

Water Resources Management Agreement for Lake Roosevelt

Between

The Spokane Tribe of Indians

And

The State of Washington

A. Introduction and Purpose

This is an Agreement between the Spokane Tribe of Indians ("Tribe"), acting by and through its federally recognized governing body the Spokane Business Council, and the State of Washington ("State"), acting by and through the Office of the Governor, the Department of Ecology, and the Department of Fish and Wildlife. The Tribe and State are the Parties to this Agreement. The purposes of this Agreement are:

1. To state the terms under which the Tribe agrees to concur in and support the State's proposed new incremental storage releases from Lake Roosevelt;
2. To provide for full consideration and mitigation by the State for all impacts and effects of such proposed new incremental storage releases upon the Tribe, its members, and its resources; and
3. To implement the mutual interest of the parties to this Agreement in a collaborative and constructive, long-term relationship that shares the benefits and facilitates management of the Columbia River Basin's resources for the benefit of members of the Tribe and all other citizens of the State, consistent with all rights reserved by the Tribe under federal law.

B. Background Facts and Issues

1. The Tribe has critical and fundamental sovereign and proprietary interests in the upper mainstem Columbia River, as well as in Lake Roosevelt, including the Spokane Arm, and in any activities that affect its operations.

2. The Spokane Indian Reservation ("Reservation") was created by Executive Agreement in 1877, and by Executive Order dated January 18, 1881, President Hayes formally set the Tribe's Reservation boundaries.
3. The southern boundary of the Reservation extends to the south bank of the original channel of the Spokane River and the western boundary extends to the west bank of the original channel of the Columbia River, and the eastern boundary extends to the east bank of Chamokane Creek.
4. The State recognizes the boundaries of the Reservation set by federal law, however, nothing in this Agreement is intended or shall be construed to determine or settle the precise location of the boundaries of the Reservation, or to recognize or affect the precise location of the boundary between the Spokane Indian Reservation and the Colville Reservation along the Columbia River.
5. The Tribe is a major landowner along the upper Columbia River within the current Reservation boundaries, and the Tribe also acts as a primary manager and regulatory entity for lands and waters within those Reservation boundaries.
6. The Tribe holds federally reserved fishing rights within the Reservation.
7. The Tribe holds federally reserved water rights within the Reservation for consumptive and non-consumptive purposes.
8. The impoundment of Lake Roosevelt by Grand Coulee Dam has had significant, long-term and unmitigated impacts and effects on the culture, resources and economy of the Tribe and it is long overdue that the Tribe shares in the benefits provided by Grand Coulee Dam.
9. The State is pursuing other new sources of water supplies in the Columbia River Basin to the extent consistent with sound environmental management principles, including conservation, conjunctive uses of ground and surface waters, aquifer storage and recovery, acquisition, alternative management of existing storage, and new physical storage facilities.
10. 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 Columbia River Basin in Washington State to meet the economic and community development needs of people and the instream flow needs of fish, and to benefit both instream and out-of-stream uses.

11. The State seeks concurrence by the Tribe in implementing the Memorandum of Understanding executed on December 17, 2004 among the State, the United States Bureau of Reclamation (BOR) and other entities ("2004 BOR-State MOU"), for new incremental storage releases from Lake Roosevelt for the purpose of making 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 under State law for new consumptive uses.
12. Such new incremental storage releases from Lake Roosevelt pose serious concerns to the Tribe, and the Tribe's concurrence in and support for such incremental storage releases is contingent upon the State's continuing fulfillment of all of its commitments set forth in this Agreement, including approval of and ongoing funding for this Agreement by the Washington Legislature.
13. The State is working with the Province of British Columbia and the United States to identify opportunities that will deliver water during the critical months of April through August.
14. The Tribe and the State share an interest in a collaborative and constructive, long-term relationship that shares the benefits and facilitates management of the Columbia River Basin's resources for the benefit of members of the Tribe and all other citizens of the State, consistent with all rights reserved by the Tribe under federal law.

C. Terms of Agreement

The Tribe and the State have determined to establish this binding Agreement including the following mutual commitments and subject to the following conditions:

1. **The State's Proposed New Incremental Storage Releases from Lake Roosevelt and Terms of Tribe's Concurrence and Support**
 - a. **The State's Proposed New Incremental Storage Releases from Lake Roosevelt**

The State shall attempt through a contract with, and permits issued to, the BOR to provide an initial supply of water for the Columbia River Water Management Program ("CRWMP") through temporary incremental storage releases from Lake Roosevelt in the amount of approximately, but no more than, 82,500 acre feet (AF) in a year as a minimum in all years to a maximum of no more than 132,500 AF in years of significant drought, as have occurred every 26 years on average in the past ("CRWMP incremental storage releases"). 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 CRWMP incremental storage releases would result in lowering of Lake Roosevelt levels from approximately 1.0 foot to 1.65 feet (corresponding to the 82,500 AF and 132,500 AF volumes referred to above) below levels of the benchmark of existing operations. Under this proposal, reservoir levels would return to elevations not affected by the CRWMP incremental storage releases by September 30 of each year. Through the CRWMP, the State proposes to develop a long-term water supply to replace the initial supply from Lake Roosevelt in an effort to keep the CRWMP incremental storage releases from becoming permanent.

b. The Tribe's Concurrence in and Support for Proposed New CRWMP Incremental Storage Releases from Lake Roosevelt

So long as the State continues to perform all of its commitments under this Agreement, including approval of and ongoing funding for this Agreement by the Washington Legislature consistent with Section C.5.a hereof, the Tribe shall concur in and support the new CRWMP incremental storage releases from Lake Roosevelt, which releases shall be implemented under the 2004 BOR-State MOU and permits issued by the State to the BOR. The Tribe's concurrence and support shall be active, ongoing and visible, and may include such further actions as may be mutually agreed upon by the Tribe and the State.

c. Agreement not a Transfer or Limitation of Tribe's Water Rights or Claims

Nothing in this Agreement is intended or shall be construed:

- (1) as a sale, lease, assignment or any other type of transfer of any of the water rights of the Tribe to the State or any other entity or person; or
- (2) to create or determine in any way or to any extent any water rights under State law; or
- (3) to determine the extent of or to diminish in any way the water rights of the Tribe; or
- (4) to limit or affect the Tribe's water rights or claims, now or in the future.

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

For the duration of this Agreement, the State shall neither seek nor support any further incremental storage releases from Lake Roosevelt beyond those new incremental storage releases pursuant to the 2004 State-BOR MOU and consistent with Section C.1.a of this Agreement, except, after collaboration with the Tribe, in cases of public safety emergency not involving or affecting any consumptive use of water except for fire fighting. If further incremental storage releases from Lake Roosevelt, beyond those to be implemented under that 2004 MOU and consistent with Section C.1.a of this Agreement, are required after January 1, 2008 as part of any new Federal Columbia River Power System (FCRPS) Biological Opinion (BiOp), the State agrees to support a process to ensure that Lake Roosevelt incremental storage releases do not exceed the total combined water supply incremental storage releases under the 2004 MOU and consistent with Section C.1.a of this Agreement, and in addition any further incremental storage releases pursuant to any new FCRPS BiOp. In addition, the State shall make every reasonable effort:

- (i) to secure Lake Roosevelt operations that minimize the impacts and effects of any incremental storage releases on the Lake and the Tribe, including coordination with the FCRPS; and
- (ii) to secure an alternative long-term water supply from other sources to replace incremental storage releases under the 2004 MOU consistent with the description of such releases in Section C.1.a hereof.

2. Mitigation

a. Mitigation for Power Revenue, Recreation Enterprise Revenue, or Cultural Resources Adversely Impacted by New Incremental Storage Releases from Lake Roosevelt

Any negative impacts to the Tribe's power revenue, recreation enterprise revenue, or cultural resources identified in the State's Final Environmental Impact Study of the new CRWMP incremental storage releases described in Section C.1.a hereof, unless otherwise mitigated by consideration provided in this Agreement, shall be fully mitigated by the State.

3. Partnership Package

a. Economic Development, Cultural Resources Protection and Mitigation, Water Resource Planning, Fisheries Enhancement, and Government Support Funding

In order to directly share a portion of the benefits derived from the State's Columbia River water supply development activities with the Tribe, the State shall transfer to the Tribe \$2,250,000 annually, beginning July 1, 2008, for the duration of this Agreement.

Such funds are intended to support long-term and strategic economic and governmental infrastructure development initiatives by the Tribe and for natural and cultural resources protection and mitigation by the Tribe, as determined by the Spokane Business Council. The use of such funds may include, but shall not be limited to, natural and cultural resources protection and mitigation, including protection for cultural resources and burial sites along affected shoreline during the CRWMP incremental storage releases, educational programs, including scholarships or reduced tuition programs for Spokane tribal members at Washington State colleges and universities as well as other institutions of higher learning, land acquisition or consolidation, water resource planning activities and water infrastructure projects on the Reservation, fisheries enhancement in Lake Roosevelt, the Spokane Arm, and Chamokane Creek, including development or operation and maintenance of hatcheries, acclimation ponds, gauging stations and water quality improvements, electrical supply infrastructure, economic development, or government infrastructure investments deemed by the Business Council to further the long-term goals of the Tribe and the welfare of all its members. Such funds shall not be used for general or per capita distribution to individuals.

b. Inflation adjustment

State funding commitments in this Agreement shall be adjusted for inflation annually based upon the federal Consumer Price Index.

4. Ongoing Government-to-Government Relationship

a. Negotiations with Canada

The State shall advocate for the Tribe to be a direct participant 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.

b. Natural Resource Issues

The State and Tribe commit to working in good faith to resolve natural resource management issues as they arise consistent with the Government-to-Government Agreement in Principle Between the State of Washington Department of Fish and Wildlife and the

Spokane Tribe of Indians, which was signed by the Tribe's Chairman on February 22, 2007 and by the Director of the State Department of Fish and Wildlife on May 1, 2007.

c. Joint Task Force

Within one hundred twenty (120) days after the effective date of this Agreement, the State and the Tribe shall create a joint task force to explore alternatives and develop recommendations for standards and principles to be applied in a collaborative process to provide for the measurement and quantification of tribal water rights in the context of formal negotiations, water rights decisions, legislation and/or judicial actions as appropriate.

d. Support for Tribe's Claims

The Office of the Governor shall provide active, ongoing and visible support for introduction, consideration and passage of federal legislation necessary to settle the Tribe's claims for fair and honorable compensation from the United States for the use of the Tribe's lands for the production of hydropower at Grand Coulee Dam. The Office of the Governor shall work with the State's Congressional delegation and relevant federal officials to provide leadership and resources to assist in securing enactment of this legislation. The State shall support federal administrative actions for the trust land acquisitions provided for in the Tribe's Grand Coulee Dam settlement. This support may include such further actions as may be mutually agreed by the State and the Tribe.

5. Other Provisions

a. Legislative Approval of Funding Commitments; Termination

State commitments in this Agreement shall be contingent on ongoing funding by the Washington Legislature in sufficient amounts to meet all of the State's financial commitments established herein. The Governor shall request funding from the State legislature for the commitments in this Agreement in any year that this Agreement is still in effect and the Tribe has not breached the Agreement. If the 2008 State legislature fails to fund the provisions of this Agreement, or if a subsequent Legislature thereafter acts to modify or diminish the financial commitments established herein, the Tribe may terminate this Agreement at its reasonable discretion 15 days after written notice to the State, *provided that* the Tribe, acting through the Chairman of its Business Council, shall first make a reasonable effort to comply

with the dispute resolution process set forth in Section C.5.f hereof. Such written notice shall be sent to:

Director
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Or by facsimile to (360) 407-6989.

If the Tribe takes action of any kind to prevent the CRWMP incremental storage releases pursuant to paragraph C.1 of this Agreement, the Governor, on behalf of the State, may terminate this Agreement in his or her reasonable discretion 15 days after written notice to the Tribe, *provided* that the State, acting through its Governor, shall first make a reasonable effort to comply with the dispute resolution process set forth in Section C.5.f hereof. Such written notice shall be sent to:

Chairman
Spokane Tribe of Indians
PO Box 100
Wellpinit, WA 99040

Or by facsimile to (509) 458-6575.

The State shall not issue a decision on any application from the BOR for a secondary permit to use water from the incremental storage releases which are the subject of this Agreement until at least 30 days after the Legislature has taken final action regarding funding or not funding this Agreement. In the event the 2008 Legislature fails to fund this Agreement, the State shall deem any application filed by BOR pursuant to the 2004 BOR-State MOU to be withdrawn due to lack of concurrence by the Spokane Tribe, and the State shall not issue any water permits pursuant to such MOU.

b. Notice of Proposed Legislation

If a bill that would expressly amend or repeal the statute created pursuant to HB 3309-2007-08 and SB 6874-2007-08 is introduced in the Washington Legislature and the Executive has knowledge of such introduction, the Executive shall notify the Tribe within twenty-four hours of learning of the bill's introduction. For purposes of this subsection, the Executive is defined as the Director identified in subsection a, above. For purposes of this subsection, such notice shall be provided to the Chairman identified in subsection a. above.

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 Tribe mutually agree to terminate it, or a party terminates the Agreement pursuant to Section C.5.a, or the 2008 Legislature fails to fund this Agreement, or the State secures replacement water for the CRWMP incremental storage releases, whichever is earlier.

d. Communications

Except as provided regarding notice of termination in paragraph C.5.a, 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
Olympia, Washington 98504-7600

The Program Manager for the Tribe is:

Executive Director
Spokane Tribe of Indians
PO Box 100
Wellpinit, Washington 99040

e. Dispute Resolution

In the case of any dispute and at the written request of a party, each party will appoint, within 10 calendar days of receipt of the written request, a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement of both parties, the representatives may utilize other alternative dispute resolution procedures such as mediation or binding arbitration.

f. Costs, Attorney's Fees, and Damages

Each Party is responsible for the Party's own costs and attorney's fees in connection with this Agreement and any dispute related to the proper interpretation or implementation of this Agreement. No damages may be awarded to either Party due to failure to perform any obligation under this Agreement.

g. Amendment of Agreement

This Agreement may be amended by mutual agreement of the State and the Tribe. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties. No alteration or modification of any term of this Agreement shall be valid unless made in writing and signed by personnel authorized to bind each of the parties. The State and the Tribe agree to meet and confer concerning whether any amendments are appropriate and desirable at least every ten years, beginning July 1, 2018.

h. Entire Agreement

This Agreement constitutes the entire agreement between the State and the Tribe, and supersedes all previous written or oral agreements between them. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the State or the Tribe. However, the State and the Tribe may enter into other stand-alone agreements on specific subjects. All such agreements shall be in writing and signed by the parties.

i. Successors and Assigns

This Agreement and each of the terms, provisions, conditions and covenants hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The above notwithstanding, none of the rights or duties hereunder may be assigned by either party without the written consent of the other party.

j. Authority to Execute

Each signer for the State and the Tribe, by executing this Agreement, represents and states that the signer has taken the necessary administrative and legal actions to procure the actual authority to bind the signer's principal.

k. Principle of Construction

This Agreement has been prepared jointly by the State and the Tribe following negotiations between them. The State and the Tribe were represented by legal counsel of their choosing. It shall be construed according to its terms and not for or against the State or the Tribe.

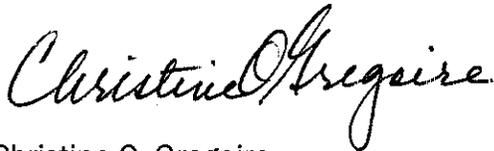
I. Governing Law

This Agreement shall be governed by applicable federal, State and Tribal law.

m. Liability

Each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

Executed this 4th day of February, 2008



Christine O. Gregoire
Governor



Richard L. Sherwood
Chairman

