Chief Joseph Hatchery Cost Sharing Agreement
By
Confederated Tribes of the Colville Reservation
Bonneville Power Administration
And
Public Utility District No. 1 of Chelan County, Washington

I. PARTIES
The parties to this Agreement are the Confederated Tribes of the Colville Reservation (Tribe), Bonneville Power Administration (BPA), and the Public Utility District No. 1 of Chelan County, Washington (CPUD).

1. The Colville Tribe is a federally recognized Indian tribe that occupies and governs the Colville Reservation, which is bounded by the Columbia and Okanogan rivers in North Central Washington State. The Tribe possesses federal reserved hunting, fishing, gathering, and water rights within the Reservation and former North Half of the Reservation. The Tribe also retains an interest in fish and wildlife management in traditional territories near the Reservation and North Half. The Tribe actively regulates and manages fish and wildlife resources within the Reservation and North Half. Fish and wildlife habitat and populations that the Tribe relied upon historically have been impacted by the construction and operation of, and inundation resulting from, federal and non-federal hydroelectric projects on the Columbia River and its tributaries.

2. BPA is a power-marketing agency within the United States of America Department of Energy. The Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h (Northwest Power Act) directs BPA 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 in a manner consistent with the purposes of the Act, the fish and wildlife program (Program) adopted by the Pacific Northwest Electric Power Planning and Conservation Council (Council) under subsection 4(h) of the Act, and other laws.

3. CPUD is a Washington State municipal corporation governed by a five-member elected Commission. Its primary purpose is to supply electrical energy to its customer owners in Chelan County,
Washington. CPUD owns and operates the Rock Island Hydroelectric Project and Rocky Reach Hydroelectric Project on the Columbia River pursuant to Licenses issued by the Federal Energy Regulatory Commission (FERC Projects 943 and 2145, respectively).

4. The Tribe and BPA are parties to one of the Columbia Basin Fish Accords that includes provisions for BPA to fund the construction, operation, and maintenance of the Chief Joseph Hatchery. The Accord anticipates cost-sharing that would offset costs for the hatchery that BPA would otherwise incur.¹

5. The Rock Island and Rocky Reach Anadromous Fish Agreements and Habitat Conservation Plans (HCPs) are 50-year agreements that FERC approved as amendments to the Rock Island Project and Rocky Reach Project licenses in 2004. The HCPs contain measures to protect all five species of anadromous salmonids found at the Rock Island and Rocky Reach Hydroelectric Projects (spring and summer/fall Chinook, steelhead, sockeye and coho, which are collectively the Plan Species). The objective of the HCPs is to achieve No Net Impact for each Plan Species. The HCPs outline a schedule for meeting and maintaining No Net Impact throughout the 50-year term of the HCPs. No Net Impact consists of two components including: (1) a 91 percent combined adult and juvenile Project survival standard at Rock Island and Rocky Reach Projects and (2) up to 9 percent compensation for Unavoidable Project Mortality at each project. Compensation to meet No Net Impact is provided through hatchery and tributary compensation programs whereby up to 7 percent compensation is provided through hatchery production and 2 percent compensation is provided through the funding of enhancements to tributary habitats that support Plan Species. Under the HCPs, hatchery compensation is periodically adjusted on the basis of juvenile survival study results, hatchery performance, and adult returns.

II. PURPOSE AND BACKGROUND

1. BPA has agreed to fund the construction, operation and maintenance of a salmon hatchery located near the base of the Chief Joseph Dam that would produce spring and summer/fall Chinook for release into

the upper Columbia River, below the dam, and the Okanogan River subbasin. The Council has agreed and recommended that BPA should construct the Chief Joseph Hatchery and fund its operation and maintenance.

2. On December 14, 2011, the Rock Island and Rocky Reach HCPs’ Hatchery Committees approved a Statement of Agreement (SOA) that established production commitments for CPUD at the Chief Joseph Hatchery. In the SOA, CPUD’s hatchery compensation for Unavoidable Project Mortality at the Rock Island and Rocky Reach Projects, combined, is 12.81% for yearling spring and summer/fall Chinook (Yearlings); and 13.51% for sub-yearling summer/fall Chinook (Sub-yearlings). This Cost Sharing Agreement implements CPUD’s specific hatchery compensation commitments for Yearling and Sub-yearling Chinook, pursuant to the SOA, at the Chief Joseph Hatchery.

3. By this Agreement, CPUD commits capacity and funding to the Chief Joseph Hatchery in exchange for production of Yearling and Sub-yearling Chinook by the Tribe at the Chief Joseph Hatchery. More specifically, CPUD will provide: (1) capacity at the Similkameen Acclimation Facility (Similkameen), located at 2098 Highway 7, Oroville, WA 98844, for the purpose of overwinter acclimating Chief Joseph Hatchery production; and (2) its share of funding for monitoring and evaluation of the Chief Joseph Hatchery Yearling and Sub-yearling Chinook programs.

4. Having completed the necessary agreements, permits, and easement arrangements between BPA, the Tribe, and the Corps of Engineers (Corps), BPA began constructing the Chief Joseph Hatchery in the summer of 2010, and completed it in May 2013. BPA has signed substantial completion documents and will transfer its interest in the hatchery to the Tribe. As used in this Agreement, the term “construction” means building all the hatchery structures, installing all the fixtures, and providing all the supplies, equipment and other materials needed by the hatchery in producing up to 2.9 million juvenile Chinook salmon.

5. The Tribe will own, operate and maintain the Chief Joseph Hatchery infrastructure using funds or other forms of cost-sharing provided by
BPA, CPUD, and other non-federal entities for hatchery operation and maintenance and monitoring and evaluation.

6. The Corps owns and operates the Chief Joseph Dam and the property surrounding the Dam upon which the primary hatchery facility is constructed. The Tribe has secured a 50-year renewable lease and easement from the Corps, which allows construction and long-term operation and maintenance of the hatchery and associated water supply pipelines.

7. BPA and the Tribe are considering whether to also construct a weir on the Okanogan River. The Okanogan Weir could be used to collect broodstock and conduct monitoring and evaluation activities for the Chief Joseph Hatchery in a selective manner that (a) protects wild runs of salmon and steelhead in the Okanogan subbasin, (b) harvests fish, (c) conducts research that will enable monitoring of fish populations, and (d) evaluates the effectiveness of mitigation actions. If BPA and the Tribe ultimately decide to construct the Okanogan Weir, BPA would fund construction, operation and maintenance and monitoring and evaluation pursuant to Section VII below.

8. The fish hatchery was constructed on the Columbia River adjacent to and just downstream of Chief Joseph Dam. Water to the hatchery will come from two sources: Rufus Woods Lake and a well field. Potable water will come from the same well field supplying the hatchery and will be conveyed in the same buried pipeline. A third water supply (a relief tunnel that collects seepage from the abutment of Chief Joseph Dam), was deferred due to project cost overruns. Operation and maintenance functions related to the water supply will be funded by a direct contract with BPA in the same manner as other hatchery operation and maintenance functions that will be performed by the Tribe.

9. The Chief Joseph Hatchery program will include three components with a combined total annual production of up to 2.9 million smolts.

- **Component 1** will produce summer/fall Chinook salmon for release within their historical Okanogan subbasin habitat. This program would produce up to 1,100,000 hatchery smolts annually (Yearlings and Sub-yearlings).
• **Component 2** will produce up to 900,000 spring Chinook smolts for release within their historical Okanagan subbasin habitat and in the Columbia River between the Okanogan River and Chief Joseph Dam (Yearlings only).

• **Component 3** will produce up to an additional 900,000 summer/fall Chinook hatchery smolts for release into the Columbia River (Yearlings and Sub-yearlings).

10. In this agreement the parties measure smolt production in smolts per pound as follows:

• For summer/fall Chinook yearlings there are 10 smolts per pound.

• For spring Chinook yearlings there are 15 smolts per pound.

• For summer/fall Chinook sub-yearlings there are 40 smolts per pound.

11. For purposes of this Agreement, The term “**Chief Joseph Hatchery**” includes the primary production facilities, all off-site acclimation facilities owned by the Tribe, employee housing, water supply systems, and other ancillary facilities funded by BPA and required for hatchery operation.

### III. REPRESENTATIVES OF THE PARTIES

1. For the Tribe:
   
   Kirk Truscott (Anadromous Fish Program Manager)
   Confederated Tribes of the Colville Reservation
   Wenatchee Field Office
   470 9th St. NE
   East Wenatchee, WA 98802
   Phone: (509) 978-8031
   Email: Kirk.Truscott@colvilletribes.com

   Notices shall be sent to:
   Randall Friedlander (Interim Director of CCT Fish & Wildlife)
   PO Box 150 Nespelem, WA 99155
Phone: (509) 634-2127  
Email: Randall.Friedlander@colvilletribes.com

2. For the BPA:  
Fish and Wildlife Division Manager  
Bonneville Power Administration, KEW-4  
905 NE 11th Avenue  
Portland, OR 97208  
Phone (503) 230-3000

3. For the CPUD:  
Alene Underwood (Hatchery Program Manager)  
327 N. Wenatchee Avenue  
Wenatchee, WA 98801  
Phone: 509-661-4364  
Email: alene.underwood@chelanpud.org

Notices shall be sent to:  
Keith Truscott (Director of Natural Resources)  
327 N. Wenatchee Avenue  
Wenatchee, WA 98801  
Phone: 509-661-4831  
Email: keith.truscott@chelanpud.org

IV. FUNDING OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, MONITORING AND EVALUATION COSTS

1. For purposes of this Agreement, the term “operation and maintenance” (O&M) means all activities involving the daily operating, routine upkeep, maintenance, replacement and repairs of the Chief Joseph Hatchery, as defined in Section II.11. For purposes of this Agreement, the term “monitoring and evaluation” (M&E) means any required or agreed upon monitoring and evaluation activities associated with the Chief Joseph Hatchery.

2. For production of CPUD’s hatchery compensation requirements under the HCPs (Table 1), CPUD will contribute available capacity for overwinter acclimation of up to 576,000 summer/fall Chinook smolts, originating from Chief Joseph Hatchery, at Similkameen in lieu of funding Chief Joseph Hatchery O&M costs. In providing Similkameen
Capacity, CPUD agrees to provide the use of the existing CPUD-owned capital infrastructure at Similkameen; and directly fund all annual operational expenses at Similkameen, with the exception of fish food, which will be provided by the Tribe. CPUD’s Similkameen “operational expenses” will include staffing, maintenance, capital, utilities, and repair costs necessary for annual operations. CPUD will provide annual Similkameen Capacity while this Agreement is in effect.

Table 1. CPUD hatchery compensation levels for Yearling and Sub-yearling Chinook for Rock Island and Rocky Reach Hydroelectric Projects. Production levels approved by Rock Island and Rocky Reach HCPs’ Hatchery Committees pursuant to the SOA dated December 14, 2011.

<table>
<thead>
<tr>
<th>Chinook stock</th>
<th>Combined Rock Island &amp; Rocky Reach Unavoidable Project Mortality compensation level</th>
<th>Total quantity of smolts produced at the Chief Joseph Hatchery</th>
<th>Quantity of smolts produced for CPUD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yearling (summer/fall)</td>
<td>12.81%</td>
<td>1,300,000</td>
<td>166,569</td>
</tr>
<tr>
<td>Yearling (spring)</td>
<td>12.81%</td>
<td>900,000</td>
<td>115,000</td>
</tr>
<tr>
<td>Sub-yearling (summer/fall)</td>
<td>13.51%</td>
<td>700,000</td>
<td>94,570</td>
</tr>
</tbody>
</table>

3. In addition to Similkameen Capacity, CPUD will fund 13.0% of the total Chief Joseph Hatchery M&E costs related to CPUD’s HCP Plan Species compensation requirements (Chinook only). The 13.0% M&E compensation is the rounded average of the Yearling and Sub-yearling Unavoidable Project Mortality (UPM), as weighted by the production quantities (QTY) for each group (see Table 1):

Weighted Average = 
\[
\frac{[(QTY\ yearling\ spring+QTY\ yearling\ summer)\times(UPM\%\ yearling)]+(QTY\ sub-yearling)\times(UPM\%\ sub-yearling)]}{(QTY\ Yearling\ spring+QTY\ yearling\ summer+QTY\ sub-yearling\ summer)}
\]

\[
= \frac{[(115,000+166,569)\times(12.81\%)]+(94,570)\times(13.51\%)]}{(115,000+166,569+94,570)} = 12.99\% - 13.0\%
\]
As an example, the current estimated annual Chief Joseph Hatchery M&E cost is approximately $960,000 and, therefore, CPUD’s 13.0% share would be $124,800 per year. Upon execution of this Agreement, CPUD will pay a lump sum payment to BPA in the amount of $61,000, which is equivalent to CPUD’s 13.0% share, calculated for the period from commencement of the Chief Joseph Hatchery program (when adult broodstock or gametes are stored at the hatchery to begin the production cycle) through December 31, 2013. Beginning January 1, 2014, CPUD will begin paying its 13.0% share, consistent with Section IV.4 below, and will continue making such payments while this Agreement is in effect.

4. BPA can invoice CPUD, not more frequently than monthly, for its share of M&E. CPUD will remit payment, as provided and conditioned by RCW 39.76, upon receipt of BPA’s invoice.

5. By meeting CPUD’s obligations under this Agreement, CPUD shall receive full HCP compensatory credit for CPUD’s entire Okanogan Chinook hatchery mitigation requirement even if the actual Chief Joseph Hatchery production levels differ from those specified in Section II.9 and Table 1. This Agreement, while it is in effect, satisfies all of CPUD’s hatchery mitigation obligations under the HCPs related to: (1) the existence of the Chief Joseph Hatchery; and (2) HCP hatchery compensation related to summer/fall Chinook or spring Chinook originating from the Okanogan River.

V. CHANGES IN CPUD’S MITIGATION REQUIREMENTS

1. CPUD’s obligations in this Agreement are derived from CPUD’s 2011 SOA whereby hatchery compensation obligations were approved at 12.81% and 13.51%, respectively, for Yearling, and Sub-yearling Chinook.

2. The parties anticipate that CPUD’s HCP hatchery compensation requirements will be periodically adjusted, pursuant to the HCPs, to reflect changes in project survival, 10-year hatchery production adjustments (i.e., recalculation), or according to other provisions within the HCPs. The Tribe and CPUD will review and modify the hatchery mitigation requirements of CPUD every ten years in general accordance with the timelines and requirements of the HCPs. Should
CPUD request to change its mitigation requirements (i.e., different from 12.81% and 13.51%, respectively, for Yearling, and Sub-yearling Chinook), the parties shall change CPUD’s Similkameen capacity and funding commitments to reflect the modified hatchery mitigation requirement. The parties will make funding adjustments at the beginning of the first federal fiscal year after CPUD requests a change in its production allocation. Any Similkameen capacity and funding adjustments pursuant to this Section V.2 will be based on the proportional use of the Chief Joseph Hatchery as described in Section IV.3.

3. The parties do not anticipate hatchery production at the Chief Joseph Hatchery to exceed the currently planned maximum of 2.9 million smolts, as described in Section II.9 and Table 1. In the event one or more parties seeks a production increase, then the party or parties seeking the increase bears all costs related to it.

VI. BPA WITHDRAWL FROM HATCHERY PARTICIPATION

Should BPA be unable or unwilling to fund Chief Joseph Hatchery O&M or M&E, the Tribe shall continue to operate and maintain the hatchery in combination with funding provided by CPUD and other entities. CPUD’s Similkameen capacity and funding obligation shall remain at the percentage required to meet its compensation requirements, including any changes under Section V.2 above. CPUD shall not for any reason be responsible for any cost or fees related to the construction of Chief Joseph Hatchery and neither the Tribe nor BPA may charge or invoice CPUD for any cost or fees related to the construction of the Chief Joseph Hatchery.

VII. OKANOGAN WEIR

1. If the BPA and the Tribe agree in writing to proceed with developing the Okanogan weir (weir) currently under discussion, BPA would construct the weir as provided in a subsequent agreement and the Tribe would operate the weir with funding provided under a separate intergovernmental contract with BPA. CPUD will not be responsible for weir construction costs or weir O&M costs except routine repair and maintenance as provided for in Section VII.2.
2. CPUD commits to sharing the costs of the following M&E activities that would be conducted at the weir on the proportional basis described in Sections IV.3 and V.2: annual installation and removal of the weir; determination of run escapement and composition; run sampling and analysis; tag reading and analysis; fish behavior monitoring and analysis; genetic sampling and analysis; and annual routine repair and maintenance of weir equipment necessary to undertake such M&E activities.

3. BPA can invoice CPUD, not more frequently than monthly, for its share of the costs described in Section VII.2. CPUD will remit payment, as provided and conditioned by RCW 39.76, upon receipt of BPA’s invoice.

VIII. BPA FINANCIAL ADMINISTRATIVE AGENT AND CPUD ADVISORY PARTICIPATION IN HATCHERY OPERATION & MAINTENANCE.

1. BPA will be the central financial administrative agent for the Chief Joseph Hatchery. Upon request, BPA must provide the parties with an accounting of cost share monies received and expended and other information reasonably necessary to document BPA’s management of cost share funds.

2. The Tribe and BPA must consult with CPUD prior to finalizing annual budgets, fish production plans, and monitoring and evaluation plans.

3. CPUD is entitled to participate fully in all meetings of the Chief Joseph Hatchery Advisory Committee.

4. The intent of this Section VIII is to provide CPUD with notice and an opportunity to review and provide input on decisions related to annual budgets, fish production plans, and monitoring and evaluation plans. BPA and the Tribe retain ultimate authority to make such decisions.

IX. MISCELLANEOUS.

1. The parties agree to submit in good faith any disputes regarding the implementation of this Agreement to non-binding mediation. A party may trigger this provision with a written request for the other party to
join in mediation. Then each party in dispute will select a mediator, or if they are unable to select a mediator, each party in dispute will select a mediator and the mediators selected will choose one mediator who will be the sole mediator. The parties will use their best efforts to resolve the dispute in mediation. After a dispute has been in mediation for at least 60 days and there have been at least two mediation sessions, any party to the dispute may, subject to the limitations in Section IX.8 below, initiate legal action to resolve the dispute. Except as provided in this Section IX, pending completion of mediation no party may initiate any legal proceeding except in aid of mediation. Each party to the mediation must bear its own costs of mediation and share equally the joint mediation costs.

2. The parties will diligently implement this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Agreement.

3. Where the dispute is a claim cognizable under a procurement contract issued by BPA, then the parties must follow the dispute resolution procedures of that contract.  

4. The parties acknowledge that any records shared in developing or implementing this Agreement may be subject to disclosure under the Freedom of Information Act and Washington Public Records Act.

5. This Agreement is effective on the date of the last signature by the parties and remains in effect throughout the Tribe’s initial 50-year land lease and easement with the Corps. However, CPUD may withdraw from this Agreement after 2015 by providing at least two years’ written notice to the other parties or as otherwise agreed by all parties. Withdrawal from this Agreement will not entitle CPUD to return of any payments made under this Agreement.

6. Modifications to this Agreement must be made in writing and signed by all parties.

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2 The Bonneville Purchasing Instructions, Part 21, covers the dispute resolution clauses used in BPA procurement contracts and the process used to resolve disputes under those contracts.

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7. Irrespective of the place of performance, this Agreement will be construed and interpreted according to the federal common law of government contracts, as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the Federal Government. To the extent that the federal common law of government contracts is not dispositive, the laws of the State of Washington shall apply.

8. This Agreement does not waive, limit or modify the sovereign immunity of the Tribe from unconsented suit except as specifically provided for in this Section IX.8. The Tribe consents to suit solely by CPUD if, and only if:

(a) the suit is solely for the purpose of enforcing or interpreting this Agreement or in aid of mediation pursuant to Section IX.1 above;

(b) any judgment in a suit seeking any money award or damages, including direct, consequential or incidental damages, interest, attorneys fees, or costs, shall be payable by the Tribe only from monies, assets or real properties derived from this Agreement and shall be accounted for as an offset against future payments by CPUD under this Agreement; all other monies, assets or properties of the Tribe or any Tribal entity shall be unavailable to satisfy a judgment; and

(c) the suit is filed in the Federal District Court for the Eastern District of Washington or, if that court rules that it lacks jurisdiction over the subject matter of the suit, either in the Superior Court of the State of Washington for Chelan County or in the Superior Court of the State of Washington for Okanogan County.

This limited waiver of sovereign immunity does not extend to proceedings in any other forum or regarding any other matter or to claims made by any entity other than CPUD. Each party must bear its own attorneys fees, costs and expenses in a proceeding under this section.

9. This Agreement is between two sovereigns and a municipal corporation, each with its own statutory and common law rights and obligations to third parties or entities who are not a party to this Agreement. Each party to this Agreement is responsible for damages
to third parties that are the result of that party's negligent acts or omissions subject to and in accordance with the party's statutory provisions for addressing these types of claims.

10. This Agreement may be executed in counterparts. Each counterpart constitutes an original and all counterparts together constitute one and the same instrument.

11. Each person executing this Agreement represents and warrants that he or she is an authorized signatory of the party for which they are signing, and have sufficient legal authority to execute this Agreement.

12. CPUD owns Similkameen and retains sole authority, in its sole discretion, to operate Similkameen and its facilities as CPUD determines appropriate. CPUD may, at its sole discretion, hire operators or contractors to operate, maintain, or repair Similkameen. CPUD's commitment of Similkameen capacity under this Agreement does not in any way subordinate CPUD's rights, authority and/or discretion to manage or access Similkameen as CPUD determines appropriate. Notwithstanding the foregoing, the parties recognize the importance of operating Similkameen in a cooperative and mutually agreeable manner and commit in good faith to coordinate Similkameen operations through regular and frequent communication and information sharing.
We the undersigned accept the provisions stated in this Agreement:

Michael Finley  
Chairman, Colville Business Council  

Elliot E. Mainzer  
Acting Administrator and Chief Executive Officer  

Kirk Hudson  
Managing Director, Generation and Transmission,  
Public Utility District No. 1 of Chelan County

11-21-13  
Date

12-17-13  
Date

12-6-13  
Date