

2023 Kalispel – Action Agency Accord Extension and Amendment

2023 EXTENSION & AMENDMENT

to the Columbia Basin Fish Accord

**among the
Bonneville Power Administration (“Bonneville”),
U.S. Army Corps of Engineers (“Corps”), and Bureau of Reclamation (“Reclamation”)
 (“Action Agencies”)
and the
Kalispel Tribe of Indians
 (“The Tribe”)**

RECITALS

- A. The Kalispel Tribe, Bonneville, Corps, and Reclamation were Parties to the 2012 Memorandum of Agreement Between the Kalispel Tribe, the Bonneville Power Administration, the U.S. Army Corps of Engineers, and the U.S. Bureau of Reclamation (“2012 Accord”), which expired on September 30, 2022.
- B. Whereas, the Parties share an interest in pursuing prompt negotiation of a potential new long-term agreement (“successor agreement”) to succeed and replace the 2012 Accord and that preserves and advances the mutual benefits of the Accord relationship that the Parties have cultivated over more than a decade;
- C. Whereas, the Parties acknowledge that pending matters relating to Columbia River System operation, management, and mitigation are material to the Parties’ consideration of and willingness to enter into a potential successor agreement;
- D. Whereas, the pendency of such matters made it impractical to negotiate a new long-term agreement prior to Sept. 30, 2022;
- E. Whereas, the Parties have agreed to this short-term Extension and Amendment (“Extension”) of the 2012 Accord as an interim step while they pursue a longer-term future agreement.

2023 Kalispel – Action Agency Accord Extension and Amendment

The Parties therefore agree as follows:

AGREEMENT

I. Accomplishments under the 2012 Accord.

The Kalispel Tribe has accomplished a significant amount of work over the past ten years of the Accord in the areas of habitat management and improvement, fish population supplementation, invasive species management, and studies to improve support for endangered and threatened species. Work has been accomplished through effective collaboration with regional partners and leveraging the Accord funding to secure approximately \$5 million in cost share resources. Participation in environmental compliance has also become more efficient through establishing a cultural resources and compliance program. Noteworthy accomplishments include:

- Habitat:
 - Restored nearly 1 mile of Goose Creek, adding nearly 2.5 miles of new channel and riparian areas, which is critical for the survival of Westslope Cutthroat Trout
 - Replanted native vegetation species across approximately 300 acres of riparian areas, restored and reestablished approximately 20 acres of active floodplain
 - Protected approximately 761 acres as part of mitigation for Albeni Falls Dam construction and inundation wildlife habitat losses since 2012, including:
 - WA - Indian Creek, ~488 acres (USFS community forest and tribal cost share 2012) and 152 acres in additions adjacent to the original purchase in 2018
 - WA – Cusick Meadows area 26 acres (2015) and 40 acres (2016)
 - ID – Big Meadows 15 acres (2015)
 - ID – Beaver Lake 40 acres (2017)
 - Actively managed, maintained, and performed restorative actions across over 5,500 acres of wildlife mitigation lands
- Hatchery:
 - Improved and increased Tribal Member fishing opportunities on the Reservation by completing improvements and upgrades to the Tribal Hatchery, through species change to the rearing of Rainbow Trout, and the creation of a stock pond for Tribal access along with student outreach & education opportunities

2023 Kalispel – Action Agency Accord Extension and Amendment

- Predation:
 - Worked with partners to reduce the non-native Northern Pike populations below Albeni Falls Dam, resulting in reductions in the numbers, sizes, and fecundity of the species
- Research, Monitoring & Evaluation and Data Management:
 - Conducted multiple bathymetry and temperature studies in the Pend Oreille River, allowing for the planning, designing, and implementation of restoration work to expand upon cold- water areas creating thermal refugia and possible tributary migration areas for Bull trout
 - Expanded on the information pertaining to the natal streams and genetic structure of the Bull trout population that inhabits Lake Pend Oreille and migrates through its tributaries
 - Continued operation and maintain of a primary database and repository for information collected on resident fish species above the blocked area and forestry, and other habitat data, and wildlife population data for the Kalispel Tribe and sub-regional projects like the Upper Columbia United Tribes (“UCUT”) Wildlife monitoring and evaluation project for all five UCUT member Tribes’ mitigation parcels. The Tribe owns and operates the Kalispel Geo-spatial Enabled Data Management System (“GEDMS”) to house and publicly disseminate data

II. Continuation of the Accord. Except as provided below, and other items that have been completed from the 2012 Accord, the provisions of the 2012 Accord¹ and the 2014 Amendment Letter² remain in effect. Revisions to the 2012 Accord Attachment C will be separately coordinated between the Corps and the Tribe, and the yearly plan is expected in 2023.

III. Amendments.

- A. Term.** This Extension extends the term of the Accord through federal fiscal year 2025, which ends on September 30, 2025.
- B. Columbia River System³ Operations:** The Parties understand that upon issuance of the Action Agencies’ Columbia River System Operations Environmental Impact

¹ See 2012 Accord linked here: <https://www.salmonrecovery.gov/Files/Partners/KalispelMOAFinal06252012.pdf>

² See 2014 Amendment linked here:

<https://www.salmonrecovery.gov/Files/Partners/Kalispel%20MOA%20amndmnt%202014.pdf>

³ The “Columbia River System” refers to the fourteen projects within the Federal Columbia River Power System that are operated as a coordinated system known as the Columbia River System (CRS) within the interior Columbia

2023 Kalispel – Action Agency Accord Extension and Amendment

Statement Record of Decision (“CRSO ROD”) on September 28, 2020, operation of the Columbia River System is as provided in the CRSO ROD and in accordance with associated biological opinions. Therefore, Sections II.A.1-5, pertaining to system operations, and II.B.1-3, pertaining to reinitiation of the U.S. Fish and Wildlife Service (“USFWS”) or new consultation that covered Columbia River System Operations, of the 2012 Accord are superseded and stricken. In addition, all other references to and commitments associated with the USFWS and National Oceanic and Atmospheric Administration (“NOAA”) consultation documents for the FCRPS in the 2012 Accord (including biological opinions, supplemental biological opinions, biological assessments, and adaptive management implementation plan) are superseded by the actions consulted upon in the 2020 CRS Biological Opinions and adopted in the CRSO ROD.

- C. Affirmation of Adequacy:** For the past 10 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 Endangered Species Act (“ESA”), Northwest Power Act (“NWP”), Clean Water Act (“CWA”), and National Environmental Policy Act (“NEPA”). Nonetheless, for the duration of this Extension, the Action Agencies agree that the Tribe is not obligated to affirm the adequacy of the Action Agencies’ compliance with those laws under Section IV.B of the 2012 Accord.
- D. Forbearance:** The Parties desire to negotiate and execute a successor agreement that includes the Tribe’s affirmation of adequacy and ongoing forbearance, and the Parties intend to work collaboratively and expeditiously towards that shared goal. Therefore, during the Parties’ good-faith negotiation of such successor agreement, the Tribe will forbear from initiating, joining in, or supporting litigation against any Action Agency, NOAA, and USFWS under the ESA, NWP, CWA, NEPA, or Administrative Procedure Act regarding the Columbia River System.
- E. Off-Ramps:** Notwithstanding Section III.D, above, the Parties agree to supersede and replace Section IV.E (“Changed Circumstances, Renegotiation/Modification, Withdrawal”) of the 2012 Accord with the following off-ramps to the Accord:

 - i. Any Party may withdraw or seek to renegotiate this Extension or the operative provisions of the 2012 Accord in the following circumstances:

River Basin in the states of Idaho, Montana, Oregon, and Washington. The 14 CRS projects (“project” is used to collectively refer to a dam and its associated reservoir) are Libby, Hungry Horse, Albeni Falls, Grand Coulee, Chief Joseph, Dworshak, Lower Granite, Little Goose, Lower Monumental, Ice Harbor, McNary, John Day, The Dalles, and Bonneville.

2023 Kalispel – Action Agency Accord Extension and Amendment

1. If any court finds a Columbia River System biological opinion or related Action Agency decision document arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, and the court orders additional or different actions that are either financially material to a Party or Parties or materially constrain the Action Agencies from meeting Columbia River System purposes.
 2. In the event of material noncompliance with this agreement, or the initiation of litigation by one or more of the Parties challenging the sufficiency of the measures or actions included within the scope of the 2012 Accord, as modified by this Extension, to meet Federal obligations, including under the ESA, NEPA, NWPA, or the CWA.
 3. In the event of a material change, in Bonneville’s financial condition due to energy markets, river flows, litigation, or other conditions outside of Bonneville’s reasonable control, from those conditions assumed by Bonneville as a matter of prudent business judgment in rate setting, and which materially affect Bonneville’s financial health and its associated ability to sustain the fulfillment of any of its multiple statutory responsibilities.
 4. If changed circumstances arising after the Effective Date of this 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 Extension, and (3) such change harms the withdrawing Party’s interests or expectations (including biological interests or expectations) related to the Columbia River System.
- ii. In such circumstances, the Parties will first seek to preserve this Extension and the operative provisions of the underlying 2012 Accord and will meet promptly to determine the appropriate response. The affected Party or Parties will notify the other Parties immediately in writing, identifying why the circumstance is considered material and potential options for resolution, including financial rebalancing through prioritization of fish and wildlife spending. Prior to withdrawing from this Extension, the Parties shall first make a 90-day good faith effort to renegotiate mutually agreeable modifications to this Extension, with a priority placed on establishing the funding levels for the projects listed in

2023 Kalispel – Action Agency Accord Extension and Amendment

- Attachment A. A Party may not withdraw from this Extension on the basis of its own noncompliance.
- iii. If renegotiation is not successful, the affected Party may notify the other Parties in writing of its intent to withdraw by a date certain. At the time the withdrawal is effective, all funding commitments and covenants made by the withdrawing Party cease; however, the withdrawing Party's liabilities and obligations under intergovernmental contracts effective on the date of withdrawal remain in effect until addressed as provided in the intergovernmental contract.
 - iv. Immediate Withdrawal; Conditions Precedent. In the event that the Tribe finds it necessary to withdraw from the Accord immediately to initiate, join in, or support litigation precluded by Section III.D, above, the Tribe will provide written notice of such withdrawal to the other Parties and need not follow the withdrawal procedures of subsections (ii) and (iii) above. The Accord will terminate automatically upon provision of such notice. In any event, the Parties agree that the Tribe's participation in litigation that would otherwise be precluded by the forbearance provision of this Extension (Section D, above) will constitute an immediate withdrawal by the Tribe.
- F.** By agreeing to this Extension, no Party waives its right to assert any claims, arguments, or defenses in the future after withdrawing from the Accord or upon its expiration.
- G.** Each Party reserves the right to pursue legislation to address concerns related to Columbia River System operation, maintenance, configuration, mitigation or infrastructure funding, and other related matters.
- H. Bonneville Funding.** Bonneville will provide the Tribe with fish and wildlife mitigation project funding for federal fiscal years 2023-2025 in the amounts and for the projects shown in Attachment A to this Extension. Bonneville and the Tribe will continue to administer the funding and implementation of Attachment A projects under separately-executed, project-specific contracts or contract-like instruments under applicable Bonneville procurement guidance; Bonneville and the Tribe will continue to administer Attachment A project portfolios under the existing budget provisions of the Accord, with the following modification to Section III.F.3:

The Tribe may request an adjustment of the project-year budget for any individual project so long as the Agreement-level planning budget—the roll up of the individual project-year budgets—does not exceed ~~120% of the original planning budgets after the inflation~~

2023 Kalispel – Action Agency Accord Extension and Amendment

~~adjustment. Transfers of budgets between projects may be allowed through mutual agreement so long as the transfer is consistent with the Agreement-level budget cap (described in the above paragraph), and BPA and the Tribe mutually agree on the revised focus. (BPA will not likely agree to a budget transfer that moves dollars away from habitat work or other on-the-ground work.)~~

If the Tribe is able to complete work below a project budget amount, leaving obligated funds for a project unspent when the contract is closed, those funds will be made available to the Tribe for re-allocation if mutually agreed to by BPA. Through mutual agreement those unspent funds may be rescheduled to the same project or transferred to another Agreement project so long as the adjustment is consistent with the Agreement-level budget cap.

Section III.F.1 from the 2012 Accord is superseded by the budgets shown in Attachment A to this Extension, which reflect the full extent of Bonneville’s new budget commitments under this Extension.

- I. **Effective Date.** This Extension takes effect with the signature of the last Party to sign under Section V, below.

IV. Negotiation of Successor Agreement

The Action Agencies have an interest in a successor agreement that includes commitments sufficient to support the Tribe’s (1) affirmation of adequacy as to the federal legal compliance with respect to Columbia River System operation, maintenance, configuration and mitigation, and (2) forbearance from initiating or joining in suits or regulatory actions challenging such compliance.

The Action Agencies acknowledge that the Tribe’s willingness to enter into a successor agreement, including affirmation of adequacy and forbearance provisions, is predicated on numerous considerations, as well as agreement with the Action Agencies on successor agreement terms that reasonably account for certain Tribal priorities and objectives, including:

- Native fish recovery
- Non-native fish suppression and/or eradication
- Temperature mitigation for Albeni Falls Dam – includes cold water refugia enhancement in lieu of flow management considerations
- Operation and maintenance of the Indian Creek Tribal fishing pond as partial mitigation for loss of anadromous fish

2023 Kalispel – Action Agency Accord Extension and Amendment

- Fish passage projects (Albeni Falls Dam and tributary culvert replacements)
- Habitat enhancement and restoration – includes terrestrial, wetland, and instream habitat work to improve conditions for target species
- Floodplain reconnection and restoration (land acquisition and hydrologic restoration)
- Water quality and quantity improvements (includes monitoring and enhancement)
- Complete wildlife construction and inundation mitigation – complete final acquisitions up to \$1.18 million (approximate numbers) in remaining commitments from the 2012 Accord (\$580,000 from the Accord and \$600,000 income from Sand Creek sale)
- Operational erosion mitigation for impacts to habitat both upstream and downstream of Albeni Falls Dam (negotiated outcome based upon operational impacts – includes land acquisition, restoration, and management)
- Begin discussions about transitional work on species or habitat improvements for resident fish, ungulates, and other wildlife and botanical resources used to bridge calorie gaps from the loss of anadromous fish to the Kalispel people
- Appropriate research, monitoring, evaluation, and data management to support and guide project outcomes
- Cultural Resources Management program support to cover state and federal National Historic Preservation Act requirements of actions from above outcomes

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

V. Signatures

BONNEVILLE POWER ADMINISTRATION:

**JOHN
HAIRSTON** Digitally signed by
JOHN HAIRSTON
Date: 2023.06.30
10:53:54 -07'00'

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

_____ Date

U.S. ARMY CORPS OF ENGINEERS:

 VANEPPS.GEOFFREY
.RYAN.1149204381
2023.07.05 15:56:30
-07'00'

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

Date

2023 Kalispel – Action Agency Accord Extension and Amendment

U.S. ARMY CORPS OF ENGINEERS:

BULLOCK.ALEXA Digitally signed by
NDER.LAWRENC BULLOCK.ALEXANDER.LA
E.1161324236 WRENCE.1161324236
Date: 2023.07.01 10:57:38
-07'00'

By: Alexander "Xander" L. Bullock
Title: Colonel, Corps of Engineers
District Commander

_____ Date

BUREAU OF RECLAMATION:

JENNIFER
CARRINGTON
N



Digitally signed by
JENNIFER
CARRINGTON
Date: 2023.07.06
15:26:32 -06'00'

By: Jennifer J. Carrington

Date

Title: Regional Director
Columbia-Pacific Northwest Region

2023 Kalispel – Action Agency Accord Extension and Amendment

KALISPEL TRIBE OF INDIANS:

Glen Nenema
By: Glen D. Nenema
Title: Chairman

7-18-23
Date

2023 Kalispel – Action Agency Accord Extension and Amendment

Attachment A: Kalispel Tribe Project Portfolio

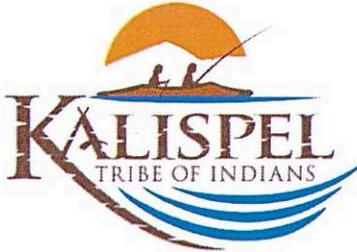
#	PROJECT No.*	PROJECT NAME	2022	2023	2024	2025	TOTAL	2023	2024	2025	TOTAL	Comments
			(Base Value)				2023-2025 (Base)		2.5%	2.5%	2023-2025 (Base + Inflation)	
		Expense							2.5%	2.5%		
1	199206102	Albeni Falls Dam Wildlife Mitigation: Operations, Maintenance, and Enhancements	\$ 1,069,199	\$ 1,069,199	\$ 1,069,199	\$ 1,069,199	\$ 3,207,598	\$ 1,069,199	\$ 1,095,929	\$ 1,123,328	\$ 3,288,456	
2	199500100	Kalispel Tribe Resident Fish (Habitat and Hatchery components)	\$ 763,978	\$ 763,978	\$ 763,978	\$ 763,978	\$ 2,291,935	\$ 763,978	\$ 783,078	\$ 802,655	\$ 2,349,710	
3	199700400	Resident Fish Stock Status Above Chief Joseph and Grand Coulee Dams (Joint Stock Assessment Project)	\$ 377,625	\$ 377,625	\$ 377,625	\$ 377,625	\$ 1,132,875	\$ 377,625	\$ 387,066	\$ 396,742	\$ 1,161,433	
4	200714900	Pend Oreille Non-native Fish Suppression Project	\$ 516,834	\$ 516,834	\$ 516,834	\$ 516,834	\$ 1,550,503	\$ 516,834	\$ 529,755	\$ 542,999	\$ 1,589,589	
5	200716200	Kalispel Tribe Fish & Wildlife Coordination	\$ 100,867	\$ 100,867	\$ 100,867	\$ 100,867	\$ 302,601	\$ 100,867	\$ 103,389	\$ 105,973	\$ 310,229	
6	200724600	Restoration of bull trout passage at Albeni Falls Dam	\$ 524,835	\$ 524,835	\$ 524,835	\$ 524,835	\$ 1,574,504	\$ 524,835	\$ 537,956	\$ 551,404	\$ 1,614,195	
7	201101800	Pend Oreille River Basin Initiative: Land Acquisitions, Watershed Restoration, Conservation Hatchery	\$ 324,704	\$ 324,704	\$ 324,704	\$ 324,704	\$ 974,113	\$ 324,704	\$ 332,822	\$ 341,143	\$ 998,669	
8	201101900	Cultural Resource Management Clearance of F&W projects	\$ 137,999	\$ 137,999	\$ 137,999	\$ 137,999	\$ 413,998	\$ 137,999	\$ 141,449	\$ 144,986	\$ 424,434	
9	201102000	Data Management Project	\$ 124,886	\$ 124,886	\$ 124,886	\$ 124,886	\$ 374,659	\$ 124,886	\$ 128,008	\$ 131,209	\$ 384,103	
YEARLY EXPENSE TOTAL:			\$ 3,940,929	\$ 3,940,929	\$ 3,940,929	\$ 3,940,929	\$ 11,822,786	\$ 3,940,929	\$ 4,039,452	\$ 4,140,438	\$ 12,120,818	

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

Note: BPA Project numbers may change over time

Note: BPA will work with Kalispel Tribe to shift unspent funds from the 2012 Accord

Note: The unspent Capital balance of \$510k is available during the extension



**KALISPEL TRIBAL COUNCIL
KALISPEL INDIAN RESERVATION
USK, WASHINGTON 99180**

MEMORANDUM:

TO: Kalispel Business Committee
FROM: Deane Osterman
SUBJECT: 2023 COLUMBIA BASIN FISH ACCORD EXTENSION AND AMENDMENT

COUNCIL ACTION: APPROVE 2023 EXTENSION & AMENDMENT TO THE COLUMBIA BASIN FISH ACCORD AMONG THE BONNEVILLE POWER ADMINISTRATION, U.S. ARMY CORPS OF ENGINEERS, AND BUREAU OF RECLAMATION AND THE KALISPEL TRIBE OF INDIANS AND AUTHORIZE THE CHAIRMAN OF THE KALISPEL BUSINESS COMMITTEE TO EXECUTE IT.

MOTION: CURT HOLMES

SECOND: RS NOME

COUNCIL MEMBERS

	(YES)	VOTE (NO)	ABSTAIN
<u>[Signature]</u>	X		
<u>Sammy Bigsmoke</u>	X		
<u>Robert J. Thomas</u>	X		
<u>Curt Holmes</u>	✓		

COUNCIL ACTIONS:

SIGNED: [Signature]

FOR: 4 **AGAINST:** 0

ABSTAINED: 0
FOR: 4
AGAINST: 0

DATE: 7-18-23



P.O. Box 39
Ulk, WA 99180
509 445-1147
509 445-1705 fax
kalispeltribe.com

RESOLUTION

WHEREAS, the Kalispel Business Committee is the duly Constituted governing body of the Kalispel Tribe by the authority of the Constitution and By-Laws for the Kalispel Tribe; and

WHEREAS, under the Constitution and By-Laws of the Tribe, the Kalispel Business Committee is charged with the duty of protecting the health, security and general welfare of the Kalispel Tribe and all Reservation residents; and

WHEREAS, the Bonneville Power Administration (“BPA”) has the responsibility to fund fish and wildlife mitigation activities for the Federal Columbia River Power System (“CRS”) Dams (US Army Corps of Engineers and Bureau of Reclamation) consistent with the Pacific Northwest Electric Power Planning and Conservation Act (“Northwest Power Act” or “NWPAct”), P.L. 96-501; and

WHEREAS, the Tribe has a longstanding relationship with the BPA, the US Army Corps of Engineers, and the Bureau of Reclamation (the “Action Agencies” herein) implementing fish and wildlife mitigation actions consistent with the Northwest Power Act since 1992; and

WHEREAS, pursuant to Kalispel Resolution No. 2012-33, the Tribe executed a 10-year Memorandum of Agreement with the Action Agencies (“2012 Columbia Basin Fish Accord” or “2012 Accord”, attached herein with Resolution No. 2012-033 as Exhibit A), and thereafter executed a 2014 Amendment Letter (attached herein as Exhibit B); and

WHEREAS, the Tribe and the Action Agencies have found the 2012 Accord mutually beneficial, and desire to negotiate a new 10-year Accord; and

WHEREAS, negotiation of a new Accord will take an extensive period of time, the Kalispel Business Committee finds that it is in the best interest of the Tribe to execute a 3-year extension and amendment to the 2012 Accord (“2023 Kalispel-Action Agency Accord Extension and Amendment”, attached herein as Exhibit C), which will provide approximately \$12 million dollars of fish and wildlife mitigation project funding to the Tribe through September 30, 2025.

20230718.02



NOW, THEREFORE, BE IT RESOLVED, that the Kalispel Business Committee hereby approves execution of the attached 2023 Extension & Amendment to the Columbia Basin Fish Accord among the Bonneville Power Administration, U.S. Army Corps of Engineers, and Bureau of Reclamation and the Kalispel Tribe of Indians; and

BE IT FURTHER RESOLVED, that the Kalispel Business Committee hereby designates signature authority to the Chairman of the Business Committee in all matters related to this Resolution.

CERTIFICATION

The Kalispel Business Committee adopted the foregoing RESOLUTION at a meeting held on the 18th day of July, 2023, at the Tribal office on the Kalispel Indian Reservation near Usk, Washington, with the required quorum present by a vote of 4 FOR and 0 AGAINST.



GLEN NENEMA, CHAIRMAN
KALISPEL BUSINESS COMMITTEE
(TERM EXPIRES JUNE 2026)



NICK PIERRE, SECRETARY
KALISPEL BUSINESS COMMITTEE
(TERM EXPIRES JUNE 2025)

20230718.02