

Signed

**Water Resources Management Agreement for Lake Roosevelt
Between
The Confederated Tribes of the Colville Reservation
And
The State of Washington**

A. Introduction and Purpose

This is an Agreement between the Confederated Tribes of the Colville Reservation ("Colville Tribes" or "Tribes"), acting by and through its federally recognized governing body the Colville Business Council, and the State of Washington ("State"), acting by and through the Office of the Governor. The Tribes and State are the parties to this Agreement. The purpose of this Agreement is to implement the parties' Agreement In Principle ("AIP") for the Lake Roosevelt Component of the State's Columbia River Water Resources Program, as executed on January 4, 2005 and modified by the Addendum executed on November 9, 2005 and by Addendum No. 2 executed on December 22, 2006.

B. Background Facts and Issues

As acknowledged in part in Section 1 of the AIP:

1. The Confederated Tribes of the Colville Reservation (Colville Tribes) has critical and fundamental sovereign and propriety interests in the upper mainstem Columbia River, as well as in Lake Roosevelt and in any activities that affect its operations.
2. The Executive Order of July 2, 1872, which established the Colville Reservation States that the Reservation is "bounded by" the Columbia and Okanogan Rivers. A subsequent agreement between the Colville Tribes and the United States, and a related Act of Congress stated that the southern and eastern boundary of the Colville Reservation is "in the middle of the channel of the Columbia River," and the western boundary is "in the Okanogan River." Agreement of May 9, 1891, and Act of July 1, 1892, 27 Stat. 62. Based on various federal executive orders, agreements, legislation, and legal opinions (including the Executive Order of July 2, 1872 that established the Colville Reservation, the Agreement of May 9, 1891, the Act of July 1, 1892, and the Interior Department Solicitor's Opinion of June 3, 1974, M-36887, 84 Interior Dec. 72), the Colville Tribes has had a long-standing understanding of its ownership of the beds of the Columbia and Okanogan Rivers within these Reservation boundaries.
3. Nothing in this Agreement is intended to determine or settle the location of the boundaries of the Colville Reservation, and nothing in this Agreement shall be construed as recognizing or affecting the precise location of the boundary between the Spokane Indian Reservation and the Colville Reservation along the Columbia River.

4. The Colville Tribes is a major landowner along the upper Columbia River, including within current Reservation boundaries, and also acts as the primary manager and regulatory entity for lands within Reservation boundaries.
5. The Colville Tribes' traditional fishing territories include, but are not limited to, the Columbia and Okanogan Rivers from their confluence to the Canadian border.
6. Nothing in this Agreement is intended to determine or settle the location of the fishing territories of the Colville tribes.
7. The Colville Tribes has established significant water rights within the Reservation for consumptive and instream fisheries purposes, and asserts claims for analogous rights in the Reservation boundary waters. The Tribes seeks to protect, conserve, develop, and administer those rights for present and future purposes.
8. The impoundment of Lake Roosevelt has had significant, long-term effects on the culture, resources, and economy of the Colville Tribes, both upstream and downstream from Grand Coulee Dam.
9. The Colville Tribes' federally protected fishing rights within the Reservation and former North Half thereof include, but are not limited to, the right to harvest a fair share of Upper Columbia River (UCR) salmon and steelhead originating from the Reservation, the North Half, and all boundary waters thereof, and the right to manage tribal fisheries on the Colville Reservation and the North Half. UCR steelhead and Spring Chinook salmon are listed as endangered under the Endangered Species Act (ESA) and have the greatest survival and recovery gaps of any Columbia River runs listed under the ESA. The Tribes and the State have a common interest in promoting the recovery of listed UCR anadromous fish.
10. The State of Washington (State) is seeking to implement an agreement with the United States Bureau of Reclamation to make water available below Grand Coulee Dam during certain critical months (April through August) to improve streamflows for out-migrating juvenile anadromous fish and to provide water rights for new consumptive uses by drawing down Lake Roosevelt; and,
11. The State is aggressively pursuing other new sources of water supplies in the Columbia River Basin, including conservation, conjunctive uses of ground and surface waters, aquifer storage and recovery, acquisition, alternative management of existing storage, and new physical storage facilities.
12. The enactment of Engrossed Substitute House Bill 2860 (RCW 90.90) in 2006 created a framework for developing and sharing the benefits of a new water supply program within the State's portion of the Columbia Basin;

13. The Colville Tribes and the State share an interest in a collaborative and constructive, long-term relationship that ensures the River's resources are managed to the benefit of all citizens.

C. Terms of Agreement

The Colville Tribes and the State, as the parties hereto, enter into this binding Agreement in full recognition and understanding of the following mutual commitments and conditions:

1. The State's Proposed New Incremental Storage Release from Lake Roosevelt and Terms of the Tribe's Support

a. The State's Proposed New Incremental Storage Release from Lake Roosevelt

The State will attempt to contract with the U.S. Bureau of Reclamation to provide an initial supply of water for the Columbia River Water Management Program (CRWMP) through a new incremental storage release from Lake Roosevelt in the amount of approximately 82,500 acre feet (AF) in a year in all years and to a maximum of 132,500 AF in years of significant drought, as have occurred every 26 years on average in the past ("CRWMP incremental storage release"). A year of significant drought is defined as when the March 1 forecast of April-September runoff at The Dalles, Oregon (as published by the National Weather Service in Water Supply Outlook for the Western United States) is 60 million acre feet or less. Such new incremental storage release would result in lowering of Lake Roosevelt elevations by 1.0 foot to 1.80 feet (corresponding to the 82,500 AF and 132,500 AF volumes referred to above) below levels of the benchmark of existing operations. For purposes of this Agreement, existing operations benchmark levels are 1280 feet elevation in the wettest 50% of water years and 1278 feet elevation in the driest 50% of water years, as set forth in the August 2007 Proposed Action, Biological Assessment, and Reasonable and Prudent Alternative prepared by the federal action agencies for the FCRPS Biological Opinion, in collaboration with the Colville Tribes and the State, Appendix B, Attachment B.1-4, ("2007 RPA," which is attached hereto as Exhibit A), at p. B.1-4-6. Under this proposal, reservoir elevations would return to elevations not affected by the CRWMP incremental storage release by September 30 of each year. Through the CRWMP, the State proposes to develop a long-term water supply to reduce the CRWMP incremental storage release from Lake Roosevelt in an effort to keep it from becoming permanent.

b. Tribes' Support for Incremental Storage Release

The State desires the Colville Tribes' support for the CRWMP incremental storage release, and this Agreement sets forth the terms under which the Colville Tribes shall provide such support.

c. Agreement Not a Sale or Other Transfer of Colville Tribes' Water Rights or Claims

Nothing in this Agreement shall be construed as a sale, lease, assignment or any other type of transfer of any of the water rights of the Colville Tribes to the State of Washington or any other party. This Agreement does not diminish in any way the water rights of the Colville Tribes, nor does it limit, waive, or affect in any way the Tribes' water rights claims, now or in the future.

d. State Not to Seek or Support Further Incremental Storage Releases

For the duration of this Agreement, the State will neither seek nor support further incremental storage releases from Lake Roosevelt for any purpose except, upon consultation with the Colville Tribes, in cases of public safety emergency. In addition, the State will make every reasonable effort to secure Lake Roosevelt operations modifications that minimize the effects of the CRWMP incremental storage release on the Lake and the Colville Tribes, and to secure a long-term water supply from one or more sources to replace the CRWMP incremental storage release from Lake Roosevelt. The parties will work to define the CRWMP incremental storage release in terms of specific reservoir levels and specific operational practices that will be conducted to meet these levels.

2. Mitigation

a. Mitigation Evaluations

For the purposes of this agreement the 2000 Biological Opinion ("BiOp") issued by NOAA provided a benchmark reservoir elevation level from which to measure potential reservoir level draw down impacts on the Colville Tribes. The benchmark level is set forth in the 2007 RPA, Exhibit A hereto and referred to in Section C.1 a of this Agreement. Both parties understand that this bench mark is likely to vary because changes in the BiOp are currently being proposed and the U.S. Bureau of Reclamation (BOR) is in the process of modeling withdrawals from Lake Roosevelt in conjunction with the Odessa Sub Area project and other uses. By entering into this Agreement the Tribes does not express any position on new allocations of water by BOR to the Odessa Sub Area beyond the 30,000 AF allocated thereto by the State's proposal for the incremental storage release, as shown in the 2007 RPA, Exhibit A hereto at p. B.1-4-5.

The Colville Tribes, with the financial assistance of the State, has evaluated the impacts that the incremental storage release proposed by the State will have on Lake Roosevelt, and the mitigation provisions of this section are based on those evaluations.

b. Resident Fisheries Mitigation

The State agrees to provide funding by July 1, 2008, on a one-time basis, in the amount of \$15 million for the design, construction and initial monitoring and evaluation

of pilot projects intended to mitigate for impacts of reservoir levels below 1278 feet elevation, allocated as follows: Barnaby Creek kokanee passage, \$250,000.00; artificial macrophyte placement, \$600,000.00; and floating spawning beds, \$300,000.00. Based on the results of the pilot projects, the State will work with the Tribes to support continued funding by the Bonneville Power Administration or other appropriate federal agency.

c. Funding for Gifford Ferry Ramp

The State agrees to support a federal appropriation to the United States Bureau of Indian Affairs for ongoing maintenance and repair of the Gifford Ferry ramp. In addition, the State agrees to support ongoing federal evaluations of a bridge at this location.

d. Cultural Resources Protection and Mitigation

The State agrees to provide funding by July 1, 2008 in the amount of \$150,000.00 to establish a fund from which the Tribes may draw for costs associated with culturally appropriate reburial of human remains inadvertently discovered or exposed along Lake Roosevelt due to the effects of the incremental storage releases described in section C.1.a of this Agreement, for costs of Traditional Cultural Properties studies along Lake Roosevelt, and related purposes. This funding is for an initial period of 10 years, and after 10 years the parties will review the uses of this fund and the adequacy of the amount in order to consider renewing for an additional 10 year period. The State is committed to providing funding for culturally appropriate reburial of human remains inadvertently discovered or exposed along Lake Roosevelt due to the effects of the incremental storage releases described in section C.1.a of this Agreement.

In addition, the State shall provide annual funding in the amount of \$20,000.00, beginning July 1, 2008, to ensure that tribal cultural resources are protected through additional archaeological monitoring and Archaeological Resources Protection Act patrols by tribal staff.

e. Recreation Resources

The State agrees to provide funding by July 1, 2008, on a one-time basis, in the amount of \$31,200.00 to cover the cost of replacing inadequate boat docks at tribal campgrounds on Lake Roosevelt.

f. Contaminated Sediments Mitigation

Both parties recognize that the completion of the Remedial Investigation/Feasibility Study (RIFS) currently evaluating toxic metal and organic pollution (dioxins, furans, PCBs) in Lake Roosevelt, eventual clean up activities arising out of the RIFS, and possible natural resources damage mitigation will take at least several more years. If it is determined that the CRWMP adversely impacts the

environment by re-entraining toxic pollutants into the air or water the State agrees to fund a working group, which it will form with the Tribe to develop mitigation measures. The State agrees to pursue funding for these mitigation measures along with the Tribes.

g. Hydro-Power Revenues

In order to implement Section 2.C of the AIP, which provides for mitigation of any adverse impacts to the Tribes' hydro-power revenues attributable to the incremental storage release described in section C.1.a of this Agreement, in accordance with a mutually acceptable manner of determining and compensating for said impacts, the parties agree that such impacts will be evaluated as the release is implemented to determine the net annual impacts to the Tribes' revenues of the actual, specific operating measures reflecting the magnitude and timing of releases and storage replacement in Lake Roosevelt. The parties will negotiate any mitigation that may be appropriate for adverse impacts to the extent they exceed positive impacts in any year in accordance with the procedures for amending this Agreement in section C.5.g below.

3. Partnership Package

a. Fisheries Enhancement Funding

The State will transfer \$500,000 per year to the Colville Tribes to enhance Reservation fisheries in Lake Roosevelt, Lake Rufus Woods, the Okanogan River, or other rivers, streams or lakes within the Reservation. Eligible uses of these funds may include, but are not limited to, the development or operation and maintenance of hatcheries, acclimation ponds, gauging stations, fishing sites or other projects related to fisheries enhancement needs deemed appropriate by the Colville Tribes. For projects occurring in or releasing fish into the boundary waters, the Colville Tribes will solicit input from the Washington Department of Fish and Wildlife in making decisions on how to use the funds. The Washington Department of Fish and Wildlife and the Colville Tribes will collaborate on the issuance of any necessary permits for funded projects. This payment to the Colville Tribes will commence July 1, 2008 and continue annually for the duration of this Agreement.

b. Water Resources Planning Funding

The State will transfer \$255,000 per year to the Colville Tribes to support ongoing, collaborative water resources planning activities on the Reservation and to create the capacity for the Colville Tribes to participate in the State's water supply development activities affecting the Columbia River. This payment to the Colville Tribes will be made on July 1, 2008 and annually thereafter for the duration of this agreement.

**c. Governmental Support and Economic Development Funding;
Cultural Resources Protection, Education, and Related Funding**

In order to directly share a portion of the benefits derived from the State's Columbia River water supply development activities with the Colville Tribes, the State will transfer to the Colville Tribes \$3.0 million on July 1, 2008, and \$2.85 million annually thereafter, beginning July 1, 2009, for the duration of this Agreement.

The funds provided on July 1, 2008 shall be used for bank stabilization for the Tribes' cultural site near Kettle Falls. Any funds not needed for that bank stabilization may be expended at the direction of the Colville Business Council for other cultural resources protection and mitigation, economic development, and governmental support as described in the following paragraph.

The funds provided for in this paragraph are intended to support long-term and strategic economic and governmental infrastructure development initiatives and for cultural resources protection and mitigation as determined by the Colville Business Council. Examples of contemplated uses include, but shall not be limited to: cultural resources protection and mitigation, establishing educational scholarships or reduced tuition programs for Colville tribal members at Washington State colleges and universities, land acquisition or consolidation, water infrastructure projects, electrical supply infrastructure, or for other economic development infrastructure investments deemed to further the long-term goals of the Colville Tribes. Consistent with Section 3.B of the AIP, it is agreed that these funds shall not be used for general or *per capita* distribution to individual tribal members.

4. Ongoing Government-to-Government Relationship

a. Okanogan River Flow, Habitat, and Storage Evaluation

The State will continue to work with the Colville Tribes, the United States, British Columbia, and Canada to improve habitat and flow conditions in the Okanogan River. To further this objective, the Colville Tribes will actively participate in the review of Similkameen River storage options, in part to evaluate the efficacy of storage to address habitat and flow conditions in the Okanogan River.

b. Tribal Participation in Discussions and Negotiations Regarding Reclamation Operations and for Access to Canadian Storage

The State will continue to advocate for the Colville Tribes to be directly represented in negotiations with Canada regarding the timing and purposes of water releases from Canadian facilities, including emerging discussions regarding the renewal of the Columbia River Treaty.

In addition, the Tribes and State will establish a process for discussion of operational issues that affect Lake Roosevelt and release of water for fisheries in the

mainstem Columbia River. Under the general policy of the CRWMP, it is understood that one-third of the incremental storage release will be allocated to outmigration flows for anadromous fish. Consistent with the parties' understandings with the federal action agencies regarding release of the fisheries flow portion of the new incremental storage release, as set forth in the 2007 RPA, Exhibit A hereto at p. B 1-4-6, in the driest 20% of water years, the State acknowledges that the fisheries flow water will be released during April-June to benefit the Upper Columbia River Evolutionarily Significant Units as defined by the National Oceanic and Atmospheric Administration -- Fisheries (steelhead and spring Chinook).

c. Federal Legislation

The Colville Tribes and the State will provide mutual support for any necessary Congressional authorization of or funding for operational provisions of this agreement, which may include, but not be limited to, the development of irrigation or other water development projects on the Colville Reservation concurrent with the provision of water supply for the Columbia River Basin Project in the Odessa subarea and feasibility analysis of offstream storage sites on the Colville Reservation concurrently with State investigations.

d. Adjustment for Inflation

All State funding commitments in this Agreement shall be adjusted for inflation annually based upon the Implicit Price Deflator provided by the State Office of Financial Management.

5. Other Provisions

a. Legislative Approval of Funding Commitments and Termination By Tribes

State funding commitments in this Agreement are subject to approval and ongoing funding by the Washington Legislature. Should the State legislature fail to approve the provisions of this Agreement by June 30, 2008, or act at any time to diminish the financial provisions established herein, the Colville Tribes may terminate this Agreement at its sole discretion 15 days after written notice to the State. Such written notice shall be sent to:

Director
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Or by facsimile to (360) 407-6989.

b. Termination by State

If the Colville Tribes take action of any kind to prevent the CRWMP incremental storage release pursuant to paragraph 1, the State may terminate this Agreement at its sole discretion 15 days after written notice to the Colville Tribes. Such written notice shall be sent to:

Chair, Colville Business Council
Colville Confederated Tribes
P.O. Box 150
Nespelem, WA 99155

Or by facsimile to (509) 634-4116.

c. Effective Date and Duration

This Agreement shall be in effect from the date of the last signature on the Agreement ("effective date") until the State and the Colville Tribes mutually agree to terminate it, or until there has been no incremental storage release used by the State pursuant to paragraph 1 of this Agreement for 2 consecutive years and the State notifies the Tribes that it intends to discontinue the incremental storage release, or a party terminates the Agreement pursuant to paragraphs C.5 a or C.5 b, or the State secures replacement water for the CRWMP incremental storage release, whichever is earlier.

The one-time-only payments pursuant to paragraphs C.2.b, C.2.d, and C.2.e shall be contingent on the State and the U.S. Bureau of Reclamation ("BOR") first either entering into a contract after the date of this Agreement for the provision of an initial supply of water through a CRWMP incremental storage release, as contemplated in paragraph C.1.a of this Agreement, or the State issuing a secondary use permit to the BOR, whichever is earlier. These one-time only payments shall be made on the on the later of the two following dates: (1) July 1, 2008, or (2) not later than two months after the earlier of the date the State and the BOR enter into such a contract, or the State issues a secondary use permit to the BOR.

d. Communications

Except as provided regarding notice of termination in paragraphs C.5.a and C.5.b, the program manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement. A party whose Program Manager or address has changed will provide written notice of such change to the other party within 30 days of the change.

The Program Manager for the State is:

Water Resources Program Manager
Department of Ecology

