

Second Extension – SHOSHONE-BANNOCK TRIBES / ACTION AGENCIES Accord

Second Extension of the Columbia Basin Fish Accord Agreement
among
the Shoshone-Bannock Tribes of the Fort Hall Reservation (“the Tribes”)
and
Bonneville Power Administration (“Bonneville”),
U.S. Army Corps of Engineers (“Corps”), and Bureau of Reclamation (“Reclamation”)

RECITALS

Whereas, the Tribes, 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 September 30, 2022;

Whereas, the Parties share an interest in pursuing 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 long-term 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 Second Extension 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. The Tribes and Bonneville renegotiated project descriptions and budgets for the term of this Second Extension. Bonneville’s project funding commitment for fiscal years 23-25 are as shown in Attachment A, which is incorporated into the Accord.
3. The Tribes and Bonneville agree to the following modification of Section III.D.4 of the 2018 Accord Extension:

~~The total amount of funds that can be spent in a single fiscal year—including any unspent carry 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. 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 the Tribes’ 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 EIS 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 Operations, is superseded and stricken.

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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 the Tribes are 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 the Tribes' 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, the 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.
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 the Tribes find it necessary to initiate, join in, or support litigation precluded by Section A.6, above, the Tribes shall provide written notice of their 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 Tribes' 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.

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

8. By accepting this Second Extension, no Party waives its right to assert any claims, arguments, or defenses in the future.

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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 the Tribes and that includes commitments sufficient to support the 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.

The Action Agencies acknowledge that the Tribes' 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 terms that reasonably account for certain of the Tribes' priorities and objectives, including:

- Implementation of Conservation Hatchery facilities located in the Mountain Snake (Salmon River basin) Province.
- Investigation of the need for safety-net programs for populations below critical viability thresholds in the Mountain Snake Province.
- Implementation of tributary habitat programs, consistent with the approach described in the CRSO EIS/ROD and associated biological opinions, in the Mountain Snake Province.
- Investigation of the need for Bull Trout monitoring programs in the Mountain Snake Province (East Fork, Yankee Fork, Panther Creek).
- Implementation of Status and Trend Monitoring programs for the Middle Fork Salmon River, specifically funding the Bear Valley Creek Monitoring Program and associated monitoring of other important tributaries within that watershed.
- Investigation of options to contribute to Conservation Recommendation #10 from the NOAA 2020 Biological Opinion to focus efforts on researching the Middle Fork Salmon River fish population and its habitat.

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- Continued implementation of ongoing resident fish and wildlife projects in the Upper Snake Province, consistent with the ongoing project descriptions for the Fort Hall Bottoms Habitat Restoration and Southern Idaho Wildlife Mitigation.

The Parties agree to good-faith discussion of these priorities and objectives in their pursuit and negotiation of a potential long-term successor agreement and, during the term of this Second Extension, will attempt to make progress on these priorities and objectives as appropriate.

C. EFFECTIVE DATE of SECOND EXTENSION

This Second 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

SHOSHONE-BANNOCK TRIBES OF THE FORT HALL RESERVATION:

By: Nathan Small
Title: Chairman
Fort Hall Business Council

Date

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Attachment A: Shoshone-Bannock 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 | 199201000 Fort Hall Habitat Restoration | \$ 658,140 | \$ 725,000 | \$ 725,000 | \$ 725,000 | \$ 2,175,000 | \$ 725,000 | \$ 743,125 | \$ 761,703 | \$ 2,229,828 | |
| 2 | 199405000 Salmon River Habitat Enhancement | \$ 284,921 | \$ 350,000 | \$ 350,000 | \$ 350,000 | \$ 1,050,000 | \$ 350,000 | \$ 358,750 | \$ 367,719 | \$ 1,076,469 | |
| 3 | 199505702 Shoshone-Bannock Wildlife Mitigation Projects | \$ 506,250 | \$ 554,690 | \$ 554,690 | \$ 554,690 | \$ 1,664,070 | \$ 554,690 | \$ 568,557 | \$ 582,771 | \$ 1,706,018 | |
| 4 | 200205900* Yankee Fork Salmon River Restoration | \$ 303,750 | \$ 300,000 | \$ 300,000 | \$ 300,000 | \$ 900,000 | \$ 300,000 | \$ 307,500 | \$ 315,188 | \$ 922,688 | |
| 5 | 200740200 Snake River Sockeye Captive Propagation | \$ 521,231 | \$ 520,000 | \$ 520,000 | \$ 520,000 | \$ 1,560,000 | \$ 520,000 | \$ 533,000 | \$ 546,325 | \$ 1,599,325 | |
| 6 | 200890100 Crystal Springs Hatchery Construction | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| 7 | 200890400 Salmon River Basin Nutrient Enhancement | \$ 445,527 | \$ 400,000 | \$ 400,000 | \$ 400,000 | \$ 1,200,000 | \$ 400,000 | \$ 410,000 | \$ 420,250 | \$ 1,230,250 | |
| 8 | 200890500 Supplementation Projects | \$ 648,000 | \$ 625,000 | \$ 625,000 | \$ 625,000 | \$ 1,875,000 | \$ 625,000 | \$ 640,625 | \$ 656,641 | \$ 1,922,266 | |
| 9 | 200890600 Crystal Springs Planning and Operations/Maintenance | \$ 1,142,809 | \$ 1,000,000 | \$ 1,000,000 | \$ 1,000,000 | \$ 3,000,000 | \$ 1,000,000 | \$ 1,025,000 | \$ 1,050,625 | \$ 3,075,625 | |
| 10 | 201102100 Accord Administration - SBT | \$ 303,999 | \$ 450,000 | \$ 450,000 | \$ 450,000 | \$ 1,350,000 | \$ 450,000 | \$ 461,250 | \$ 472,781 | \$ 1,384,031 | |
| 11 | 202300200 Survival Migration Chinook Salmon | \$ - | \$ 300,000 | \$ 300,000 | \$ 300,000 | \$ 900,000 | \$ 300,000 | \$ 307,500 | \$ 315,188 | \$ 922,688 | |
| | Reinstatement of 2018 Extension Reduction | \$ 410,063 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| | YEARLY EXPENSE TOTAL: | \$ 5,224,690 | \$ 5,224,690 | \$ 5,224,690 | \$ 5,224,690 | \$15,674,070 | \$5,224,690 | \$5,355,307 | \$5,489,190 | \$ 16,069,187 | |

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

Note: BPA Project numbers may change over time

Note: Crystal Springs Hatchery Construction to be allocated after construction MOA signed by SBT/BPA; prior capital amount carried forward.

Note: Southern Idaho Wildlife Mitigation prior capital amount carried forward (for land acquisition)

Note: 2023-002-00 Survival Migration Chinook Salmon was previously contracted under 2008-906-00; a stand-alone project number was agreed upon for 2023 & beyond.