	\$ 2,084,412	\$ 2,084,412	\$ 6,253,237	\$ 2,084,412	\$ 2,136,523	\$ 2,189,936	\$ 6,410,870	
16	201700400 Northern Pike Suppression & Monitoring	\$ 108,263	\$ 308,263	\$ 308,263	\$ 308,263	\$ 924,790	\$ 308,263	\$ 315,970	\$ 323,869	\$ 948,103	Base includes \$14,395 originating from 2008-111-00 Twin Lakes Enhancement
17	202300100 Upper Columbia Habitat Improvement (UCHIP)	\$ 2,420,705	\$ 2,748,861	\$ 2,748,861	\$ 2,748,861	\$ 8,246,582	\$ 2,748,861	\$ 2,817,582	\$ 2,888,022	\$ 8,454,464	Base includes \$290,067 originating from 1996-042-00 Restore Salmon Creek and \$2,130,638 originating from 2007-224-00 Okanogan Habitat Improvement Program (OSHIP)
	Reinstatement of 2018 Extension Reduction	\$ 1,025,156	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	YEARLY EXPENSE TOTAL:	\$ 18,503,701	\$ 18,503,701	\$ 18,503,701	\$ 18,503,701	\$ 55,511,102	\$ 18,503,701	\$ 18,966,293	\$ 19,440,451	\$ 56,910,445	

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

Note: BPA Project numbers may change over time