

**Memorandum of Agreement  
between the  
Kalispel Tribe of Indians,  
Bonneville Power Administration,  
U.S. Army Corps of Engineers,  
and  
Bureau of Reclamation**

**INTRODUCTION**

This Memorandum of Agreement (“**Agreement**”) is entered into by and between the Kalispel Tribe of Indians (the “**Tribe**”), Bonneville Power Administration (“**Bonneville**”), U.S. Army Corps of Engineers (the “**Corps**”), and Bureau of Reclamation (“**Reclamation**”) to address for the Term of this Agreement (see Section V.B, below) the direct and indirect effects of the construction, operation, and maintenance of the Federal Columbia River Power System (“**FCRPS**”)<sup>1</sup> on fish and wildlife in a manner that recognizes the Tribe as a governmental partner in the pursuit of the protection, mitigation, and enhancement of affected fish and wildlife. For purposes of this Agreement, Bonneville, the Corps, and Reclamation may be referred to collectively as the “**Action Agencies**.” The Tribe, Bonneville, the Corps, and Reclamation may be referred to individually as a “**Party**” or collectively as the “**Parties**.”

**RECITALS**

- A. The Kalispel Tribe of Indians is a federally recognized Indian Tribe. Portions of the Pend Oreille River and its tributaries lie within the boundaries of the Kalispel Reservation, as established in the Executive Order of 1914. The Tribe is a significant landowner along the Pend Oreille River, both within and outside Reservation boundaries, and also acts as the primary manager and regulatory entity for lands within Reservation boundaries and some lands outside the Reservation. The Tribe holds reserved hunting, gathering, and fishing rights within the Kalispel Reservation. The Tribe also holds reserved water rights including, but not limited to, the right to a sufficient quantity and quality of water necessary to support the purposes of the Reservation. The Tribe’s federally protected hunting, gathering, and fishing rights within the Reservation include, but are not limited to, the right to harvest

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<sup>1</sup> The FCRPS is comprised of 31 multipurpose federal projects. The term “project” is used to refer collectively to a dam and its associated reservoir. Within the FCRPS, there is a subset of 14 federal projects within the interior Columbia River Basin in the states of Idaho, Montana, Oregon, and Washington that are operated as a coordinated system known as the “**Columbia River System**” (“**CRS**”). The 14 CRS projects 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.

a fair share of all natural resources originating or located on or passing through the Reservation and the right to manage those natural resources in those areas. The Tribe thus has critical and fundamental interests in the Pend Oreille River, including its tributaries, and the upper Columbia River, and the fish and wildlife resources in these rivers. The Tribe has a particularly strong interest in native fish such as bull trout, westslope cutthroat trout, and mountain whitefish. In fact, the Kalispel Reservation was strategically located to include the mouth of Calispell Creek because of its singular importance to Tribal fishermen as a dependable fall fishery for these species. The development of federal hydroelectric projects on the Columbia River and its tributaries, and federal licensing of non-federal hydroelectric projects, has had significant, long-term adverse effects on the culture, natural resources, and economy of the Tribe. Nothing in this Agreement is intended to determine, settle, or concede the precise location of the Kalispel Reservation boundaries or to concede, quantify, settle, or diminish any aspects of the Tribe's water or fishing rights. The intent of the Kalispel Tribe in entering this Agreement is to maintain consistency with all of the Tribe's claims of rights and interests, while also aiding the Action Agencies in meeting obligations under the Endangered Species Act ("ESA") and other laws. The fact that any right or interest of the Kalispel Tribe, or any claim thereof, is not set forth in these Recitals is not intended to be a waiver thereof.

- B. Bonneville is a power-marketing administration within the United States Department of Energy. Bonneville is authorized to market the power generated by the FCRPS projects. Bonneville is subject to a variety of detailed and diverse statutory directives that it must discharge in accordance with sound business principles. Among these, the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h ("**Northwest Power Act**"), directs Bonneville to protect, mitigate, and enhance fish and wildlife affected by the development and operation of federal hydroelectric projects on the Columbia River and its tributaries (the FCRPS), in a manner consistent with the purposes of the Act, the fish and wildlife program adopted by the Pacific Northwest Electric Power Planning and Conservation Council ("**Council**") under subsection 4(h) of the Act, and other environmental laws.
- C. The U.S. Army Corps of Engineers operates and maintains 12 of the CRS projects: Bonneville, The Dalles, John Day, McNary, Ice Harbor, Lower Monumental, Little Goose, Lower Granite, Dworshak, Chief Joseph, Albeni Falls, and Libby. The Corps operates these projects for multiple authorized purposes, including, depending on the project, flood risk management, hydropower generation, navigation, irrigation, municipal and industrial water supply, water quality, recreation, and fish and wildlife.
- D. Reclamation operates and maintains two of the CRS projects: Grand Coulee and Hungry Horse. Reclamation operates these projects for multiple authorized purposes, including,

depending on the project, flood risk management, hydropower generation, irrigation, municipal and industrial water supply, water quality, recreation, and fish and wildlife.

E. This Agreement is founded on the following principles:

- Mitigation for the effects of the CRS projects should be based first on biologically sound operations of the hydroelectric system, to the extent economically feasible, which will protect and enhance fish and, where relevant, wildlife resources based upon the best available scientific information.
- The Action Agencies will make operational decisions giving consideration to the interests of each affected sovereign state and tribe through agreed-upon forums.
- The Action Agencies will seek to ensure that operational measures aimed at the survival and recovery of ESA-listed salmon and steelhead do not adversely impact non-listed native species, and where such impacts are unavoidable, that the impacts are minimized where reasonably practical to do so, giving consideration to the interests of each affected sovereign as described in the preceding principle.
- Additional mitigation (non-operations) for the effects of the CRS projects should consider “All Hs”, including habitat, hatchery, harvest, and predator management measures, and be biologically effective and cost effective (addressing biological objectives at the least cost for similar results).
- Mitigation funding and operational priorities should reflect the identified biological needs and limiting factors for affected fish and wildlife, as well as the magnitude of CRS projects effects.
- Each Party reserves all rights, powers, and remedies now or hereafter existing in law, by statute, executive order, regulation, or otherwise, in participating in this Agreement. Nothing in this Agreement shall be construed to be a waiver of the sovereign immunity of the Kalispel Tribe or the United States.

F. In 2012, the Tribe and the Action Agencies entered into the *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”)* to address issues associated with the effects of the construction, operation, and maintenance of the FCRPS and Reclamation’s Upper Snake River Projects<sup>2</sup> on fish and wildlife resources in the Columbia River Basin. The 2012 Accord, amended in 2014, emphasized partnership and collaboration between the parties to address those effects by, among other commitments, including certainty of funding from Bonneville for projects under Bonneville’s Fish and Wildlife Program; scheduling studies and feasibility planning for fish passage; providing a structure

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<sup>2</sup> The Minidoka, Palisades, Michaud Flats, Ririe, Little Wood River, Boise, Lucky Peak, Mann Creek, Owyhee, Vale, Burnt River, and Baker projects.

to collaborate and coordinate on operations and actions at Albeni Falls Dam to benefit bull trout and other aquatic species; and committing to the reinitiation of consultation under Section 7 of the ESA with the U.S. Fish and Wildlife Service (“**USFWS**”) on effects to bull trout. The 2012 Accord expired on September 30, 2022, but was subsequently extended through federal Fiscal Year (“**FY**”) 2025, which ends on September 30, 2025, in the *2023 Extension and 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 (“**2023 Extension**”)*. The parties to the 2023 Extension intended it to be an interim step while they pursued negotiation of a potential new, long-term successor agreement to succeed and replace the 2012 Accord that preserves and advances the mutual benefits of the Accord relationship that the parties cultivated over more than a decade.

- G. This Agreement is the result of the Parties’ good-faith negotiations on a long-term successor agreement to the 2012 Accord, as amended and extended, that includes commitments to fund and implement actions that benefit fish and wildlife in the Columbia River Basin sufficient to support the Tribe’s (1) affirmation of adequacy as to federal agencies’ legal compliance with respect to the construction, operation, and maintenance of the FCRPS, and (2) forbearance from initiating or joining in suits or regulatory actions challenging such compliance, as further described in Sections III.A and III.B, below, over the Term of this Agreement.

## AGREEMENT

- I. **Bonneville Fish and Wildlife Commitments.** Bonneville and the Tribe agree that Bonneville will fund, and the Tribe will implement, a suite of fish and wildlife projects over the Term of this Agreement, in accordance with the provisions below. Bonneville's funding commitments are subject to compliance with applicable laws and regulations, including, but not limited to, the Northwest Power Act, National Environmental Policy Act (“**NEPA**”), the ESA, and the National Historic Preservation Act (“**NHPA**”).

### **A. Fish and Wildlife Projects.**

1. *Annual Project Portfolio (Expense).*
  - a. The individual projects that make up the portfolio of expense projects to be funded by Bonneville and implemented by the Tribe under this Agreement are summarized in Attachment A. Bonneville’s corresponding funding commitment for each project, in the form of an annual planning budget, is identified in Attachment B, for a FY 2025 expense portfolio total of approximately \$5.8 million.

- b. These projects may be modified, individually or as a portfolio, by agreement of Bonneville and the Tribe based on biological priorities, feasibility, science review comments, new information, current needs, or other changed circumstances.
- c. Bonneville and the Tribe agree that all projects funded by Bonneville pursuant to this Agreement are consistent with the Council's Columbia River Fish and Wildlife Program ("**Program**") (including sub-basin plans), as amended.
- d. Replacement Projects.
  - i. Bonneville and the Tribe acknowledge that the projects identified in this Agreement may not ultimately be implemented, in whole or in part, due to a variety of possible factors, including, but not limited to:
    - (a) Insurmountable issues arising during regulatory compliance, e.g., under the ESA, NEPA, NHPA, or Clean Water Act ("**CWA**") permit processes;
    - (b) New information regarding a particular project that the Tribe and Bonneville collectively determine necessitates a change in the scope or viability of the project; or
    - (c) Changed circumstances (e.g., completion of the original project or inability to implement the project due to environmental conditions).
  - ii. Should a project not be implemented as noted above, Bonneville and the Tribe will promptly negotiate a replacement project.
    - (a) A replacement project should be the same or similar to the one it replaces in terms of target species, limiting factor(s), mitigation approach, geographic area and/or subbasin, and biological benefits.
    - (b) A replacement project would have the same or similar planning budget as the one it replaces (less any expenditures made for the original project) and will take into account carry-forward funding as agreed to by Bonneville and the Tribe.
- e. Changes to Bonneville's Mitigation Obligations. Bonneville and the Tribe acknowledge that Bonneville's legal obligations and associated fish and wildlife mitigation obligations can change over time due to, for instance, regulatory matters such as new or updated ESA consultations. In the event Bonneville's mitigation obligations change or expand during the Term of this Agreement, and if such change or expansion presents opportunity for new or different mitigation work to be implemented by the Tribe, Bonneville and the Tribe agree to discuss whether Bonneville and the Tribe can accommodate such mitigation through this Agreement. This may include discussion of, for instance, whether any unspent funds can be allocated toward the Tribe's implementation of Bonneville's new

mitigation obligations; whether any projects described in Attachment A, or elements thereof, are appropriate for concluding, with associated funds (as identified in Attachment B) reallocated to the Tribe's implementation of Bonneville's new mitigation obligations; whether the Tribe's current priorities might align with Bonneville's new mitigation obligations such that the Tribe would support pivoting any projects described in Attachment A, or elements thereof, to implementation of Bonneville's new mitigation obligations; whether Bonneville's new mitigation obligations are located in a geographic area that is practical for the Tribe to work in; or any combination of the above.

2. *Real Property Acquisition (Capital)*. Bonneville and the Tribe agree to pursue the acquisition of real property and the permanent protection of fish and wildlife habitat, with an emphasis on acquisitions that can provide benefits to both (ecosystem benefits), such as protection of riparian areas. During the Term of this Agreement, Bonneville commits to make \$21 million in capital funds available to the Tribe for fish and wildlife land acquisitions, as described in Attachment A and identified in Attachment B, that satisfy Bonneville's capitalization criteria<sup>3</sup> and comply with the federal acquisition procedures and regulations, discussed in Section I.B.2, below.

## **B. Project Administration.**

1. *Annual Expense Projects*.
  - a. Bonneville's expense funding commitments to the Tribe, beginning in FY 2025, are set out in Attachment B to this Agreement.
  - b. Inflation. The Tribe and Bonneville agree to an annual inflation rate of 2.5% beginning in FY 2026, as reflected in the expense budgets shown in Attachment B; *provided*, that the Tribe and Bonneville shall meet and confer in the fifth year of the Term of this Agreement to determine whether any adjustment to the annual inflation rate is appropriate based on actual inflation during the first five years of the Agreement as well as the pace and level of spending under the Agreement to date.
  - c. Budget Flexibility. Attachment B expense funds may be reallocated across different projects or fiscal years pursuant to the budget flexibility rules in Section I.B.1.c.i–iii, below; however, the total amount of funds that can be spent on expense projects in a single fiscal year—including any unspent funds from any

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<sup>3</sup> Bonneville's fish and wildlife capitalization policy, which may be updated from time to time, is currently available here: <https://www.bpa.gov/-/media/Aep/about/internal-policy-library/policy-212-10-fish-and-wildlife-capitalization.pdf>.

prior fiscal years—shall not exceed 120% of the budgeted amount for that year set forth in Attachment B.

- i. Out-year Pre/Reschedule – Preschedules and reschedules are defined as the transfer of funds for a project to an earlier or future period, respectively. Preschedules and reschedules of a project's working budget (e.g., changes to budget timing) are allowed by mutual agreement so long as the funds are not currently committed in an open contract and adjustment is consistent with the Tribe's annual budget cap shown in Attachment B.
- ii. Budget-transfer – Budget-transfer means the transfer of funding from one project to another in the same or different years. Budget transfer is allowed by mutual agreement of the Tribe and Bonneville so long as the funds are not currently committed in an open contract and the adjustment is consistent with the budget cap.
- iii. Committed Funds – Funds included in a currently open contract are considered funds committed and budgeted and may not be rescheduled or transferred until officially repurposed. Upon completion of contract deliverables (including status and annual reports) and submission and payment of a final invoice, any savings (remaining contract balance) will be returned to the project budget and may at that point be budgeted to another contract or fiscal year. If the Tribe does not implement a work element or task in an open contract, Bonneville may agree to repurpose the funds for that deliverable within the open contract period and make those funds available for other work. Project managers should expect a delay between the end of a contract and the return of excess funds to the project budget. Uncompleted work element deliverables and funds associated with them may be rescheduled from one year to the next via modification to the current contract and inclusion in the subsequent contract.
- iv. Bonneville and the Tribe agree to meet and confer in five years (i.e., during FY 2029) to discuss, and as needed to modify, the allocation of the budgets established in Attachment B across the remaining years of the Agreement or among Attachment B projects or both, including with respect to unspent funds. *Provided*, this conferral and any reallocation of the budgets established in Attachment B does not constitute a commitment or obligation for Bonneville to provide supplemental funding beyond what it has committed to provide at the outset of this Agreement.

d. Project Implementation and Procurement.

- i. Each project will be implemented via one or more contracts or financial assistance awards. The appropriate procurement vehicle will be determined based on the planned work and consistent with Bonneville's procurement guidance and policies.<sup>4</sup> The terms and conditions contained in the contract or financial assistance award will be adhered to by Bonneville and the Tribe (e.g., timely invoicing and payment and timelines associated with contract close-out).
  - ii. Site-specific environmental review will occur on a project-by-project basis or as Bonneville determines is appropriate.
  - iii. Nothing in this Agreement supersedes or modifies federal procurement law.
- e. Cost Share. Bonneville and the Tribe understand that the Tribe and others are currently expending substantial funds to protect and enhance fish and wildlife species or their habitats in close proximity to where the Bonneville funds will be applied. Bonneville supports, and the Tribe commits to continue, the Tribe's efforts to secure or support funding for fish and wildlife from non-Bonneville sources, including cost-share.

2. *Land Acquisitions.*

a. Funding.

- i. Bonneville will provide \$21 million in capital funding for capitalized land acquisitions during the Term of this Agreement for the permanent protection of fish and wildlife habitat, as described in Attachment A and identified in Attachment B.
- ii. No Inflation Adjustment. No inflation adjustment will be applied to the capital funding commitments described in this Agreement.
- iii. Budget Coordination. Bonneville and the Tribe agree to coordinate prospective capital spending during the year to ensure Bonneville has sufficient flexibility in its capital budget to accommodate large expenditures. The Tribe agrees to provide Bonneville with notice of proposed capital projects as early as practicable and understands that advance coordination for proposed capital expenditures will give Bonneville the best opportunity to

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<sup>4</sup> Bonneville's Financial Assistance Instructions are currently found here: <https://www.bpa.gov/energy-and-services/customers-and-contractors/financial-assistance-instructions-manual>. Bonneville's Purchasing Instructions are currently found here: <https://www.bpa.gov/energy-and-services/customers-and-contractors/bonneville-purchasing-instructions>. Both may be updated from time to time.



assure that capital is available in the fiscal years in which it is needed. Bonneville and the Tribe acknowledge Bonneville is unable to guarantee capital funding availability in any given year; however, Bonneville's overall capital commitment in this Agreement will be available during the Term of this Agreement.

- (a) Capital funds for real property acquisition will remain available for 1 year beyond the Term of this Agreement for acquisitions initiated but not completed prior to the expiration of this Agreement, but capital funds will not be available for the acquisition of properties for which the acquisition process was not initiated prior to the expiration of this Agreement.
- b. Permanent Protection of Land. Bonneville and the Tribe agree that each land acquisition under this Agreement must provide for perpetual protection of fish and wildlife habitat and that Bonneville shall receive a real property interest in each property (a conservation easement if the Tribe acquires fee title, and third-party rights of enforcement if the Tribe acquires a conservation easement).
- c. Fee-to-Trust. Bonneville and the Tribe agree that the Tribe may seek to convey lands acquired under this Agreement to the United States to be held in trust. The Tribe and Bonneville will coordinate to ensure that the protection of fish and wildlife habitat and the property's conservation values continue to be recognized and protected as set forth in any easement or deed and consistent with this Agreement.
- d. Administration and Due Diligence.
  - i. Consistent with the practices and procedures developed under the *Northern Idaho Wildlife Mitigation Agreement between Bonneville Power Administration and the Kalispel Indian Community of the Kalispel Reservation*, dated February 16, 2000, as amended on August 24, 2006, ("**2000 MOA**"), Bonneville and the Tribe understand and agree that federal real property acquisition procedures and regulations shall govern the acquisition of land under this Agreement, and Bonneville cannot commit to acquire any particular parcel until satisfactory completion of that process for each property that Bonneville and the Tribe agree to pursue.
  - ii. Bonneville and the Tribe acknowledge that Bonneville's due diligence includes, but is not limited to, compliance with Bonneville's internal land acquisition policies, the Uniform Relocation Assistance and Real Property Acquisition Policy Act, 42 U.S.C. § 4601 *et seq.*, federal appraisal standards,

federal title review regulations, and federal environmental compliance requirements.

- iii. Bonneville and the Tribe may decide an additional implementation agreement or an amendment to the 2000 MOA is appropriate to define or update Bonneville's and the Tribe's roles and the steps necessary for successful completion of land acquisitions with the capital funds provided under this Agreement.
- e. Acknowledgement of Permanent Credit. Bonneville and the Tribe agree that Bonneville's capital funding policies govern the use of capital funds, and certain criteria must be met before expenditures can be made, including that the property interest acquired must provide a measurable benefit and irrevocable credit against Bonneville's legal obligation to mitigate for the effects of the FCRPS on fish and wildlife. Bonneville and the Tribe agree that each acre protected or restored under this Agreement will provide a permanent and irrevocable acre of credit against Bonneville's legal obligation to mitigate for the effects of the FCRPS on fish and wildlife, including, but not limited to, operational impacts from Albeni Falls Dam. The Tribe will submit to Bonneville, in writing, the total number of acres to be acquired prior to closing of each acquisition, along with the Tribe's written confirmation that it will affirmatively support BPA's claim of corresponding mitigation credit in perpetuity. Bonneville and the Tribe agree that Bonneville has the perpetual right to allocate, consistent with this Agreement and in consultation with the Tribe, these mitigation credits against any of its mitigation obligations. Bonneville's exercise of its right to allocate these mitigation credits is not contingent upon the prior completion of an assessment(s) to quantify fish and wildlife habitat losses associated with the construction and inundation or operation of any FCRPS project(s).

**C. Northwest Power and Conservation Council and Independent Science Review Panel Review.**

1. *Expense Projects.*

- a. Categorical Reviews. For expense projects implemented under this Agreement, the Tribe agrees to active and good-faith participation in the Independent Scientific Review Panel's ("ISRP") review of such projects (i.e., "categorical reviews") conducted pursuant to 16 U.S.C. § 839b(h)(10)(D).
- b. Council Recommendations. Bonneville and the Tribe will consider reasonable adjustments to expense projects based on Council recommendations that result from ISRP reviews conducted pursuant to 16 U.S.C. § 839b(d)(h)(10)(D). A

decision to make such reasonable adjustments will require agreement of both Bonneville and the Tribe.

2. *Hatchery Projects.* As the proponent of ongoing and potential new hatchery programs under this Agreement, as described in Attachment A, the Tribe agrees to participate in any applicable ISRP and Council 3-step review processes, including master planning, recognizing that the ultimate decision to implement is for Bonneville subject to the terms of this Agreement. Bonneville and the Tribe will consider reasonable adjustments to hatchery programs based on ISRP and Council recommendations. A decision to make such reasonable adjustments will require agreement of both Bonneville and the Tribe.

## **II. Albeni Falls Actions and Operations.**

### **A. Albeni Falls Annual Action Plan.**

1. The Tribe, the Corps, and Bonneville will collaborate on the development of an Action Plan (“AP”) for the Albeni Falls project to address bull trout passage and other activities that could benefit from planned coordination. The AP will be updated annually and will:
  - a. Document actions completed in the preceding federal fiscal year and the status of any planned but uncompleted actions (including the explanation for any delays or plan changes);
  - b. Identify specific priority actions—including a schedule of tasks, key milestones, and necessary funding requests—to be taken in the upcoming fiscal year based on the status of available funding;
  - c. Identify proposed annual water management operations for Albeni Falls project for inclusion in the FCRPS annual Water Management Plan; and
  - d. Identify projected key actions, milestones, and funding needs for future fiscal years.
2. The AP for FY 2025 is set forth in Attachment C to this Agreement. The Tribe, the Corps, and Bonneville will collaborate to update the AP by August 31 of each year. The same process will be followed for each successive fiscal year for the Term of this Agreement or until the Tribe, the Corps, and Bonneville agree that the process is no longer necessary. The AP is a “living document” and may be modified using adaptive management principles as needed. The Tribe understands that modification of planned implementation schedules may be required and will not object to scheduling changes that are reasonably necessary and timely conveyed as part of the routine coordination process. Nothing in this Agreement, including coordination on

the AP, limits, supersedes, or otherwise affects the Action Agencies' authority and ability to select operations in accordance with their respective legal authorities.

3. The Corps will take the lead role to arrange timely updates to the AP and meetings between the Tribe, the Corps, and Bonneville to discuss the AP at least annually or when requested by any Party.

**B. Albeni Falls Bull Trout Passage.** The Corps fully intends to complete construction of bull trout passage at Albeni Falls Dam by 2030, subject to the availability of appropriations for that purpose. The Corps continues to seek funding to fully implement the project.

### **III. Forbearance; Adequacy of Legal Compliance; Consistency; Disputes; and Withdrawal.**

**A. Forbearance.** In consideration of the long-term commitments for funding and implementation activities to support protection and recovery of, and other benefits for, fish and wildlife affected by the FCRPS set out in this Agreement, the Tribe covenants<sup>5</sup> that during the term of this Agreement:

1. The Tribe will not initiate, intervene in, or support in any manner ESA, Northwest Power Act, CWA<sup>6</sup>, NEPA, or Administrative Procedure Act (“**APA**”) suits against the Action Agencies, National Oceanic and Atmospheric Administration (“**NOAA**”), or USFWS regarding the legal sufficiency of the 2020 Columbia River System Operations Environmental Impact Statement (“**CRSO EIS**”) and associated documents, the CRSO EIS Record of Decision, associated ESA consultations (“**CRS Biological Opinions**”), this Agreement, or conforming implementing decision documents, including Records of Decision.
2. Provided that the terms and conditions of the CRSO EIS, CRS Biological Opinions, and modifications to any of the biological opinions through consultation, including, but not limited to, remanded or reinitiated consultation or environmental analyses under NEPA, this Agreement, and conforming implementing decision documents are complied with by the Action Agencies, the Tribe will not initiate, intervene in, or support in any manner ESA, Northwest Power Act, CWA<sup>7</sup>, NEPA or APA suits against the Action Agencies, NOAA, or USFWS regarding the effects on fish resources or

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<sup>5</sup> These commitments apply to the Tribe, its staff, and any persons hired or volunteering for the Tribe when acting in the name of or on behalf of the Tribe, any representative or organization under the Tribe's guidance or control, and any person or entity when acting as an agent for the Tribe, and to participation in all forums.

<sup>6</sup> Excepting the effects and consequences of unpermitted releases of oil or toxic materials from Columbia River System projects or operations.

<sup>7</sup> Excepting the effects and consequences of unpermitted releases of oil or toxic materials from Columbia River System projects or operations.

water quality resulting from the operations or existence of the FCRPS that are addressed in the CRS Biological Opinions.

- a. Water quality for purposes of this provision includes only water temperature and total dissolved gas (“TDG”) requirements and therefore excludes all other matters, such as (by way of illustration and not limitation) the Corps’ program under 33 U.S.C. § 1344 and toxics clean up regulation.
  - b. Nothing in this Agreement shall preclude the Tribe from enforcing the provisions of the Tribal water quality codes, to the extent permitted by federal law, with respect to any effect from the operation of the CRS, except effects on TDG or water temperature when an FCRPS project is operated consistently with the CRS Biological Opinions, and to the maximum extent practicable, any total maximum daily load (“TMDL”) applicable to the Pend Oreille River and its tributaries, and this Agreement.
  - c. Nothing in this Agreement shall preclude the Tribe from participating in ongoing processes regarding TMDLs for temperature or TDG, nor does it preclude continued discussions about temperature and TDG with the Action Agencies, but the Tribe is agreeing that during the term of this Agreement, it will not take action against the Action Agencies for temperature or TDG issues as to the CRS, except as permitted by this Section. In recognition of the value of this Agreement in fostering a cooperative and collaborative relationship, the Tribe agrees that before initiating any enforcement action concerning Tribal water quality codes, it will confer with the Corps and Bonneville to seek alternatives for resolution.
3. The Tribe’s participation in ongoing and future Bonneville rate proceedings (ratemaking, approval, review, or implementation of rate mechanisms) will be consistent with the terms of this Agreement.
  4. The Tribe shall not advocate against, either directly or through parties not subject to the Agreement, the adequacy of the Action Agencies’ implementation of the CRS Biological Opinions or this Agreement except as otherwise provided in this Agreement. Nothing in this Agreement shall preclude the Tribe from discussing any biological opinion with the Action Agencies, and indeed, if the Tribe has concerns about the adequacy of or implementation of the CRS Biological Opinions, the Tribe shall discuss these matters with the Action Agencies in accordance with the Good Faith provisions of Section IV, below.
  5. The Tribe will not directly or indirectly support third-party efforts to challenge the adequacy of the CRS Biological Opinions, this Agreement, or the Action Agencies’ efforts to implement them, except as otherwise provided for in this Agreement.

## **B. Affirmation of Adequacy.**

1. Provided that the Action Agencies fulfill their commitments under this Agreement, for the term of this Agreement, the Parties agree the actions committed to in this Agreement along with the actions committed to by the Action Agencies in the CRS Biological Opinions, including modifications to any of the biological opinions through consultation, including, but not limited to, remanded or reinitiated consultation, are an adequate combined response of these entities to address the government's duties to mitigate for the effects of the CRS under applicable environmental laws and regulations for the duration of the biological opinions. This includes requirements for:
  - a. Conserving currently listed salmon and steelhead, bull trout, and Kootenai River white sturgeon, including avoiding jeopardy and adverse modification of currently designated critical habitat under the ESA;
  - b. Protection, mitigation, and enhancement of fish and wildlife and their habitat under the Northwest Power Act; and
  - c. Consistency with the CWA related to water temperature and TDG responsibilities for CRS dams to the extent consistent with the CRS Biological Opinions.
2. The Tribe agrees that the Action Agencies' funding and commitments for lamprey actions are adequate for the duration of this Agreement such that the Tribe will not petition to list lamprey or support third party efforts to list lamprey as threatened or endangered pursuant to the ESA.
3. Any obligation the Action Agencies may have to mitigate for the effect of the CRS Projects or operations on cultural resources, however, is not addressed in this Agreement, and therefore this Agreement does not address the adequacy or lack thereof of any such mitigation efforts.
4. The Tribe's determination of adequacy under applicable law is premised on several important assumptions and understandings with which Bonneville and the Corps concur:
  - a. The specific actions identified in this Agreement, including those appearing in any Attachment thereto, are carried out or funding for such actions is provided by Bonneville and the Corps, as applicable, in a timely manner;
  - b. Other actions not specifically identified in this Agreement but committed to in the Action Agencies' decision documents adopting the actions called for in the CRS Biological Opinions, and their respective Incidental Take Statements as they

relate to the Pend Oreille River and its tributaries, are complied with and carried out in coordination with the Tribe following the provisions of Section II.A;

- c. The biological performance and status of the species affected by the development and operation of the CRS multipurpose projects are diligently and comprehensively monitored and analyzed, and reported to the Tribe and others as provided in those biological opinions; and
- d. Adaptive management will be used as described in Section 2.6.4 of the Action Agencies' 2020 *Biological Assessment of Effects of the Operations and Maintenance of the Federal Columbia River System on ESA-Listed Species* and incorporated into the 2020 CRS Biological Opinions to ensure expected benefits are being met for the CRS.

**C. Consistent Participation in Council Processes.**

1. During the Term of the Agreement, the Tribe and Bonneville will submit recommendations or comments or both in relation to Council Program amendments that are consistent with this Agreement, including the Tribe's affirmation of adequacy and confirmation that the actions committed to in this Agreement adequately address any Bonneville role with respect to Council Program provisions or recommendations related to the need for increased mitigation in the Columbia River Basin, including in the Pend Oreille River. This means that the Tribe will not propose or support additional Bonneville actions or funding in Council processes.
2. However, neither the Tribe nor Bonneville waive the right to assert that, if adopted by the Council based on its own recommendations, or recommendations of third parties, an amendment that is contrary to this Agreement is either lawful or unlawful under the Northwest Power Act, or any other law, is justified or unjustified on a factual, biological, technical, or other basis, or is supportable as a policy or financial matter, provided they act consistent with the terms of this Agreement.

**D. Dispute Resolution.** The Parties agree to use best efforts to pursue the good faith implementation of this Agreement. In the event of any disagreement or dispute arising out of or relating to this Agreement, however, the Parties agree to pursue a good faith resolution of that disagreement or dispute through informal negotiation before resorting to formal dispute resolution procedures, in accordance with the provisions below.

1. *Point of Disagreement.* A Party may raise a point of disagreement arising out of or relating to this Agreement by giving written notice thereof to the other Party or Parties, as appropriate (the "**Disputing Parties**"). The written notice shall include a summary of the disagreement, the Party's position on the appropriate resolution(s) of the disagreement, and any documents or supporting material that assist in

describing the disagreement or supporting the Party's position on an appropriate resolution. The Parties agree to strive to provide notice of any point of disagreement at the earliest opportunity. They further agree that all reasonable requests for information made by one Party to the other(s) during the negotiation process laid out below will be honored, with the Action Agencies treating "reasonable" within the context of what would be released under the Freedom of Information Act.

2. *Informal Dispute Resolution—Negotiation.*

- a. The Disputing Parties will first work to resolve the point of disagreement through negotiation at the staff level. If the Disputing Parties are unable to agree on a resolution after preliminary negotiation at the staff level, a Party may request consultation with the Disputing Parties' senior leadership to help clarify the matter and the Disputing Parties' respective interests and positions in reaching a resolution. If resolution is still not achieved, the negotiation shall be elevated to senior leadership for the Disputing Parties.
- b. Only if negotiation at the staff level is unsuccessful may a Party elevate the negotiation to the senior leadership level by giving the other Party or Parties, as appropriate, written notice thereof. Senior leadership for the Disputing Parties will make every reasonable effort to negotiate a mutually agreeable resolution.

3. *Formal Dispute Resolution—Mediation.* If the Disputing Parties are unable to achieve resolution of a disagreement or dispute after complying with the informal dispute resolution provisions above, a Party may request formal mediation. Mediation will occur using a mutually agreed upon mediator. The mediator will not render a decision but will assist the Disputing Parties in reaching a mutually satisfactory resolution. The Disputing Parties agree to share equally the costs of the mediation.

**E. Withdrawal.**

1. *Withdrawal.* Any Party may withdraw from or seek to renegotiate this Agreement in the following circumstances:
  - a. If any court (regardless of appeal) requires one or more of the Action Agencies to take actions that materially constrain one or more of the Action Agencies from meeting any of their respective obligations under this Agreement.
  - b. In the event of material noncompliance with this Agreement, or the initiation of litigation by the Tribe in in contravention of Section III.A, above.
  - c. In the event of an Uncontrollable Force (see Section V.I.1, below) that cannot be eliminated or addressed, as provided in Section V.I.3, below.

2. *Effect of Withdrawal.*



- a. In the event of a Party's withdrawal from this Agreement, the Action Agencies will continue to fund implementation of such actions that they each determine are necessary and appropriate for their respective legal compliance.
- b. Further, upon any Party's withdrawal, all funding commitments and covenants made in this Agreement cease for all Parties and the Agreement is immediately terminated; however, a Party's liabilities and obligations under project contracts or financial assistance awards effective on the date of withdrawal remain in effect unless and until altered pursuant to the terms and procedures of such contract or financial assistance award.
- c. Further, upon a Party's withdrawal, each Party reserves all legal arguments, claims, and defenses, and this Agreement cannot be used as an admission or concession.

**IV. Good-faith Implementation; Coordination.** The Parties agree to work together in partnership to implement the mutual commitments in this Agreement. Although no Party is relinquishing its respective authorities through this Agreement, the Parties commit to make best effort to confer with each other prior to making decisions in implementation of this Agreement.

**V. Other Provisions.**

- A. Effective Date.** This Agreement is effective as of the date of the signature of the last Party to sign the Agreement.
- B. Term.** The Term of this Agreement extends from its Effective Date through the end of FY 2034, which is September 30, 2034, unless a Party withdraws under Section III.E or the Agreement is otherwise terminated early.
- C. Supersedes Prior Agreements.** This Agreement expressly replaces and supersedes the 2012 Accord, as amended and extended, in its entirety as of the Effective Date. The Parties agree that current FY 2024 budgets, in place on the Effective Date, will remain in effect until budgets described in this Agreement go into place beginning FY 2025.
- D. Relationship to 2000 MOA.** This Agreement shall govern any inconsistency between the 2000 MOA and any provision of this Agreement. Specifically, the manner of crediting Bonneville's mitigation obligation for land acquisitions made with funding provided under this Agreement will be as described above in Section I.B.2.e, above.
- E. Applicable Law.** All activities undertaken pursuant to this Agreement shall be in compliance with all applicable laws and regulations. No provision of this Agreement will be interpreted as or constitute a commitment or requirement that the Action Agencies take any action in contravention of law, including, but not limited to, the Northwest

Power Act, APA, NEPA, ESA, CWA, Federal Advisory Committee Act, Information Quality Act, or any other procedural or substantive law or regulation. Federal law shall govern the implementation of this Agreement and any action brought pursuant to it.

**F. Third Parties.** No third-party beneficiaries are intended or created by this Agreement.

**G. Amendments.** The Parties may agree to amend this Agreement, provided that any such amendment must be in a writing signed by the Parties.

**H. Waiver.** The failure of a Party to require strict performance of any provision of this Agreement, or a Party's waiver of performance of any provision of this Agreement, shall not be a waiver of any future performance or of a Party's right to require strict performance in the future.

**I. Uncontrollable Force.**

1. The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "**Uncontrollable Force**" means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party's reasonable care, diligence, and foresight, such Party was unable to avoid. Uncontrollable Forces include, but are not limited to:
  - a. Strikes and work stoppages;
  - b. Floods, earthquakes, and other natural disasters;
  - c. Terrorist acts;
  - d. Epidemics and pandemics; and
  - e. Final orders and injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.
2. Neither the unavailability of funds or financing, nor conditions of national or local economies or markets, shall be considered an Uncontrollable Force. The economic hardship of any Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require any Party to settle any strike or labor dispute in which it may be involved.
3. If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall: (1) immediately notify the other Parties of

such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other Parties apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. If the Uncontrollable Force cannot be eliminated or addressed, the Party may consider withdrawal pursuant to Section III.E.

- J. Tribal Rights and Trust.** The Parties agree that nothing in this Agreement is intended to nor shall in any way abridge, abrogate, or resolve any rights reserved to the Tribe. The Parties agree that this Agreement is consistent with rights of the Tribe and the United States' trust obligation to the Tribe but does not create an independent trust obligation.
- K. Reservation of Rights.** This Agreement does not address or resolve the Tribe's claims and concerns relating to: (1) harvest, harvest rights, or harvest allocation of fish and wildlife resources unrelated to the CRS projects; (2) the Tribe's federally reserved or other water rights to the Pend Oreille or Priest rivers and their tributaries, including rights for instream flows; (3) designation or modification of critical habitat for bull trout by the USFWS; (4) modification of any of the terms or conditions of the listing of bull trout as endangered or threatened by the USFWS; (5) the impact of the CRS on cultural resources as noted in Section III.B.3; and (6) any action or inaction by any agency or department of the United States other than the Action Agencies that are Parties to this Agreement or those agencies or departments issuing the CRSO EIS or CRS Biological Opinions as to those documents and conforming implementing decision documents, including Records of Decision. Except as expressly addressed in this Agreement, the Tribe does not waive any rights it may have under federal or other law.
- L. Notice.** Notices under this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given 5 days after deposit in the United States mail, postage prepaid and addressed as follows, or at such other address as a Party may from time to time specify to the other Parties in writing. Notices may be delivered by electronic means, provided that they are also delivered personally or by mail. The addresses listed below can be modified at any time through written notification to the other Parties.

1. Notices to the Tribe should be sent to:

Director, Department of Natural Resources  
Kalispel Tribe of Indians  
PO Box 39  
Usk, WA 99180

2. Notices to Bonneville should be sent to:

Executive Manager, Fish and Wildlife  
Bonneville Power Administration, EW-4  
PO Box 3261  
Portland, OR 97208-3261

3. Notices to the Corps should be sent to:

U.S. Army Corps of Engineers, Northwestern Division  
Chief, Planning, Environmental Resources, and Fish Policy Support Division  
PO Box 2870  
Portland, OR 97208-2870

4. Notices to Reclamation should be sent to:

Deputy Regional Director  
Bureau of Reclamation  
Columbia-Pacific Northwest Region  
1150 N. Curtis Rd., Suite 100  
Boise, ID 83706

**M. List of Attachments.**

Attachment A – BPA Fish and Wildlife Project Abstracts  
Attachment B – BPA Fish and Wildlife Project Planning Budgets  
Attachment C – Albeni Falls Dam FY 2025 Action Plan

- N. Authority.** Each Party to this Agreement represents that it has legal authority to execute and implement this Agreement.

SIGNATURES

*Glen Nenema*

*10-1-24*

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Glen D. Nenema  
Chairman  
Kalispel Tribe of Indians

Date

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

Date

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William C. Hannan, Jr.  
Brigadier General, U.S. Army  
Commander, Northwestern Division  
U.S. Army Corps of Engineers

Date

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Jennifer J. Carrington  
Regional Director  
Columbia-Pacific Northwest Region  
Bureau of Reclamation

Date

SIGNATURES

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Glen D. Nenema  
Chairman  
Kalispel Tribe of Indians

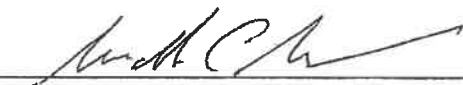
Date



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

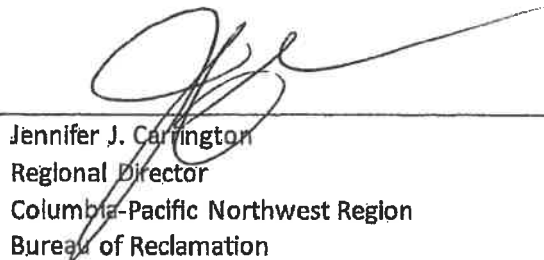
10/7/2024  
Date



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William C. Hannah, Jr.  
Brigadier General, U.S. Army  
Commander, Northwestern Division  
U.S. Army Corps of Engineers

27 SEP 24  
Date



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Jennifer J. Carrington  
Regional Director  
Columbia-Pacific Northwest Region  
Bureau of Reclamation

10/3/2024  
Date



P.O. Box 39  
Usk, 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 (“FCRPS”) and Columbia River System (“CRS”) Dams (operated by the US Army Corps of Engineers and Bureau of Reclamation) consistent with the Pacific Northwest Electric Power Planning and Conservation Act (“Northwest Power Act” or “NWPA”), 16 U.S.C. §§ 839-839h and other federal laws; and
- WHEREAS**, the Tribe has a longstanding relationship as a governmental partner 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”), and thereafter executed a 2014 Amendment Letter; and
- WHEREAS**, pursuant to Kalispel Resolution No. 2023-93, the Tribe and Action Agencies executed an extension to the 2012 Accord known as the 2023 Kalispel-Action Agency Accord Extension and Amendment (“2023 Extension”), allowing the parties time to negotiate another Accord or Memorandum of Agreement; and
- WHEREAS**, building on the success of the 2012 Accord and 2023 Extension, the Tribe and the Action Agencies have negotiated a new 10-year Memorandum of Agreement between the Kalispel Tribe of Indians, Bonneville Power Administration, U.S. Army Corps of Engineers, and Bureau of Reclamation (“2024 MOA”); and

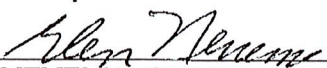
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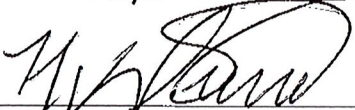
**WHEREAS**, the attached 2024 MOA will facilitate the longstanding intergovernmental relationship between the parties in implementing fish and wildlife mitigation projects in the Columbia River Basin, and will provide approximately \$89 million dollars in fish and wildlife mitigation project funding to the Tribe through September 30, 2034.

**NOW, THEREFORE, BE IT RESOLVED**, that the Kalispel Business Committee hereby approves the attached 2024 Memorandum of Agreement between the Kalispel Tribe of Indians, Bonneville Power Administration, U.S. Army Corps of Engineers, and Bureau of Reclamation and authorizes the Chairman to execute it.

**CERTIFICATION**

The Kalispel Business Committee adopted the foregoing RESOLUTION at a meeting held on the 1<sup>st</sup> day of October, 2024, 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)

20241001.01



# Kalispel Tribe of Indians-Action Agencies MOA ATTACHMENT A

## BPA Fish and Wildlife Project Abstracts

### 1. Project # 1992-061-02<sup>1</sup>, Albeni Falls Dam Wildlife Mitigation Project for Operation, Maintenance, and Enhancements (Ongoing Project)

**Abstract:** The Kalispel Albeni Falls Dam Wildlife Mitigation Project is an ongoing project focused on operating, maintaining, managing, and enhancing/restoring acquired habitat for wildlife mitigation. The original wildlife mitigation project was initiated in 1992 with land purchased adjacent to the Kalispel Reservation, and at present the project manages and enhances approximately 5,300 acres spread across the Pend Oreille River Subbasin in Washington and Idaho to address partial mitigation for habitat losses because of Albeni Falls Project. This Wildlife Mitigation Project protects and manages core riparian and wetland habitat areas for the biological requirements of managed wildlife species. Mitigation lands are located on or near the Pend Oreille River and its tributaries. Wildlife management will focus on focal species identified in the loss assessments as well as state-threatened or endangered species, species of concern, and species that are important for traditional cultural and/or subsistence use. Now that all acquisitions to mitigate for habitat loss caused by the construction and inundation of Albeni Falls Project are completed, this project will continue operating, maintaining, managing, and enhancing the acquired habitat for the life of the Albeni Falls Project.

- Target Habitats: Upland forests, riparian and wetland habitats and associated species/guilds with an emphasis on watershed related actions.
- Projected Benefits: Improve and maintain habitats on wildlife mitigation lands. Continue to protect and restore habitats toward watershed benefits.
- References: See Bonneville Power Administration (BPA) Projects # 1992-061-02 and 1992-061-00

### 2. Project # 1995-001-00, Kalispel Tribe Resident Fish Hatchery Project (Ongoing Project - Split)

**Abstract:** The Kalispel Tribe Natural Resources Department (KNRD) constructed a warmwater Largemouth Bass fish hatchery at Flying Goose Ranch in 1997 with funding provided by BPA. The purpose of the hatchery was to partially mitigate losses of anadromous fish due to the construction and operation of Chief Joseph and Grand Coulee dams. Although the bass hatchery was marginally successful between 1997 and 2014, it ultimately failed to increase the relative abundance of Largemouth Bass and meet Tribal harvest goals for a variety of reasons.

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<sup>1</sup> Note: BPA Fish and Wildlife project numbers may change over time.

With habitat improvement and non-native fish suppression and eradication projects being implemented in tributaries to the reservoir coming to fruition through FERC license implementation and the prior Kalispel-Action Agency MOA, significant shifts in the reservoir fish community, and mainstem fish passage being implemented, continued stocking of the Pend Oreille River with Largemouth Bass was determined to be inappropriate and ceased in 2014. It is now feasible to restore self-sustaining, genetically pure populations of Westslope Cutthroat Trout (WCT) to recovered tributary reaches, while still providing subsistence and sport fishing opportunities for Kalispel Tribal Members.

A coldwater conversion feasibility study (McMillen 2014) resulted in the planning for a triploid Rainbow Trout subsistence program between 2014 and 2018. That development included final designs, specifications, permitting, and construction of hatchery modifications and receiving waters at Indian Creek Community Forest. The program has been hugely successful at both attracting Tribal fishers and rearing high quality adult trout.

Included in the feasibility study were analyses of biological criteria, tank loading and dimensions, water quality and quantity, biosecurity, and operations schedules for conservation aquaculture of Westslope Cutthroat Trout based on a projected Pend Oreille tributary recovery schedule. These criteria were carried forward through concept and 35% designs, specifications, cost estimation, and development of a draft Hatchery and Biological Management Plan. The planning for a WCT conservation program in advance of step review by the Northwest Power and Conservation Council's (NPCC) Independent Scientific Review Panel (ISRP) was initiated as a cost saving measure (single solicitation, contract negotiation, and contractor) and to ensure flexibility in designs ensuring criteria can be met if the Tribe decides to pursue that endeavor. Planning for the WCT program was not advanced beyond the 35% design level but a program transition may be pursued during this agreement in a combined step review.

The Tribe also participates in the Mid-Columbia surplus hatchery salmon broodstock distribution as partial mitigation for the loss of anadromous fish to the upper Columbia River. Staff assist with sorting and loading at the hatchery and deliver whole fish to the reservation for processing and distribution to Tribal membership.

Going forward, this project will continue to provide funding for the Tribe's triploid Rainbow Trout subsistence hatchery program and surplus hatchery salmon broodstock distribution program. Funding provided for this project may also be used to continue planning for the WCT hatchery program.

- Target Habitats: Kalispel Tribal Fishing Pond at the Indian Creek Community Forest.
- Projected Benefits: Up to 5,000 adult Triploid Rainbow Trout for Tribal subsistence stocked into Kalispel Tribal Fishing Pond and up to 25,000 pounds of surplus hatchery broodstock salmon from Mid-Columbia hatcheries.
- References: See BPA Project # 1995-001-00

### **3. Project # 1995-001-01, Kalispel Tribe Resident Fish Habitat Project (Ongoing Project - Split)**

**Abstract:** The Tribe’s vision is to restore harvestable populations (see Lamb et. al. 2023) of Bull Trout and Westslope Cutthroat Trout for Tribal members in the mainstem Pend Oreille, Priest, and Pack rivers and associated tributaries. The Kalispel Tribe Resident Fish Habitat Project has and will continue to help us achieve that vision. From a habitat restoration perspective, there is a need to remedy legacy and current impacts on watershed processes and native resident fish populations in these areas, especially with respect to adfluvial Bull Trout and Westslope Cutthroat Trout—life histories that are of particular subsistence interest to Kalispel Tribe members. Habitat forming processes (runoff, sediment, and wood), when functioning and intact, help support adequate food (both quantity and quality) to support native trout. Like their salmon relatives, the odds of Bull Trout and Westslope Cutthroat Trout becoming adults are small. However, the likelihood is even less now due to habitat degradation. Climate change is a factor as well. Hotter, drier summers and lower snowpacks lead to less water in the rivers (Kittitas Conservation Trust 2018). In a healthy food web, Bull Trout and Westslope Cutthroat Trout play important roles as both predator and prey. But, human-caused impacts and climate change are creating an imbalance. Non-native fish species, including Eastern Brook Trout, Smallmouth Bass, and Northern Pike, prey upon native trout, making suppression and eradication in the Kalispel Non-Native Fish Suppression Project and other FERC licensee-funded eradication efforts extremely important. While we cannot directly address climate change, we can rehabilitate human-impacted streams and make them more resilient and manage non-native fish. The proposed project seeks to:

- Improve the aquatic habitat at three restored meadows (Big Meadows, Hughes Meadow, and Bismark Meadows);
- Increase climate change resiliency and habitat function within key watersheds in the Pend Oreille, Priest, and Pack River watersheds; and
- Increase cold water refuge areas at select locations identified along the Pend Oreille River in Mejia et al. (2020) and within the Priest River watershed as directed by the Priest River Watershed Group.

The Tribe will continue to leverage financial and personnel resources from our many conservation partners and funding sources.

#### References:

- Kittitas Conservation Trust. 2018. Bull trout in the food web. Available at <https://www.kittitasconservationtrust.org/2018/09/04/bull-trout-food-web/>. Accessed December 23, 2019.
- Lamb, C.T., R. Willson, A.K. Menzies, N. Owens-Beek, M. Price, S. McNay, S.P. Otto, M. Hessami, J.N. Popp, M. Hebblewhite, and A.T. Ford. 2023. Braiding Indigenous rights and endangered species law. *Science* 380 (6646). <https://doi.org/10.1126/science.adg9830>

- Mejia, F.H.; C.E Torgersen; E.K. Berntsen, J.R. Maroney, J.M. Connor, A.H. Fullerton, J.L. Ebersole, and M.S. Lorang. 2020. Longitudinal, lateral, vertical, and temporal thermal heterogeneity in a large impounded river: Implications for cold-water refuges. *Remote Sens.*:12, 1386. <https://doi.org/10.3390/rs12091386>
- Wu, J. and O.L. Loucks. 1995. From balance of nature to hierarchical patch dynamics: a paradigm shift in ecology, *Quart. Rev. Biol.* 70 (4):439–466.

#### **4. Project # 1997-004-01, Resident Fish Stock Status Above Chief Joseph and Grand Coulee Dams (Ongoing Project)**

**Abstract:** The Resident Fish Stock Status above Chief Joseph and Grand Coulee Dams Project, commonly referred to as the Joint Stock Assessment Project (JSAP), is a management tool that uses ecosystem principles to manage fish assemblages in altered environments existing in the Columbia River System above Chief Joseph and Grand Coulee dams, as well as non-Federal dams such as those on the Spokane River (Blocked Area). This is a cooperative project among the Kalispel Tribe, Spokane Tribe, Colville Tribe, and Washington Department of Fish and Wildlife. The fish assemblage existing today in the blocked area is drastically different than that prior to hydroelectric development, consisting of 39 known resident species, most of which are non-native. Anadromous fish have been extirpated due to the construction of Chief Joseph and Grand Coulee dams, as well as non-Federal dams such as those on the Spokane River. The JSAP (NPCC 1994 program measure 10.8B.26) is designed and guided jointly by fisheries managers in the Blocked Area employing a three-phase approach which will enhance fisheries resources by identifying data gaps, filling data gaps with research, and implementing management recommendations based on research results.

Quantitative data on current habitat conditions, limiting factors, species composition, distribution, abundance, and life history remain lacking for many species in many watersheds in the blocked area. The focus of the JSAP since 1999 has been to fill these data gaps using standardized methodologies, by conducting baseline habitat surveys of tributary streams, lakes, and reservoirs and assessing the stocks and status of all resident fish species known to exist in those water bodies. All fisheries, habitat, and water quality data is compiled into unified databases. The Blocked Area fisheries information is housed in central locations that allows managers to view the entire system while making management decisions, rather than basing decisions on isolated portions of the system. Kalispel data is housed in a geospatially enabled database management system (GEDMS) in the Intermountain Province/Pend Oreille Subbasin Data Management Project.

- Target Habitats: Baseline habitat surveys of tributary streams, lakes, and reservoirs and assessing the stocks and status of all resident fish species known to exist in those water bodies.
- Projected Benefits: Baseline habitat surveys as well as stock status. Provide and/or implement management recommendations based on research results.
- References: See BPA Project # 1997-004-00; Draft Bull Trout Recovery Plan (Chapter 23).

## 5. Project # 2007-149-00, Pend Oreille Non-Native Fish Suppression Project (Ongoing Project)

**Abstract:** Competition, hybridization, and predation by non-native fish have been identified as primary factors in the decline of native Bull Trout, Westslope Cutthroat Trout, sucker, and minnow populations throughout the Pend Oreille Subbasin. Within waters located in Idaho, Oregon, and Washington, the Pend Oreille River Subbasin has the highest number of non-native fish species, comparable only to the Willamette River system and sections of the Snake River Subbasin. Given the density of non-native fishes and their widespread impacts, the intent of this project is to protect, preserve, and enhance native salmonid, minnow, and sucker populations in the Pend Oreille Subbasin, through the continued development and application of specific management actions that suppress or eradicate non-native fish. This includes, but is not limited to: (1) the enhancement of Westslope Cutthroat and Bull trout populations through continued Brook Trout suppression and eradication and, where appropriate, the installation of fish management structures; (2) the stabilization and long-term enhancement of the Upper Priest Lake Bull Trout population through continued suppression of Lake Trout; (3) sustained suppression of Northern Pike in the Pend Oreille River and its tributaries to preserve the native fish assemblage while reducing downstream entrainment of Northern Pike; and (4) continued participation in activities leading to the identification, prioritization, development, and implementation of best management practices (e.g., M<sub>YY</sub> Brook Trout), non-native fish suppression or eradication techniques, and native fish enhancement opportunities (e.g., population supplementation/reintroduction, fish management structures, weirs). Primary techniques used to remove non-native fishes through this project include the use of electrofishing (i.e., backpack, boat), passive/targeted netting (i.e., trapnets, gillnets), and the development and application of additional novel techniques (e.g., M<sub>YY</sub> Brook Trout) that assist in the reduction or eradication of non-native fish populations.

- Target Subbasins: Priest Lake Subbasin (Upper Priest River, Upper Priest Lake, Priest Lake, and Priest River and its tributaries), Upper and Lower Pend Oreille Subbasins (Pend Oreille River and its tributaries within Washington and Idaho).
- Projected Benefits: Eradication and suppression of non-native fish. Specifically, suppression or localized eradication of non-native Northern Pike, Lake Trout, Brook Trout, and additional species determined to be detrimental to native fish. Protection, restoration, and enhancement of resident and migratory life history forms of native Westslope Cutthroat Trout, Bull Trout, Mountain Whitefish, suckers, and minnows.
- References: See BPA Project # 2007-149-00; NPCC Intermountain Subbasin Plan (Pend Oreille Subbasin); USFWS Bull Trout Recovery Plan; ISAB Non-Native Species Impacts on Native Salmonids in the Columbia River Basin.

## **6. Project # 2007-162-00, Kalispel Tribe Fish and Wildlife Coordination (Ongoing Project)**

**Abstract:** The Kalispel Tribe is a federally recognized Indian tribe with reserved rights in fish, wildlife, water, and other resources, pursuant to federal law. The Tribe is a sovereign government with management capability and regulatory authority over such resources. The KNRD has developed a Fish and Wildlife Conservation Plan (Plan) that is a comprehensive accumulation of present and future directions of the respective divisions of the KNRD. These directions are based upon the Tribe's management authority within its aboriginal lands. These authorities are based on federal law, Tribal resolution, and agreements between the Tribe and other resource management agencies.

In 2005, the Kalispel Tribe withdrew its membership from the Columbia Basin Fish and Wildlife Authority (CBFWA) to protect its rights, interests, and sovereignty. With the dissolution of CBFWA as the focal regional coordination entity, it is necessary for the Kalispel Tribe to continue its regional efforts.

This project will continue to provide capacity to enhance the effectiveness of the Kalispel Tribe's involvement in regionally important processes and programs. This involvement includes coordination and communication with the NPCC, BPA, and other fish and wildlife managers throughout the Basin. This is particularly important in the implementation of the NPCC Fish and Wildlife Program and the Northwest Power Planning and Conservation Act of 1980. Activities and actions covered under this work will include attendance of relevant meetings and forums to discuss and inform others of Kalispel interests and concerns and to coordinate activities that may be interrelated to those of others. It will also include the use of presentations, letters, and other forms of communication to inform others of Kalispel interests and concerns, including educating BPA, NPCC, and others about the Kalispel Tribe, its history and culture with respect to its natural resources' programs, and its role in fish and wildlife management in the Pend Oreille Subbasin, Intermountain Province, and the Columbia River Basin.

The budget for this project reflected in Attachment B includes an amount, not subject to an inflation adjustment, to provide adequate work space for Kalispel staff carrying out these activities.

- Target Habitats: Resident fish and wildlife habitats.
- Target Species: Waterfowl, general wildlife, resident fish, amphibians, neo-tropical migratory birds, ESA listed species.
- Projected Benefits: Maintain connection and coordination with processes and entities necessary to continue mitigation projects and programs. Includes maintenance and dissemination of data related to mitigation projects and programs. Helps ensure broader awareness of mitigation activities in a geographic area, develop partnerships to improve connectivity of, and synergy among, actions, sharing resources where

opportunities exist, and generally improve effectiveness of actions to benefit fish and wildlife. Improved Tribal capacity to serve Program objectives more efficiently.

- References: See BPA Project # 2007-162-00

## **7. Project # 2007-246-00, Restoration of Bull Trout Passage at Albeni Falls Dam (Ongoing Project)**

**Abstract:** This project was initiated in 2007 in response to recommendations of Geist et al. (2004) and Scholz et al. (2005a). Albeni Falls Dam interferes with natural migration of adfluvial Bull Trout in the Lake Pend Oreille/Pend Oreille River system and has contributed to the extirpation of populations originating downstream of the dam. Genetically isolated populations originating upstream routinely pass the dam on their own volition or through entrainment and cannot return to natal tributaries to spawn or access thermal refuge and forage in Lake Pend Oreille. Mortality rates of migratory Bull Trout and Westslope Cutthroat Trout blocked from passing Albeni Falls Dam are extremely high due to summer water temperatures exceeding 24 °C. Reconnecting the fragmented Pend Oreille/Clark Fork system is thought to be the best way to restore local Bull Trout populations and has been required at 5 out of 6 existing mainstem dams in the U.S. through FERC license negotiations. Albeni Falls Dam is the only Federally owned and operated dam in the system, and the U.S. Army Corps of Engineers (USACE) was required by the U.S. Fish and Wildlife Service to study the feasibility of restoring passage by October 1, 2004. Albeni Falls Dam upstream fish passage is the single most important conservation action that can be undertaken to recover and conserve native migratory salmonids to the lower Pend Oreille watershed. The goals of this project are to: (1) provide temporary upstream passage for Bull Trout at Albeni Falls Dam; (2) fill data gaps identified through this and related projects on Bull Trout and Westslope Cutthroat Trout associated with mainstem habitat connectivity in the Pend Oreille/ Clark Fork system; and (3) assist USACE with long-term monitoring and evaluation (M&E), adaptive management, and fisheries management at the facility once construction is complete.

- Target Habitats: Mainstem Pend Oreille River at Albeni Falls Dam and the greater Clark Fork/Pend Oreille watershed.
- Projected Benefits: Finalize the construction of the fish passage facility at Albeni Falls Dam (USACE) and provision of BPA funds to assist with long-term M&E, adaptive management, and fisheries management.
- References: See BPA Project # 2007-246-00; Draft Bull Trout Recovery Plan (Chapter 23); U.S. Fish and Wildlife Service Biological Opinion on Federal Columbia River Power System Operations December 20, 2000.

## **8. Project # 2011-018-00 (Expense) and 2011-018-01 (Capital), Pend Oreille River Basin Initiative Project: Land Acquisitions, Watershed Restoration, and Conservation Hatchery (Enhanced Ongoing Project)**

**Abstract:** The goal of this project is to identify and implement larger scale restoration projects to improve local watershed conditions within the Pend Oreille Subbasin. Funding will be used to implement necessary and appropriate restoration measures which could include, for example, land acquisition, conservation easements, or other habitat restoration actions in the watershed to support native ecosystem/watershed function. The Kalispel Tribe has a history of matching & leveraging funds from various sources (e.g. Salmon Recovery Funding Board, Washington Department of Fish and Wildlife, U.S. Forest Service, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, and FERC Licenses) to implement large watershed scale restoration projects. This project is unique because it can react fast to emerging cost share opportunities with stakeholders to implement projects. Many of these opportunities would not be accomplished within existing Kalispel Tribe projects funded by BPA or by conservation partners alone. For example, in 2016 fisheries co-managers saw a need to develop a Bull Trout reintroduction feasibility analysis. Once the analysis was complete and identified Sullivan Lake/Harvey Creek as the best location, the emphasis was shifted to Harvey Creek for restoration measures and a risk assessment. This project is on track for implementation in the coming years. This project brings major cost share to the table, allowing projects to be accomplished in a timely manner with significant cost saving passed onto BPA. To date, \$6.8 million has gone to project implementation, of which \$3.1 million is in the form of cost share while this project has contributed \$3.7 million.

This project will also contribute cost share funding to the production of fish at the newly constructed Native Salmonid Conservation Hatchery in Usk, WA, which is owned and operated by Seattle City Light for partial mitigation of Boundary Dam (FERC No. 2144). This annual investment will increase the pace and scale of native fish restoration outside of the Boundary Project Area in tributaries to Box Canyon Reservoir by leveraging SCL's infrastructure and expertise to meet the recovery needs of the region. We propose to purchase varying life stages of Westslope Cutthroat Trout and Bull Trout as well as salvage, holding, and repatriation of Westslope Cutthroat Trout to restored habitats to recover self-sustaining, genetically pure populations. Cost share partners include Seattle City Light, Pend Oreille Public Utility District, Washington Department of Fish and Wildlife, and U.S. Fish and Wildlife Service.

Additionally, funding was added to this project as an alternative to water releases designed to improve water temperatures downstream of Albeni Falls Dam. This additional funding was to improve cold water refugia habitat in the Pend Oreille River. So far, two cold water refugia projects were constructed near Indian Creek in 2022. There is a continuing need to develop additional cold water refugia sites through this project.

The scope of the Pend Oreille Initiative has direct ties across subbasin and province boundaries. This project is consistent with the following plans:



- 1) NPCC's 2014/2020 Addendum to the Columbia River Basin Fish and Wildlife Program
- 2) U.S. Fish and Wildlife Service Bull Trout Recovery Plan (2015)
- 3) Intermountain Province/ Pend Oreille Subbasin Plan (2004)
- 4) Strategy for Protection and Improvement of Native Salmonid Habitat (2007)
- 5) Bull Trout Habitat Limiting Factors: WRIA 62, Pend Oreille Watershed (2003)
- 6) Kalispel Natural Resources Department Resource Conservation Plan (2023)
- 7) Pend Oreille PUD Trout Habitat Restoration Program (2009)
- 8) Boundary Hydroelectric Project Fish and Aquatics Management Plan (2010)

Going forward:

- This project will continue to react fast to emerging cost share opportunities with stakeholders to local watershed conditions within the Pend Oreille Subbasin. This project will continue to implement cold water refugia projects as well as procure land management and water rights for priority native fish habitat.
- The budget for this project reflects the inclusion of pre-acquisition and operation and maintenance funding to support land acquisition or conservation easements.
- This project also includes access to capital funding for the acquisition of land or interests in land (e.g., conservation easements) for the permanent protection of fish and wildlife habitat as separately identified in Attachment B.

## **9. Project # 2011-019-00, Cultural Resources Management Services for BPA Fish and Wildlife Projects - (Ongoing Project)**

**Abstract:** The Kalispel Tribe's Cultural Resources Program will provide cultural resource management services (e.g., inventory, shovel testing, reporting, monitoring, etc.) as determined in coordination with BPA cultural resources staff for BPA fish and wildlife mitigation projects. Although funding for this work typically comes out of individual project budgets, the Tribe and BPA believe that a separate line item to identify the anticipated collective costs is appropriate in support of BPA's regulatory compliance with section 106 of the National Historic Preservation Act. The amount of acreage to be inventoried will be determined by BPA cultural resources staff in coordination with Tribal cultural resources staff on an annual basis and depending on the BPA-funded actions to be taken. For real property acquisitions, a pre-acquisition survey for all the acreage proposed will not be the standard unless otherwise agreed to by BPA cultural resources staff. As to timing, surveys will occur contemporaneous with acquisition or shortly thereafter for assistance in land management planning and/or in anticipation with actions consistent with the definition of an undertaking (36 C.F.R. § 800.16(y)).

If requested through coordination with BPA, the Tribe may provide assistance with project implementation for non-Tribal fish and wildlife projects requiring cultural resources services including communication with BPA Environmental Compliance staff and archaeologists, and providing recommendations for inventory, monitoring, and sampling.

In support of BPA and the Tribe's relationship with the public and their interests to learn from our Heritage, the Tribe will continue to design opportunities to participate in local (Spokane, Pend Oreille, and/or Bonner County) public events to facilitate all levels of educational support on the topic of Native American Heritage. Annual events that further this effort include opportunities such as Spokane Archaeology Day in October and the Big Horn Show in March. To maintain staff currency in relevant topics, we will support continuing education efforts and attendance of relevant conferences.

Project Benefits: Assure continuity in the delivery of regulatory compliance and fulfillment of mutually agreed upon actions. The Tribe having the capacity to act within space, coupled with institutional knowledge of Columbia River System process, obligations, and resource distribution allows for an improved compliance trajectory.

## **10. Project # 2011-020-00, Intermountain Province/Pend Oreille Subbasin Data Management Project (Ongoing Project)**

**Abstract:** Existing data management services supported by the NPCC's Fish and Wildlife Program are primarily focused on anadromous fish data with little emphasis on resident fish and wildlife. Data management strategies support monitoring, evaluation, and research actions and provide the means for making information and results easily available through publicly accessible Internet sites. This project provides funding to enable resident fish and wildlife data from the Intermountain Province/Pend Oreille Basin to be used within and by existing regional databases. The Tribe proposes to complement this project with other database funding sources to create a web-enabled database for environmental data collected in the Pend Oreille Basin. The web database will also be available as a repository for quality-assured data collected by other monitoring groups/entities. Database users will be able to view and download data by navigating through a GIS framework and select data by data type and location.

- Target Habitats: Aquatic and terrestrial data within the Pend Oreille subbasin.
- Projected Benefits:
  - Reporting metrics and protocols to track accomplishments at the project and/or subbasin level. These implementation metrics will vary according to the type of project and should accurately represent accomplishments.
  - Compile, analyze, and report data and metadata within a year of the completion of the project.
  - Support the existing regional databases and websites to disseminate agency and tribal data in a regionally consistent format and respond to other specific data requests.
- References: Intermountain Subbasin Plan (Pend Oreille Subbasin)

**Kalispel Tribe of Indians-Action Agencies MOA - ATTACHMENT B  
BPA Fish and Wildlife Project Planning Budgets**

PROJECT No.*	PROJECT NAME	2024 (Base Value)	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	TOTAL 2025-2034 (Base + Inflation)
#	<b>Expense</b>												
1	199206102 Albeni Falls Dam Wildlife Mitigation: Operations, Maintenance, and Enhancements	\$ 1,095,929	\$ 1,125,000	\$ 1,153,125	\$ 1,181,953	\$ 1,211,502	\$ 1,241,790	\$ 1,272,834	\$ 1,304,655	\$ 1,337,271	\$ 1,370,703	\$ 1,404,971	\$ 12,603,804
2	199500100 Kalispel Tribe Resident Fish - Hatchery	\$ 783,078	\$ 450,000	\$ 611,250	\$ 472,781	\$ 484,601	\$ 496,716	\$ 509,134	\$ 521,862	\$ 534,909	\$ 548,281	\$ 561,988	\$ 5,191,522
3	199500101 Kalispel Tribe Resident Fish - Habitat	\$ -	\$ 605,000	\$ 620,125	\$ 635,628	\$ 651,519	\$ 667,807	\$ 684,502	\$ 701,615	\$ 719,155	\$ 737,134	\$ 755,562	\$ 6,778,046
4	199700401 Resident Fish Stock Status Above Chief Joseph and Grand Coulee Dams (Joint Stock Assessment Project)	\$ 387,066	\$ 523,000	\$ 536,075	\$ 549,477	\$ 563,214	\$ 577,294	\$ 591,726	\$ 606,520	\$ 621,683	\$ 637,225	\$ 653,155	\$ 5,859,369
5	200714900 Pend Oreille Non-native Fish Suppression Project	\$ 529,755	\$ 725,000	\$ 743,125	\$ 761,703	\$ 780,746	\$ 800,264	\$ 1,570,271	\$ 840,778	\$ 861,797	\$ 883,342	\$ 905,426	\$ 8,872,452
6	200716200 Kalispel Tribe Fish & Wildlife Coordination	\$ 103,389	\$ 445,000	\$ 448,125	\$ 451,328	\$ 454,611	\$ 457,977	\$ 461,426	\$ 464,962	\$ 468,586	\$ 472,300	\$ 476,108	\$ 4,600,423
7	200724600 Restoration of Bull Trout Passage at Albeni Falls Dam	\$ 537,956	\$ 674,835	\$ 691,706	\$ 708,999	\$ 726,723	\$ 744,892	\$ 763,514	\$ 782,602	\$ 802,167	\$ 822,221	\$ 842,776	\$ 7,560,434
8	201101800 Pend Oreille River Basin Initiative: Land Acquisitions, Watershed Restoration, and Conservation Hatchery	\$ 332,822	\$ 750,000	\$ 768,750	\$ 1,787,969	\$ 807,668	\$ 827,860	\$ 1,848,556	\$ 869,770	\$ 891,514	\$ 1,913,802	\$ 936,647	\$ 11,402,536
9	201101900 Cultural Resources Management Services for BPA Fish & Wildlife Projects	\$ 141,449	\$ 300,000	\$ 307,500	\$ 315,188	\$ 323,067	\$ 331,144	\$ 339,422	\$ 347,908	\$ 356,606	\$ 365,521	\$ 374,659	\$ 3,361,015
10	201102000 Intermountain Province/Pend Oreille Subbasin Data Management Project	\$ 128,008	\$ 180,000	\$ 184,500	\$ 189,113	\$ 193,840	\$ 198,686	\$ 203,653	\$ 208,745	\$ 213,963	\$ 219,313	\$ 224,795	\$ 2,016,609
	<b>YEARLY EXPENSE TOTAL:</b>	<b>\$ 4,039,452</b>	<b>\$ 5,777,835</b>	<b>\$ 6,064,281</b>	<b>\$ 7,054,138</b>	<b>\$ 6,197,491</b>	<b>\$ 6,344,429</b>	<b>\$ 8,245,039</b>	<b>\$ 6,649,415</b>	<b>\$ 6,807,651</b>	<b>\$ 7,969,842</b>	<b>\$ 7,136,088</b>	<b>\$ 68,246,209</b>

PROJECT No.*	PROJECT NAME	2024 (Base Value)	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	TOTAL 2025-2034 (Base + Inflation)
	<b>Capital</b>												
1	201101801 Pend Oreille River Basin Initiative (Capital Land Acquisitions)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,500,000	\$ -	\$ -	\$ -	\$ -	\$ 10,500,000	\$ 21,000,000
	<b>YEARLY CAPITAL TOTAL:</b>		<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 10,500,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 10,500,000</b>	<b>\$ 21,000,000</b>

Note: BPA Project numbers may change over time

**ATTACHMENT C**  
**ALBENI FALLS DAM – FY 2025 ACTION PLAN**

**I. INTRODUCTION**

Section II.A of the Memorandum of Agreement (“MOA”) identifies a coordination process as the forum for discussing ongoing and proposed actions at both the policy and technical level concerning effects on fish, wildlife, and water temperature. The MOA calls for the Corps, BPA, and Kalispel Tribe to collaborate on the development of an Action Plan (“AP”) for the Albeni Falls project to address bull trout passage, water temperature-related activities and other items that could benefit from planned coordination. The Action Plan must be updated annually. In accordance with the foregoing requirements, this is the FY 2025 AP.

**II. ACTION PLAN PURPOSE**

As stated in the first iteration of action planning in 2012, the purpose of this AP is to timely achieve the long-term objectives set forth in the MOA by:

- Documenting actions completed in the preceding fiscal year (October 1 – September 30), and the status of any planned but uncompleted actions (including an explanation for any delays or plan changes);
- Identifying specific priority actions—including a schedule of tasks, key milestones, and necessary funding requests—to be taken in the upcoming fiscal year based on the status of available funding; and
- Identifying projected key actions, milestones, and funding needs for future fiscal years.

**Albeni Falls Fish Passage**

- The long-term objective is to expeditiously complete the Conservation Measures identified for Albeni Falls Dam in the 2020 Biological Opinion for the Columbia River System Operations and Maintenance of 14 Federal Dams and Reservoirs.

**Habitat Enhancement to Improve Temperature Conditions**

- The issue of potential water releases from Albeni Falls Dam to moderate downstream water temperature to benefit bull trout and other aquatic species has been particularly difficult. Local stakeholders were extremely vocal about their interests for higher Lake Pend Oreille levels for longer duration each year. In response, the Corps, BPA, and Tribe discussed how to best achieve the objective of moderating temperature impacts on bull trout and agreed on a new process to develop additional non-operational actions to help address temperature issues downstream of Albeni Falls Dam.
- BPA, Corps, and Tribe, after consulting with the Bureau of Reclamation, agreed to amend the MOA in 2014 in response to concerns about Lake Pend Oreille water level management and will continue implementing habitat restoration projects to enhance cold water refugia may be achieved without making operational changes at Albeni Falls Dam.

The Tribe has completed studies related to temperature heterogeneity below Albeni Falls Dam and identified areas that could benefit from habitat restoration to enhance coldwater refugia.

- In lieu of operational changes at Albeni Falls to reduce water temperatures, the Tribe will initiate additional studies to identify and implement additional coldwater refugia projects funded by BPA as described in Attachment A to this Agreement.

The 2025 AP primarily focuses on upstream fish-passage planning efforts.

### **III. ROUTINE COORDINATION**

#### **A. Discuss project cost estimates for FY+2 (October 2024)**

The Parties will discuss key priorities for the Corps' FY+2 budget request for Albeni Falls Dam. Budgets are typically submitted to the Corps' Northwestern Division office ("NWD") at the end of May.

#### **B. President's Budget for FY+1 (February/March 2025)**

The Parties will meet to discuss what was in the President's Budget for FY+1 for Albeni Falls Dam, and to develop funding strategies for any anticipated budget shortfalls.

Annual Leadership Meeting

#### **C. Preparation of the FY+1 AP (August 2025 – at Annual Leadership Meeting)**

Policy representatives of the Tribe, BPA and Corps will meet approximately one month before Labor Day and annually thereafter to review the implementation of the prior year's AP. They will document actions completed in the preceding fiscal year and the status of any planned but uncompleted actions (including an explanation for any delays or plan changes). Lessons learned and improvements will be identified and incorporated into the upcoming FY's AP.

#### **D. Funding Plan for FY+1 (August 2025 – at Annual Leadership Meeting)**

The Parties will begin to finalize priorities for the upcoming fiscal year. If funding from Corps' appropriations is insufficient to finance performance of the Parties' agreed-upon priorities, the Parties will consider reprioritizing work within available funds and will seek alternative funding as appropriate.

#### **E. Seattle District Regulatory Workload (August 2025 – at Annual Leadership Meeting)**

The Parties will provide status updates for planned upcoming work that will need Section 404/Section 10 permits and also the status of permit applications being worked by Seattle District Regulatory Branch.

## **IV. Current FY Activities**

### **A. Albeni Falls Fish Passage**

- The Corps is committed to a design-build project delivery method and operations of an upstream fish passage trap and haul facility.

### **Preparation of Design-Build Request for Proposal**

- The Corps prepared a Request for Proposal (RFP) for the acquisition of a Design-Build construction contract.
- The Corps is acquiring the Design-build construction contract through a two-phase selection procedure.
- The Kalispel Tribe will continue to participate through representation on the Project Delivery Team (PDT) by its technical expert on bull trout in the region. This team member will continue to participate by attending PDT meetings and providing review and comment on project design as detailed in the future contracting schedule (to be developed post-award).

### **Contributed Funds**

In June of 2018 the Tribe provided the Corps a letter of intent to contribute funds to upstream passage at Albeni Falls. The Parties agree that contributed funds could potentially be helpful to the success of the upstream fish passage project at Albeni Falls Dam. The Parties are committed to making the project as cost-effective as possible. The Parties will continue to monitor funding requirements going forward and will consult thereon.

### **Summary and Status of FY24 Action Plan Activities and Planned Future FY Activities**

- Draft RFP Submitted for Reviews – 3<sup>rd</sup> Quarter FY23
- Draft RFP Completed – 3<sup>rd</sup> Quarter FY23
- Final RFP Submitted for Reviews – 4<sup>th</sup> Quarter FY23
- Final RFP Completed – 1<sup>st</sup> Quarter FY24
- Ready to Advertise – 3<sup>rd</sup> Quarter FY24
- Award – 4<sup>th</sup> Quarter FY25
- Construction Start – FY27
- Construction Complete – FY30
- Expected Full Completion – FY31 (post one year of contractor operations alongside AFD operator)