

MEMORANDUM OF AGREEMENT

For the

COLUMBIA RIVER BASIN FORUM

PREAMBLE

The parties establish the structure and processes of the Columbia River Basin Forum and agree to work together in good faith on Columbia River Basin issues. The Columbia River Basin Forum will be a visible, credible and accessible means to enhance the ability of the parties to coordinate the use of their respective authorities and responsibilities to strengthen and improve existing processes addressing fish and wildlife and related habitat management in the Columbia Basin.

I. PARTIES AND AUTHORITIES

This Memorandum of Agreement, (hereafter **Agreement**), is made and entered into by and among the following Pacific Northwest States:

THE STATE OF OREGON
THE STATE OF IDAHO
THE STATE OF WASHINGTON
THE STATE OF MONTANA,

the following Columbia River Basin Indian Tribes (also herein referred to collectively as **the Tribes**), which are tribes or bands located in whole or in part in the Columbia River Basin and which have a governing body that is recognized by the Secretary of the Interior:

BURNS-PAIUTE INDIAN TRIBE
COEUR D'ALENE TRIBE
CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION
CONFEDERATED TRIBES AND BANDS OF THE YAKAMA INDIAN NATION
CONFEDERATED TRIBES OF COLVILLE RESERVATION
CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON
KALISPEL INDIAN COMMUNITY
KOOTENAI TRIBE OF IDAHO
NEZ PERCE TRIBE
SHOSHONE-BANNOCK TRIBES OF THE FORT HALL RESERVATION
SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION
SPOKANE TRIBE OF INDIANS

and the following Federal Agencies:

UNITED STATES DEPARTMENT OF COMMERCE

National Marine Fisheries Service
UNITED STATES DEPARTMENT OF THE ARMY
Corps of Engineers
UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Reclamation
Fish and Wildlife Service
Bureau of Land Management
Bureau of Indian Affairs
UNITED STATES DEPARTMENT OF ENERGY
Bonneville Power Administration
UNITED STATES DEPARTMENT OF AGRICULTURE
Forest Service
Natural Resource Conservation Service
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Collectively, all signatories to this memorandum of agreement will be referred to as the parties.

The federal agencies each have general authority to cooperate and reach interagency understandings on matters within the scope of this Agreement under the Endangered Species Act, 16 U.S.C. " 1531 et seq., (ESA), the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. " 839 et seq.), (Northwest Power Act), and the Fish and Wildlife Coordination Act (16 U.S.C. " 661-666c), among other authorizing statutes, and pursuant to the federal government's significant and continuing responsibilities toward the Tribes and their fish and wildlife resources, arising under the United States' trust obligations, treaties, statutes, and executive orders.

Furthermore, this Agreement embodies and implements the objectives of Section 204, State, Local, and Tribal Governmental Input, of Title II of P.L. 104-4, the Unfunded Mandates Reform Act of 1995, and, accordingly, is in accord with the Federal Advisory Committee Act.

Authority for the State of Oregon to enter into this Memorandum of Agreement is contained in Article V, Sections 1 and 13 of the Oregon Constitution; Oregon Revised Statutes 190.110 and 190.420.

Authority for the State of Montana to enter into this Memorandum of Agreement is contained in Montana Annotated Code Sections 2.15.103; 2.15.112; and 2.15.201.

Authorization for the State of Idaho to enter into this Memorandum of Agreement is contained in Idaho Code Sections 67-2328 and 67-4002.

Authority for the State of Washington to enter into this Memorandum of Agreement is contained in Article III, Section 2 of the Washington State Constitution and in the Revised Code of Washington, Section 43.06.010.

Along with their inherent sovereignty, the Tribes generally possess rights and authorities reserved by treaty, executive order, statute or enactments by their governing bodies to resources such as fish and wildlife affected by the development and operation of the Federal Columbia River Power System. Among these authorities are the following:

MOA for the Columbia River Basin Forum - 2

Treaty with the Yakima Tribe, June 9, 1855, 12 Stat.951 (1859)

Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat.963 (1859)

Treaty with the Umatilla Tribe, June 9, 1855, 12 Stat.945, (1859)

Treaty with the Nez Perce Tribe, June 11, 1855, 12 Stat.957 (1859)

Treaty with the Eastern Band Shoshoni and Bannock, July 3, 1868, 15 Stat.673 (1869)

Treaty with the Flathead, Kootenai and Upper Pend d'Oreilles, July 16, 1855, 12 Stat.975 (1859)

Agreement with the Columbia and Colville, July 7, 1883, 23 Stat.79 (1884)

Executive Order creating the Coeur d'Alene Reserve, November 8, 1873 and ratified by the Act of March 3, 1891, 26 Stat.1027 (1891)

Executive Order creating the Spokane Reserve, January 18, 1881

Executive Order creating the Duck Valley Reservation of the Paiute and Western Shoshoni, April 16, 1877 and the Executive Order of May 4, 1886

The Act of October 13, 1972, 86 Stat.806 (1972)

II. PURPOSES

- A.** The overarching purpose of this Agreement is to provide a high-level policy forum in which federal, state and tribal governments, working with interested members of the public, will address, collaborate on and coordinate basin-level policy, planning, decision-making and implementation issues and processes that effect the Columbia River Basin fish and wildlife and related habitat. The parties recognize the need to prioritize their efforts, focusing on the most pressing issues with the greatest opportunity to improve the effectiveness of regional efforts.
- B.** Specific purposes of the Forum shall be to:
 - 1. Ensure coordination among federal, state and tribal parties in planning and implementing existing and future similar processes.
 - 2. Initially address all factors affecting anadromous fish in the Columbia River Basin, including activities such as hydroelectric power production, harvest, habitat and hatcheries. In doing so, the parties will also address how measures for anadromous fish affect other, related basin-wide resources and values, including but not limited to resident fish and wildlife, habitat, cultural resources, recreation, and commercial interests. The process will address and seek to harmonize actions and shape initiatives

for anadromous fish in ways that provide benefits to other resources and values.

3. Simplify current processes by eliminating duplicative efforts and consolidating or eliminating existing committees or bodies;
 4. Provide a process to help resolve disputes among parties;
 5. Improve financial administration, accounting, and accountability for expenditures and results of regional fish and wildlife activities, and reduce the cost of administering these activities;
 6. Ensure independent scientific and economic review mechanisms that enable fish and wildlife programs to proceed based on the best available scientific and economic information, and effective monitoring and evaluation.
 7. Ensure a structured process of public information and involvement that engages the region in a discussion of the critical issues that affect the Columbia Basin and seeks the views and perspectives of all interests concerning the management and policy issues considered by the Columbia River Basin Forum.
- C. This Agreement does not alter, abridge or modify any of the parties' legal authorities as amplified in Section VIII, Exclusions.

III. ORGANIZATION

There is established a governance structure that includes a Columbia River Basin Forum Board (Board) and an implementing Columbia River Basin Forum Committee (Forum Committee). Collectively this structure will constitute the Columbia River Basin Forum.

A. COLUMBIA RIVER BASIN FORUM BOARD (Board)

1. COMPOSITION

The Governors of Oregon, Idaho, Washington and Montana, the leaders of the Columbia Basin Indian tribes and a representative of the federal Administration constitute the Columbia River Basin Forum Board.

2. FUNCTIONS

- a. The Board will meet from time to time to provide policy guidance to facilitate implementation of this agreement.
- b. The Board will review priorities and tasks, and provide oversight for the Columbia River Basin Forum Committee.

- c. By consensus, the Board will make determinations and recommendations regarding matters raised by forum members or referred to the Board by the Columbia River Basin Forum Committee.

B. COLUMBIA RIVER BASIN FORUM COMMITTEE (Forum Committee)

1. COMPOSITION

- a. The Columbia River Basin Forum Committee consists of twelve (12) designated members: four representing federal agencies; four representing the Tribes; and one representative of each of the four states' Governors.
- b. Parties shall appoint executive level representatives who are authorized to speak for their party, subject to approval by that party, and who can actively and consistently participate in the work of the Forum Committee.
- c. For purposes of Forum Committee deliberations, federal representatives will strive for a single federal position among the federal parties.
- d. The Tribes may designate up to four alternate representatives from those tribes whose programs are directly relevant to a particular issue before the Forum Committee.

2. ORGANIZATION

- a. To accomplish the functions listed in Section III.B.3, the Forum Committee organization shall include the following:
 - 1) A chair, to be elected annually from its members;
 - 2) Rules of procedure not inconsistent with Section III. A.2;
 - 3) Subcommittees, administrative support and facilities approved by the Forum Committee. Wherever possible, the Forum Committee will use the respective staffs of the parties and that of any existing processes, without compromising the independent function of the Forum Committee.

3. FUNCTIONS

- a. The Forum Committee will accomplish the purposes outlined in Section II, and

other tasks duly assigned by the Board.

- b. The Forum Committee will address the specific tasks described in Attachment A.
- c. Develop annual budgets. An initial draft suggested FY99 budget for the Committee's consideration is included as Attachment B.
- d. The Forum Committee will implement the public involvement and outreach provisions of Section V.
- e. The Forum Committee will monitor implementation of agreed-upon actions and its recommendations for coordination among basin processes.
- f. The Forum Committee will make recommendations to the Board concerning the assignment of additional responsibilities to the Forum Committee, as necessary.
- g. The Forum Committee will prepare and refer issues of particular policy significance to the Board.

C. FUNDING

The parties agree that the Forum Committee will require adequate funding to achieve the purposes stated in this Agreement. The parties commit to investigate the full range of funding alternatives, and agree that total funding obligations are shared among the parties on an equitable basis. Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds.

IV. FORUM ISSUES AND PROCESS

The following procedures apply to the Columbia River Basin Forum Committee.

A. Presentation of Issues for Forum consideration

Any member may propose an issue for consideration by the Forum Committee. The party will have the opportunity to provide the rationale for why the issue should be considered by the Forum Committee.

B. Forum Issue

Upon a vote of at least nine members of the Forum Committee, an item shall become a Forum Issue. A Forum Issue shall be eligible for the development of further information, analysis and possible alternative resolutions.

C. Collaborative Recommendation Process

By consensus of the Forum Committee, a Forum Issue may become subject to a collaborative process to achieve a recommendation to more fully inform the entity with decision-making authority in making its decision. This Collaborative Recommendation Process can take a variety of different forms. On one end of the spectrum is an intensive process where the parties collaborate on the development of all parts of a decision process, including investigation, analysis, creation of a record, debate and a recommendation to the entity with final decision-making authority. At the other end of the spectrum is a less resource-intensive collaboration where the parties consult in an evaluation and decision by the entity with decision-making authority. In a collaborative process, the parties recognize the decision-makers' legal obligations, and reach decisions that comply with these obligations. In this way, the parties will not derogate any entity's decision-making obligations, but strengthen decisions by informing them more broadly.

D. Recommendation

Upon a consensus of the Forum Committee, the Forum Committee may make a recommendation regarding any Forum Issue.

E. Definition of consensus

Consensus means a recorded vote of all twelve (12) members of the Forum Committee in which there are no opposing votes. If a member does not vote, the member shall be given notice of the vote, and two weeks to register a vote. If the member does not vote within two weeks, then that member's vote shall not be required to achieve consensus. A consensus to engage in the Collaborative Recommendation Process in Section IV.C, above, must include the affirmative vote of a member representing the entity whose decision is the focus of the collaborative process. A record shall be made of the members voting and their respective votes.

F. Limiting or terminating the Collaborative Process

The parties recognize that parties with decision-making authority have legal and practical requirements and deadlines for carrying out their responsibilities. To meet its obligations, a signatory party with decision-making authority may withdraw from consideration or limit an issue previously placed on the Forum Committee's agenda for recommendation. The party with decision-making authority withdrawing or conditioning the consideration of such an issue shall promptly provide to the Forum Committee an explanation of the reasons for the withdrawal or limitation. Once notice of withdrawal or limitation has been given under this provision, no further consideration of that issue shall take place as a part of the Forum Committee's work without the consent of the party with decision-making authority. Treatment of the issue may take place under section IV.B, above.

G. Obligation to Explain Negative Vote

A member voting to block consensus on a recommendation shall contemporaneously provide an explanation for why such a vote is necessary to protect the significant interests and obligations the member represents.

V. PUBLIC INVOLVEMENT AND OUTREACH

A. GENERALLY

Public participation is an essential element of Forum Committee activity. The parties to this agreement commit to a structured process of public information and involvement that engages the region in a discussion of the critical issues that affect the future of the Columbia Basin.

B. PUBLIC MEETINGS

All meetings of the Board and the Forum Committee will be open to the public. Notice of any meeting will be provided at least seven days in advance and will include the time, place and agenda. Each meeting will include an opportunity for public comment on the issues on the meeting agenda or any other matter pending before the Forum. The Board and Forum Committee may close a portion of a meeting to discuss internal personnel matters.

Materials for the meetings and a summary of Board and Forum Committee meetings will be available upon request to any individual or organization. The Columbia River Basin Forum will develop a mailing list of all organizations and individuals that are interested in the Forum.

C. OUTREACH AND PUBLIC INVOLVEMENT PLANS; PUBLIC REVIEW OF DOCUMENTS

The parties are committed to a proactive effort to inform and involve all stakeholders and other interests, and to seek collaborative solutions to the issues addressed by the Columbia River Basin Forum. Members of the Forum Committee and other members of federal, state and tribal staffs will meet with stakeholders, other interests and the public on a regular basis. The purpose of these meetings will be to address Forum Issues by providing information, seeking information and perspectives, and working with stakeholders, other interests and the public to craft solutions that incorporate the perspectives of the broad array of interests in the region.

To ensure that stakeholders', other interests' and the public's perspective is represented in the Columbia River Basin Forum, the parties commit to developing public involvement plans for each major issue being addressed in the Forum. The purpose of these plans will be to ensure meaningful involvement by any group or individual in the deliberations on the issue. The plans will include such components as a schedule for the development of information, draft documents and final decisions. These plans will allow stakeholders, interested parties and the public to get involved in an issue at each and every stage of the parties' decision-making process.

The Board and Forum Committee will circulate significant documents as drafts for public review and comment. These draft documents will describe the issues and information being considered by the Board or Forum Committee. Each document will also clearly indicate the process and schedule for comments.

E. ADVISORY COMMITTEES

The Board or Forum Committee may form advisory committees to provide information and advice on issues being addressed by the Columbia River Basin Forum. Any advisory committee will be broadly representative, and have a charter that clearly states the scope, expectations and schedule for the committee.

VI. DISPUTE RESOLUTION

The parties commit to strive for recommendations that have the support of all parties in the Columbia Basin and will engage in and support clear and effective communications as a primary means for reaching consensus. To this end, the Forum Committee will develop procedures for dispute resolution intended to help the parties reach consensus. These procedures shall provide for an efficient process that does not restrict the authorities of any entity.

VII. FINANCIAL MANAGEMENT AND ACCOUNTABILITY

The parties recognize the need to establish a workable, comprehensive approach for financial management and accountability and provide necessary funding for fish and wildlife programs. Accordingly, the Forum Committee will investigate the full range of alternatives for Federal, State, and Tribal funding for existing and future fish and wildlife programs; pursue the goal of fish and wildlife coordinated budgeting, whereby information on expenditures for fish and wildlife programs is collected, displayed and analyzed; achieve a common understanding of issues that affect the abilities of all parties and other parties to meet their present and future fish and wildlife financial and other obligations; address implementation of the accountability, accounting and other provisions of the Bonneville Power Administration's Financial Commitments for Columbia River Basin Fish and Wildlife Costs, executed in September 1996. However, this Agreement does not change any provisions of the Bonneville Agreement.

VIII. EXCLUSIONS

This agreement does not:

- A.** Delegate any authority or responsibility established by law;
- B.** Limit the discretion, alter or affect the statutory and other legal rights of parties, including any rights to legal remedies, or the authorities, responsibilities or obligations of the parties under relevant federal, tribal or state laws;

- C. Create any right to any type of administrative review nor create any new right to judicial review or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the Federal, State, or Tribal signatories to this agreement, their agencies or instrumentalities, officers or employees, or any other person;
- D. Create new trust responsibilities or other benefits, substantive or procedural, enforceable against any signatory party;
- E. Create, abrogate, delegate, diminish or otherwise alter the trust responsibilities and obligations of the United States to any Columbia Basin Indian Tribes under any federal treaty, executive order or statute;
- F. Modify the obligations or duties of any party under laws or regulations, now enacted or as amended, including but not limited to those that pertain to fish and wildlife, the environment or protection of cultural and historical resources;
- G. Limit the discretion of the decision-making entity to alter its proposal in response to public comment or information gained after Forum deliberations and/or recommendations.
- H. Preclude the signatory federal agencies, states and tribes from modifying this Agreement in order to conform with future legislative changes enacted by the U. S. Congress, state legislatures or the governing bodies of the Tribes;
- I. Impede the timely exercise of a party's authority, discretion, or duty in accordance with law, nor impede the ability of an entity to grow, harvest, or otherwise use resources in accordance with applicable law;
- J. Require the obligation, appropriation, or expenditure of any money from the U.S. Treasury, the Bonneville Fund, tribal, or state funds. The parties acknowledge that the federal, tribal or state entities will not be required under this Agreement to expend any appropriated funds or Bonneville Fund funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing; or
- K. Modify, abrogate or otherwise affect private property rights, including water rights.
- L. Authorize the parties to address, through the Columbia River Basin Forum, local issues that do not have basin-wide effects, unless otherwise agreed by the parties.

IX. OTHER PROVISIONS

A. EFFECTIVE DATE, RATIFICATION, MODIFICATION AND TERMINATION

1. This Agreement becomes effective when:

- a. It has been executed on behalf of all Federal Agencies, States, and Tribes, listed in Section I, by individuals with authority sufficient to bind their respective parties; or
 - b. Representatives of the parties that have signed the Agreement by January 29, 1999 determine to make the Agreement effective and to proceed.
2. Once this Agreement becomes effective, the terms of the Agreement may be modified by unanimous agreement among the parties.
 3. The Agreement will automatically terminate on January 1, 2005, unless renewed by the parties.

B. EXECUTION AND WITHDRAWAL

This Agreement may be executed in counterparts. A copy with all original executed signature pages affixed will constitute the original parties MOA. Any signatory to the MOA may withdraw 30 days after providing a written notice to the parties of its decision and reasons for withdrawal.

X. SIGNATURES

 John Kitzhaber - Governor DATE
 State of Oregon

 Dirk Kempthorne – Governor DATE
 State of Idaho

 Gary Locke – Governor DATE
 State of Washington

 Marc Racicot – Governor DATE
 State of Montana

 Wanda Johnson - Chair DATE

 Ernest Stensgar – Chair DATE

Burns-Paiute Tribe

Coeur d'Alene Tribe

Michael Pablo – Chair DATE
Confederated Salish and Kootenai Tribes
of the Flathead Reservation

William Yallup, Sr. – Chair DATE
Confederated Tribes and Bands of
the Yakama Nation

Joseph A. Pakootas – Chair DATE
Confederated Tribes of the
Colville Reservation

Antone C. Minthorn – Chair DATE
Confederated Tribes of the
Umatilla Indian Reservation

Olney Patt, Jr. – Chair DATE
Confederated Tribes of the Warm Springs
Reservation of Oregon

Glen Nenema – Chair DATE
Kalispel Indian Community

Velma Bahe – Tribal Chair DATE
Kootenai Tribe of Idaho

Samuel N. Penney – Chair DATE
Nez Perce Tribe

Keith Tinno – Chair DATE
Shoshone-Bannock Tribes of the
Fort Hall Reservation

James Paiva – Chair DATE
Shoshone-Paiute Tribes of the
Duck Valley Reservation

Bruce Wynne – Chair DATE
Spokane Tribe of Indians

William Daley – Secretary DATE
U. S. Department of Commerce

Louis Caldera - Secretary DATE
U.S. Department of the Army

Bruce Babbitt – Secretary DATE
U.S. Department of Interior

Bill Richardson - Secretary DATE
U.S. Department of Energy

Dan Glickman – Secretary DATE
U.S. Department of Agriculture

Carol Browner – Administrator DATE
U.S. Environmental Protection Agency

ATTACHMENT A—INITIAL AGENDA FOR THE COLUMBIA RIVER BASIN FORUM

The parties agree that the following items are deemed Forum Issues under, Section IV.B:

1. Independent Scientific and Economic Review – Develop or promote means to ensure independent

scientific and economic review mechanisms that enable fish and wildlife programs to proceed based on the best available scientific and economic information, and effective monitoring and evaluation.

2. Identify policy issues of concern regarding existing planning and implementation efforts that pertain to fish and wildlife and related habitat in the Columbia River Basin. As part of this effort the parties will develop recommendations to sequence major regional decision processes relating to fish and wildlife and related habitat management. The parties will seek opportunities and pursue actions to coordinate processes while avoiding and eliminating duplication of efforts. If processes or policies appear inconsistent or impede sound management of resources, the parties will seek solutions that foster a consistent, unified approach.

3. Framework - Develop a multi-species analytical framework that can be used in the collaborative process for the 1999 decision on mainstem configuration under the Endangered Species Act, the Northwest Power Planning Council's process to amend the Columbia River Basin Fish and Wildlife Program, and other plans and processes that address the sources of mortality for fish and wildlife throughout their lifecycle.

4. 1999 FCRPS Decision - Engage in a collaborative process to make recommendations regarding the 1999 decision on the long-term operation and configuration of the Federal Columbia River Power System (FCRPS) as identified in the 1995 Biological Opinion on FCRPS operations.

5. Develop estimates for future fish and wildlife costs and funding consistent with Section VII.

ATTACHMENT B – INITIAL DRAFT SUGGESTED BUDGET

FY99 Budget for the Columbia River Basin Forum

Staffing*

Coordinator*	\$0 to 70,000
Support Staff	In-kind services
Public Involvement Staff	In-kind services

Administrative Support

Public involvement (printing, mailing meetings, advertising, web page, etc.)*	\$30,000
Forum meetings	In-kind services
Printing	\$ 5,000
Copier usage	\$ 2,000
Long distance telephone calls	\$ 5,000
Conference calls	\$30,000
Postage	\$ 5,000
Staff Travel	\$20,000
Administrative expenses (includes local phones, Office space, use of computer, photocopier, fax, Internet, e-mail, accounting support, receptionist, Benefits administration, computer system and support Office supplies and equipment, etc.)	In-kind services**
Indirect costs @ 12.8%	\$22,000

Total Costs **\$119,000 to 189,000**

* Personnel and other in-kind funding could be provided by Forum parties. In addition, parties may identify efficiencies through improved coordination with other processes.

** In-kind services from the Columbia Basin Fish and Wildlife Authority.

c:\documents and settings\weist\my documents\cb forum\moa\forum moa.doc (Karl Wiest)