

Accord Extension Amendment – COLVILLE TRIBES / ACTION AGENCIES

Amendment to 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 (collectively, together with this Amendment, “**the Accord**”), and the 2018 Accord Extension includes fish and wildlife mitigation project budgets spanning four federal fiscal years – 2019 through 2022;

Whereas, the 2018 Accord Extension term provision states: “[T]his Extension will be in force until the earlier of when the Action Agencies issue their final decisions on the [Columbia River System Operations (“CRSO”) Environmental Impact Statement (“EIS”)] and any associated consultation under the Endangered Species Act (“ESA”) for the Columbia River System, or September 30, 2022”;

Whereas, in response to an October 19, 2018 presidential memorandum, the Action Agencies revised the schedule for the CRSO EIS and associated biological opinions to complete them by September 2020, one year earlier than originally planned;

Whereas, the Parties share an interest in pursuing prompt negotiation of a potential new long-term agreement (“**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, the Parties acknowledge that pending matters relating to Columbia River System operation, maintenance, configuration, and mitigation (including non-operational conservation measures), and the substance of final agency decisions for the CRSO EIS and associated ESA

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consultations in particular, 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 successor agreement on a timeframe that would allow the Parties to complete negotiation and execution of such agreement prior to Sep. 30, 2020; and

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

Now, therefore, the Parties agree as follows:

Except as expressly stated in this Amendment, 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.

A. AMENDMENTS

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 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 or such time that the Parties enter into a successor agreement replacing this Accord Extension.

2. The Parties understand that upon issuance of the Action Agencies' Record of Decision (CRSO ROD), operation of the Columbia River System will be as provided in the CRSO ROD and in accordance with associated biological opinions. Therefore, Attachment C of the 2018 Accord Extension, that covered Columbia River System Operations, is superseded and stricken.
3. For the past 13 years, 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 remaining term of the 2018 Accord Extension, as amended by Amendment 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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4. 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 intend to work collaboratively and expeditiously towards those shared goals. Therefore, during the Parties' good-faith negotiation of such successor agreement, 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.
5. Notwithstanding Section A.4, above, the Parties agree to the addition of the following off-ramp to the Accord, amending Section IV.D of the 2018 Accord Extension:

In the event that the Colville Tribes finds it necessary to initiate, join in, or support litigation precluded by Amendment Section A.4, 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.

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

6. By agreeing to this Amendment, no Party waives its right to assert any claims, arguments, or defenses in the future.
7. 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.

B. NEGOTIATION OF SUCCESSOR AGREEMENT

1. The Parties share a mutual goal of expeditiously pursuing a potential long-term successor agreement. Accordingly, the Parties agree to: (1) promptly commence negotiation of a successor agreement following execution of this Amendment; and (2) meet monthly or more frequently thereafter to continue negotiations.
2. The Parties understand that the matters enumerated in this Subsection, B.2, are beyond the scope of this Amendment, but the Parties agree to good-faith discussion of these matters in their pursuit and negotiation of a successor agreement.
 - a. The Action Agencies have an interest in developing a successor agreement 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 a successor agreement that preserves and promotes collaborative relationships with the Action Agencies and that includes, *inter alia*, commitments sufficient to support the Action Agencies': (1) agreement on the Colville Tribes' use of the fish produced at Chief Joseph Hatchery in the blocked area above Chief Joseph and Grand Coulee Dams for the purposes set out in the Colville Tribes' April 27, 2020 Scenarios Memo; (2) funding of the Colville Tribes' actions related to reintroduction and passage of anadromous salmonids in the blocked area above Chief Joseph and Grand Coulee Dams, including the phased approach set out in the Northwest Power and Conservation Council's 2014 Columbia River Basin Fish and Wildlife Program; (3) planning and funding of the CRSO EIS mitigation measure regarding extension of the Inchelium-Gifford ferry ramp; and (4) funding of the CRSO EIS mitigation measure regarding impacts of modifications in Lake Roosevelt refill to resident fish. The Colville Tribes' goal is for the Parties to utilize the commitments in Amendment Section B.1 to reach an agreement in principle by June 30, 2021.
 - c. The Action Agencies acknowledge that the Colville Tribes' willingness to enter into a successor agreement, including affirmation of adequacy and forbearance provisions, is predicated on numerous considerations, such as review of the CRSO Final EIS, associated biological opinions, and Record of Decision.

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C. EFFECTIVE DATE OF AMENDMENT

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

D. SIGNATURES

/s/ John L. Hairston

September 24, 2020

John L. Hairston
Acting Administrator and Chief Executive Officer
Bonneville Power Administration

Date

/s/ D. Peter Helmlinger

September 24, 2020

D. Peter Helmlinger, P.E.
Brigadier General, US Army
Division Commander

Date

/s/ Lorri J. Gray

September 24, 2020

Lorri J. Gray
Regional Director
Bureau of Reclamation
Pacific Northwest Region

Date

/s/ Rodney Cawston

September 25, 2020

Rodney Cawston
Chairperson
Colville Business Council
Confederated Tribes of the Colville Reservation

Date