OFFICE OF THE SECRETARY OF STATE
TOBIAS READ
SECRETARY OF STATE

MICHAEL KAPLAN
DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED
11/25/2025 10:50 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updating ceremonial and subsistence hunting tag numbers for Burns Paiute Tribe

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/16/2026 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Roxann Borisch
503-947-6314
roxann.b.borisch@odfw.oregon.gov

4034 Fairview Industrial Drive SE
Salem,OR 97302

Filed By:
Roxann Borisch
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 01/16/2026
TIME: 8:00 AM - 5:00 PM
OFFICER: ODFW Commission

REMOTE HEARING DETAILS
PHONE NUMBER: 503-947-6044
SPECIAL INSTRUCTIONS:
This hearing will be conducted virtually. Additional information regarding participation will be posted on our website at www.dfw.state.or.us/agency/commission/minutes/. The meeting can be viewed at www.youtube.com/user/IEODFW. Any changes to the meeting format will be posted to our website as soon as possible.

NEED FOR THE RULE(S)

The commission adopted rules to issue ceremonial hunting tags to the Burns Paiute Tribe in 2018 via 635-043-0150. In 2022, the state and tribe agreed to consider updating tag numbers at the request of the tribe. The tribe requested an update in early 2025. Staff and the tribe agreed to new tag numbers for proposal to the commission that have minimal impact on non-tribal hunters and support the needs of the tribe. (Note: Rule renumbered to 635-800-0015, Tribal Agreements.)

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 12/12/2025, including the presentation and all provided materials.

A copy of the rules and the other documents relied upon for this rulemaking [the above document(s)] are available from the Oregon Department of Fish and Wildlife, Wildlife Division, 4034 Fairview Industrial Drive SE, Salem, Oregon

97302-1142. Contact Roxie Borisch at 503-947-6314 or Roxann.B.Borisch@odfw.oregon.gov to view by appointment between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Department has solicited input from representatives of underrepresented communities likely to be affected on whether the proposed rule will have a fiscal impact on the community, the extent of the fiscal impact, and whether the rules will have significant impact on underrepresented communities. https://www.dfw.state.or.us/OARs/index.asp

FISCAL AND ECONOMIC IMPACT:

These amendments are not expected to result in significant economic or fiscal impacts to local governments or the public. The fiscal and economic impact of amending rules on ceremonial and subsistence harvest permits is expected to be positive in nature for Tribal members, while adhering to the State of Oregon's Wildlife policy ORS 496.012.

Fiscal and economic impacts discussed in this document pertain only to the proposed rules at the time of writing of this fiscal impact statement.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

A. The state agencies that would be affected are the Oregon Department of Fish and Wildlife (Department) and the Oregon State Police (OSP). The Department's and OSP's enforcement efforts and other associated costs are not expected to be directly impacted in a significant manner.

B. There are no major expected fiscal or economic impacts to local governments. No significant changes from current levels of local agencies operations or expenditures are expected as a result of the adoption of these rules.

C. The Department is not able to provide a monetary estimate of the economic impact of these rule amendments, the economic effect is expected to be positive in nature. The amendments provide clarification and additional opportunity for the use of harvest permits for hunting in the Juntura and Sage Hen Hunt Areas for deer permits; and the Silvies, Malheur River, and Beulah Wildlife Management Units (WMUs) for elk and pronghorn antelope permits. These resources are of great economic, subsistence, cultural, and ceremonial significance to the Burns Paiute Tribe. The harvest of additional animals is not likely to have a discernable effect on big game populations in the region or impact tag opportunities for non-tribal hunters. Meaning that these amendments are unlikely to affect businesses that serve hunters and wildlife viewers in general.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s); Additional compliance costs to small businesses are not expected. The impact to small businesses is expected to be insignificant, it is unlikely that businesses catering to sportspeople would experience any significant revenue losses resulting from these amendments.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);
These types of compliance costs are not anticipated.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).
These types of compliance costs are not anticipated.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Does not apply to this rulemaking.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

A Rules Advisory Committee was not consulted. These amendments are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

At the Commission hearing, public correspondence and testimony is accepted into the record as part of the rulemaking process.

AMEND: 635-800-0015

RULE SUMMARY: These amended rules will update the number of tags available to the Burns Paiute Tribe to support their member's interests in ceremonial and subsistence hunting opportunities. The amendments also conform the rules to recently adopted mule deer hunt areas and slightly expand the geographic scope of those opportunities.

The Commission may decide to adopt staff recommended rule amendments as proposed in attachment 3, or the Commission may decide to modify the proposed rules or not adopt some or any of the proposed rule amendments.

CHANGES TO RULE:

635-800-0015
Burns Paiute Ceremonial Harvest Permits
Ceremonial harvest permits for use by the Burns Paiute Tribe (the "Tribe").¶
(1) The Commission authorizes the harvest of deer, elk and pronghorn antelope by members of the Tribe for ceremonial, subsistence, and cultural purposes in accordance with these rules.¶
(2) Authorization for ~~ceremonial~~ harvest permits will be considered only upon written request from the Tribe.¶
(3) Authorization for harvest shall specify the season dates, times, locations, and numbers of permits authorized for each species.¶
(a) Permits authorized shall be provided to the Tribe and may be used only by enrolled members of the Tribe. Each permit shall specify the season dates, times, and location where the permit is valid.¶
(b) Enrolled Burns Paiute Tribal members using authorized ~~ceremonial~~ harvest permits must carry on their person a valid ~~ceremonial~~ harvest permit, and shall present this document, as well as documents identifying said hunter as a member of the Burns Paiute Tribe, to Department employees or law enforcement personnel upon request.¶
(c) Enrolled Burns Paiute Tribal members designated to harvest animals using ceremonial or subsistence harvest permits shall not be required to possess a state hunting license or big game tags in addition to the ~~ceremonial~~ harvest permits authorizing harvest.¶
(d) In recognition of accepted Tribal custom, the Commission acknowledges that Tribal authorities may designate individuals to harvest animals using these ~~ceremonial~~ harvest permits. The Tribe may designate the number of permits used by enrolled Burns Paiute Tribal members, so long as the total harvest does not exceed the number of ~~ceremonial~~ permits authorized under subsection (e) of these rules.¶
(e) Pursuant to a request received under subsection (2), the Department shall issue up to ~~eight (8~~sixteen (16) deer

permits with a bag limit of "one deer"-, up to ~~fifteen (15~~thirty (30) elk permits with a bag limit of "one elk", and up to four (4) pronghorn antelope permits with a bag limit of "one pronghorn", for ceremonial or subsistence purposes annually. Season dates are: January 1 through last day of the Department's unit wide, Any Legal Weapon controlled 100 series hunt in the ~~Silvies and Malheur River WMU~~Juntura and Sage Hen Hunt Areas for deer permits, January 1 through November 30 for elk permits in the Silvies, Malheur River, and Beulah WMUs, and January 1 through the last day of the Department's unit wide, Any Legal Weapon controlled hunt in the Silvies ~~and~~, Malheur River, and Beulah WMUs for pronghorn antelope.¶
(f) Each permit shall be validated immediately upon successful harvest of a designated animal by blacking out in ink, or removing in its entirety, only the month and day of the kill. The permit shall be attached securely to the game mammal in plain sight. The permit shall be kept attached to the carcass, or remain with any parts thereof, so long as the same are preserved.¶
(g) Ceremonial or subsistence harvest permits are valid only on federal lands and Burns Paiute Tribal lands (Tribal trust and fee title) in the ~~Silvies Wildlife Management Unit, that portion of the Malheur River Wildlife Management Unit (WMU) that is north of U.S. Highway 20, the Burns Paiute Tribal property known as the Jonesboro property south of U.S. Highway 20 in the Malheur River WMU~~area described in 3e, and the Buena Vista unit of the Malheur National Wildlife Refuge when also in possession of a valid special use permit issued by the Malheur National Wildlife Refuge. Ceremonial or subsistence harvest permits cannot be used on private lands and do not authorize trespass upon private lands to access federal or tribal lands where landowner permission has not been obtained. ~~Ceremonial~~These harvest permits do not authorize entry or use on public lands where hunting, access, or discharge of firearms is precluded by any other statute, rule or law.¶
(h) Methods of take, shooting hours, and other restrictions or limits on hunting methods, weapons and techniques all remain the same as those pertaining to sport harvest during other Commission authorized big game seasons, or as restricted by conditions of a special use permit issued by Malheur National Wildlife Refuge when hunting in the Buena Vista unit of the Malheur National Wildlife Refuge. Harvest of elk is restricted to archery equipment only from August 15 to October 15.¶
(i) If a ceremonial need arises after the end of authorized season dates and a previously issued ceremonial harvest tag from that year was not validated for harvest, the Tribe may request a date extension in writing.¶
(A) Written request must include the cultural or ceremonial need as determined by the Tribe, the requested new dates for hunt, and the original tag.¶
(B) The species on the ceremonial harvest tag cannot be changed.¶
(C) The Department will consider the request to avoid conflicts with ongoing hunting seasons and may limit the hunt area from the description in (3)(~~g~~e).¶
(D) If approved, the local Wildlife District staff from the Department will provide the revalidated tag to the Tribe.¶
(4) The Tribe shall report all harvest of deer, elk or pronghorn antelope conducted under ~~ceremonial~~these harvest permits to the Department on an annual basis.¶
(5) Animals harvested under an authorized ~~ceremonial~~ harvest permit may only be used by Tribal members for ceremonial, subsistence, and cultural purposes. Animals and parts thereof may not be bartered or sold.¶
(6) Authorization of these ~~ceremonial~~ hunting permits does not create, convey, modify, limit, impede or imply any tribal legal or treaty entitlement.
Statutory/Other Authority: ORS 496.138, 496.162, 496.146, ORS 496.012
Statutes/Other Implemented: ORS 496.138, 496.162, 496.146, ORS 496.012

RULE ATTACHMENTS MAY NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF OREGON
AND THE BURNS PAIUTE TRIBE

THIS AGREEMENT is made and entered into this 3rd day of October, 2022, between the Burns Paiute Indian Tribe (BPT), a federally-recognized Indian tribe, the State of Oregon (Oregon) by and through Governor Kate Brown and the Oregon Department of Fish and Wildlife (ODFW).

Part 1 RECITALS

1.1 The Burns Paiute Tribe (BPT) is a federally-recognized Indian tribe. The BPT is a successor to several bands of Northern Paiute Indians who occupied much of eastern Oregon and other states, including the Malheur River Basin. In 1868, the BPT's predecessor bands signed a treaty of "peace and friendship" with the federal government. Neither the BPT nor its predecessor bands have ceded any of their rights in the Tribe's ancestral territory.

1.2 Large runs of Snake River Spring and Summer Chinook Salmon (*Oncorhynchus tshawytscha*) and Steelhead (*Oncorhynchus mykiss*) historically spawned in Oregon's Malheur River Basin. Approximately 1 million (Between 900,000-1.4 mil, Chapman & Chandler 2003) Snake River Chinook alone returned to spawn upstream of Brownlee Reservoir (source MRSMP 2004). The Upper Malheur and North Fork Malheur likely served as critical spawning and rearing habitat for the anadromous fish in the basin (MRSMP 2004).

1.3 For thousands of years, salmon fishing was a way of life and salmon was an important First Food for ancestors of the BPT. Tribal descendants recognize their native interest in salmon subsistence in aboriginal territories and former reservation lands of the Malheur Basin. The BPT believes that loss of returning salmon equates to a loss of the Tribe's inherent right to practice salmon subsistence activities, as well as the deterioration of cultural knowledge of traditional fishing grounds, harvest techniques, preparation methods, and tribal ceremonies associated with salmon procurement. A notable decline in the health of BPT tribal members is likewise linked to the disappearance of salmon as a traditional mainstay food source. Access to local runs is necessary for the maintenance and revitalization of the Northern Paiute culture. Restoration of anadromous runs of salmon will restore tribal subsistence fishing, traditional fishing knowledge, and cultural ties between the Basin and the fish to the first people.

1.4 The mainstem tributaries of the Upper Malheur and North Fork Malheur, critical spawning and rearing habitat for anadromous fish, were blocked from all fish passage by the construction of Bureau of Reclamation's (BOR) Warm Springs Dam in 1919 and Agency Valley Dam in 1934, respectively. The construction of Bonneville Dam in 1938, operated by Bonneville Power Administration (BPA), and the subsequent upstream construction of dams, currently part of the Federal Columbia River Power System (FCRPS), added to the cumulative annual loss of returning migratory fish. Construction of Brownlee Dam in 1958, part of Idaho Power's Hells Canyon Complex, completely prohibited future migration of anadromous fish from the entire Upper Snake River Basin, which includes the Malheur River system.

1.5 The mainstem tributaries of the Upper Malheur and North Fork Malheur are currently listed as critical spawning and rearing habitat for Endangered Species Act-listed bull trout (USFWS 2010) – a species of salmonid which historically coexisted and coadapted with anadromous species. Bull trout populations persist in the Upper Malheur and North Fork Malheur indicating that habitat may be available to support other salmonid species.

1.6 The BPT has an abiding interest in protecting and enhancing the fish and wildlife and cultural resources of its ancestral territory. Today, the BPT's reservation is headquartered in Burns, Oregon. The BPT also owns nearly 10,000 acres of real property in the Malheur River Basin, which the BPT manages for fish and wildlife habitat and to protect other cultural resources. The BPT plays an active role in management of fish and wildlife and other natural resources on federal, state, tribal and private lands, including serving as co-lead entity for preparation, adoption and implementation of the Malheur Subbasin Plan.

1.7 The BPT has an abiding interest in restoring access for tribal members to hunt and fish throughout its ancestral territory, for cultural and subsistence purposes.

1.8 The BPT has an abiding interest in protecting, restoring and enhancing the fish and wildlife resources of its ancestral territory. The anadromous fish resources of the Malheur River Basin are particularly important to the BPT and restoring the spring Chinook salmon and summer steelhead of the Malheur River Basin is a top priority.

1.9 Oregon, acting through the Fish and Wildlife Commission (FWC), exercises responsibility under state law to protect and maintain the fish and wildlife resources of the State. Oregon has an abiding interest in protecting, restoring and enhancing the State's anadromous fish resources.

1.10 The BPT and ODFW have a shared vision of a Malheur Basin reconnected to the greater Columbia River Basin, free of impediments to fish passage to support thriving and self-sustaining anadromous fish populations.

1.11 The BPT believes that BOR, BPA, and Idaho Power have failed to adequately protect, mitigate, or enhance traditional and culturally significant fish and wildlife populations and to date, no mitigation losses have been settled between the Burns Paiute Tribe and these entities.

1.12 The BPT believes that BOR, BPA, and Idaho Power are liable for the cumulative annual losses of Chinook and steelhead stemming from reservoir operations, which resulted in reduced run sizes and the eventual extirpation of anadromous fish in the Malheur.

1.13 The BPT and ODFW have a shared interest in restoration and agree that eventual reintroduction in the blocked areas is in the best interest of supporting both Parties' shared vision for the Malheur Basin.

Part 2 PURPOSES

Subject to paragraph 6.9, the PURPOSES for this THIS AGREEMENT are —

2.1 To provide ODFW's support and cooperation for the BPT's efforts to protect and enhance fish and wildlife populations, cultural resources, and habitat connectivity including –

2.1.1 Reintroduction of genetically appropriate, as agreed to by both parties, spring Chinook salmon and summer steelhead in the Malheur River;

2.1.2 Cultural and subsistence salmon fisheries in the Malheur River;

2.1.3 Cultural and subsistence hunting in agreed upon areas outside tribal lands; and

2.1.4 Protection of cultural resources, and increasing access for BPT to cultural resources within the limits of ODFW's statutory authority;

2.1.5 To identify measures to reduce transportation-related wildlife mortality throughout the Tribes traditional territory.

2.2 To further the existing government-to-government relationship between the BPT and the State of Oregon, including –

2.2.1 Supporting BPT's efforts to form an advisory and coordination body, referred to as a "Hells Canyon Advisory Committee", with representatives from federal and state agencies, Tribes, and hydropower interests. This group would work cooperatively on salmon reintroduction goals and objectives and seek to address limiting factors to salmon reintroduction.

Part 3 ANADROMOUS FISH REINTRODUCTION IN THE MALHEUR RIVER

3.1 REINTRODUCTION GOALS

3.1.1 ODFW and BPT agree that the long-term goal of collaboration between the parties is to support reintroduction of genetically appropriate spring Chinook salmon and summer steelhead into the Malheur River.

3.1.2 ODFW and BPT agree to work cooperatively to establish habitat conditions necessary for successful reintroduction of spring Chinook salmon and summer steelhead into the Malheur River.

3.2 SALMON REINTRODUCTION STUDIES

3.2.1 ODFW shall cooperate with the BPT to evaluate the feasibility of reintroduction of anadromous fish stocks that are not listed as threatened or endangered in the Malheur River.

3.2.2 ODFW and BPT will work cooperatively to develop a pathogen assessment and plan to minimize risk to bull trout and redband trout from any reintroduction of spring Chinook salmon and summer steelhead in the Malheur River and its tributaries. Both parties will work together to identify funding. The pace of this work may be contingent on available funding and ODFW's lab capacity for processing samples.

3.2.3 ODFW and BPT will work collaboratively to prepare the pathogen assessment and plan to minimize risk (described in 3.2.2) consistent with the existing U.S. Fish and Wildlife Service's Federal Power Act Section 18 prescription for bull trout, filed with the Federal Energy Regulatory Commission in the Hells Canyon Complex relicensing proceeding. Pathogen assessment and testing procedures will be developed by ODFW's fish pathology staff and will include pathogen surveillance protocols that staff from both parties can use. ODFW shall provide testing for the fish pathogen assessment. The Parties understand and agree that the purpose of the pathogen assessment is to inform fish managers of the current fish pathogens in the Malheur River to inform next steps in minimizing risk in the movement of fish from below Hells Canyon Dam to upstream receiving waters within the Malheur River basin.

3.2.4 ODFW will authorize the BPT to study propagation of naturally-spawning salmon and steelhead within limited reaches of the Malheur River through out-planting spring Chinook salmon and/or summer steelhead if both parties agree that the pathogen assessment and plan described in 3.2.3 of this agreement indicates that the risk to existing, sensitive species can be minimized. This could include spring Chinook salmon and/or summer steelhead from below Hells Canyon Dam or other stocks, if the assessment identifies significant risk to bull trout and redband trout from Hells Canyon fish stocks.

3.2.5 ODFW shall provide pathogen testing for a subset of fish determined by both parties to be appropriate prior to any release in the Malheur River contingent on available funding and ODFW's lab capacity for processing samples.

3.2.6 ODFW agrees to meet with BPT on an annual basis, or more frequently as agreed upon, regarding progress on and evaluation of data, analyses and studies related to anadromous fish passage and reintroductions above the Hells Canyon Complex.

3.2.7 Prior to anadromous fish reintroductions, the parties will seek funding to initiate an appropriate monitoring program.

Part 4 TRIBAL CULTURAL RESOURCES PROTECTION AND USE

4.1 TRIBAL CULTURAL AND SUBSISTENCE FISHERY

4.1.1 After consulting with BPT, ODFW proposed, and the FWC adopted, permanent Administrative Rules that allow annual harvest of Chinook salmon on the upper Malheur River.

4.1.2 ODFW and BPT agree to meet annually to review opportunities to increase the out-planting of fish to meet the cultural and subsistence needs of BPT and public recreational fishery in the Malheur River.

4.1.3 ODFW and BPT agree to meet annually, or more frequently as agreed upon, to review opportunities to increase fish hatchery production of Chinook salmon or steelhead, or both, including discussion of and exploration of opportunities to address existing regulatory, funding, and infrastructure constraints, and other factors that affect the availability of hatchery produced fish for tribal opportunities.

4.1.4 ODFW agrees to provide adult spring Chinook for BPT ceremonial and cultural fisheries, subject to annual hatchery brood stock collection needs, available surplus

hatchery spring Chinook and the availability of trucking resources. BPT agrees to continue to secure funding for trucking and liberation costs associated with transporting adult spring Chinook from hatchery facilities to the upper Malheur River.

4.1.5 ODFW agrees to donate surplus (high quality/food grade) salmon and steelhead carcasses, when available, to BPT for tribal use and consumption, in accordance with the distribution of fish in excess of hatchery production goals.

4.1.6 BPT agrees to report to ODFW all harvest of spring Chinook by tribal members annually.

4.2 TRIBAL CULTURAL AND SUBSISTENCE HUNTING

4.2.1 After consulting with BPT, ODFW proposed, and the FWC has adopted permanent Administrative Rules that allow for ceremonial and cultural hunting in agreed upon areas outside tribal lands during mutually agreeable seasons.

4.2.2 ODFW and BPT agree to meet annually to review opportunities to increase tag numbers, hunting area, species hunted, method of take, season dates, and other related topics to meet the cultural and subsistence needs of BPT.

4.2.3 BPT agrees to report to ODFW all harvest under the Administrative Rules referenced in 4.2.1 of this agreement.

4.3 TRANSPORTATION-RELATED WILDLIFE MORTALITY

4.3.1 ODFW and BPT shall meet annually, or more frequently as agreed upon, to identify measures to reduce transportation-related wildlife mortality throughout the Tribe's traditional territory. ODFW and BPT agree to work collaboratively to review opportunities to implement feasible enhancement tools identified in the Highway 20 Wildlife Habitat Connectivity Feasibility Study (Table 4-1) and other relevant wildlife connectivity opportunities identified by ODFW or the Tribe.

Part 5 GOVERNMENT-TO-GOVERNMENT RELATIONS

5.1 ODFW and BPT agree to cooperate on governmental matters of mutual interest.

5.2 The ODFW Director or designee shall meet annually with the BPT Tribal Council to discuss progress on meeting reintroduction goals, and to discuss other issues relating to protection and enhancement of tribal cultural resources, including specific matters identified above. ODFW and Tribal natural resource managers shall meet on an annual basis to discuss management activities including harvest management, watershed and habitat protection, restoration, habitat and population establishment/enhancement actions, non-lethal and lethal removal of invasive species, and other management activities.

5.3 ODFW agrees to work collaboratively with BPT regarding environmental review for proposals that may adversely affect Malheur River Basin fish and wildlife resources.

5.4 ODFW agrees to work cooperatively with BPT on management of Natural Resources. The Parties will coordinate the use of their respective authorities, expertise, and influence as regulatory or voluntary opportunities are presented to protect, enhance, and restore fish and wildlife habitat and populations. The Parties will coordinate applying for, seeking, and obtaining third party funding through grants, appropriations, or other means to enhance financial resources available to carry out resource management activities, including but not limited to applying for funding as an intergovernmental partnership. This provision does not prohibit each from also applying for such funding on its own.

5.5 The geographic scope of the cooperation and coordination set forth in the provisions of Part 5 is limited to the area that the Burns Paiute Tribe identifies as Aboriginal territory within Oregon and any areas or locations that are of interest to both parties both within and outside of Oregon that may affect the conditions or species in that area, including the Snake River Basin. For reference, description and map of BPT's asserted traditional Aboriginal territory is attached. However, nothing in this Agreement is intended to preclude ODFW from consulting or coordinating with any other Tribe.

Part 6 GENERAL PROVISIONS

6.1 AUTHORITIES

6.1.1 The BPT's authority to enter into this Agreement arises under the Burns Paiute Tribal Constitution and laws.

6.1.2 ODFW's authority to enter into this Agreement arises under Oregon Revised Statutes (ORS) Chapters 190 and 496.

6.1.3 ODFW's obligation to perform its duties under this Agreement is conditioned upon ODFW receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODFW, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any law limiting the activities, liabilities, or monetary obligations of ODFW.

6.2 COMMENCEMENT AND TERMINATION

6.2.1 The Agreement takes effect upon the signature of the Governor of Oregon, ODFW Director, and ratification by the BPT Tribal Council.

6.2.2 Either Party may terminate this Agreement after providing thirty (30) days written notice of intent to terminate to the other Party.

6.3 NOTICES

Any notice or communication required by this Agreement between BPT, Oregon, and ODFW may be by way of regular or certified mail, facsimile, electronic or data transmission, personal delivery, or any other reasonable means that provides actual notice to the recipient and shall be considered completed upon reasonably documented transmission and receipt or three (3) days after mailing, whichever shall be earlier. Any notice or communication required by this Agreement shall be given to the Parties at the addresses set forth below:

If to the BPT:

Calla Hagle
Burns Paiute Tribe
Natural Resources Director
100 Pasigo Street
Burns, OR 97720

With copies to:

Rick Eichstaedt
Attorney-at-Law
25 West Main Avenue
Suite 320
Spokane, WA 99201

If to Oregon Governor:

Governor's General Counsel
Office of the Governor
900 Court Street NE, Suite 254
Salem, OR 97301-4047

With copies to:

Curt Melcher
Director
ODFW
4034 Fairview Industrial Dr SE
Salem, OR 97302

If to ODFW:

Philip Milburn
Klamath/Malheur Watershed Mgr
ODFW
3814 Clark Blvd.
Ontario, OR 97914

With copies to:

Curt Melcher
Director
ODFW
4034 Fairview Industrial Dr SE
Salem, OR 97302

6.4 SEVERABILITY

No provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision or provisions of this Agreement be unenforceable for any reason, the party finding itself unable to enforce said provision(s) may, at its sole discretion, declare this entire Agreement to be null and void.

6.5 WAIVER

If either party fails to exercise its rights under this Agreement, it shall not be precluded from subsequent exercise of its rights. A failure to exercise rights shall not constitute a waiver of any other rights under this Agreement, unless stated in a letter signed by an authorized representative of the Party and attached to the original agreement.

6.6 AMENDMENT

Amendments to this Agreement must be in writing and signed by authorized representatives of each of the Parties.

6.7 GOVERNING LAW/ SOVEREIGN IMMUNITY

This Agreement shall be governed and enforced under the laws of the State of Oregon. Nothing in this Agreement shall be construed as waiving the sovereign immunity of either Party.

6.8 COMPLIANCE WITH LAW; NO PRINCIPLE OR PRECEDENT

Nothing in this Agreement is intended or shall be construed to affect or limit either party from complying with its obligations under applicable laws and regulations. This Agreement establishes no principle or precedent with regard to any issue addressed in this Agreement, or with regard to any Party's participation, in any other pending or future administrative or judicial proceeding. By entering this Agreement, no Party shall be deemed to have made any admission or waived any contention of fact or law that it did make or could have made in any such proceeding; provided further that this Agreement shall not be offered in evidence or cited as precedent by any Party to this Agreement in any mediation, arbitration, litigation or other administrative or adjudicative proceeding, except in a proceeding to establish the existence of, or to enforce, or to implement this Agreement. Section 6.8 shall survive any termination of this Agreement.

6.9 STIPULATION

The Parties agree that nothing in this Agreement shall be construed to constitute Oregon's commitment, or encouragement or collaboration with the Tribe, to make any recommendation, condition, prescription, determination, or comment with respect to spring Chinook salmon or summer steelhead in any proceeding relating to any new Federal Energy Regulatory Commission license for the Hells Canyon Complex Hydroelectric Project.

6.10 COUNTERPARTS

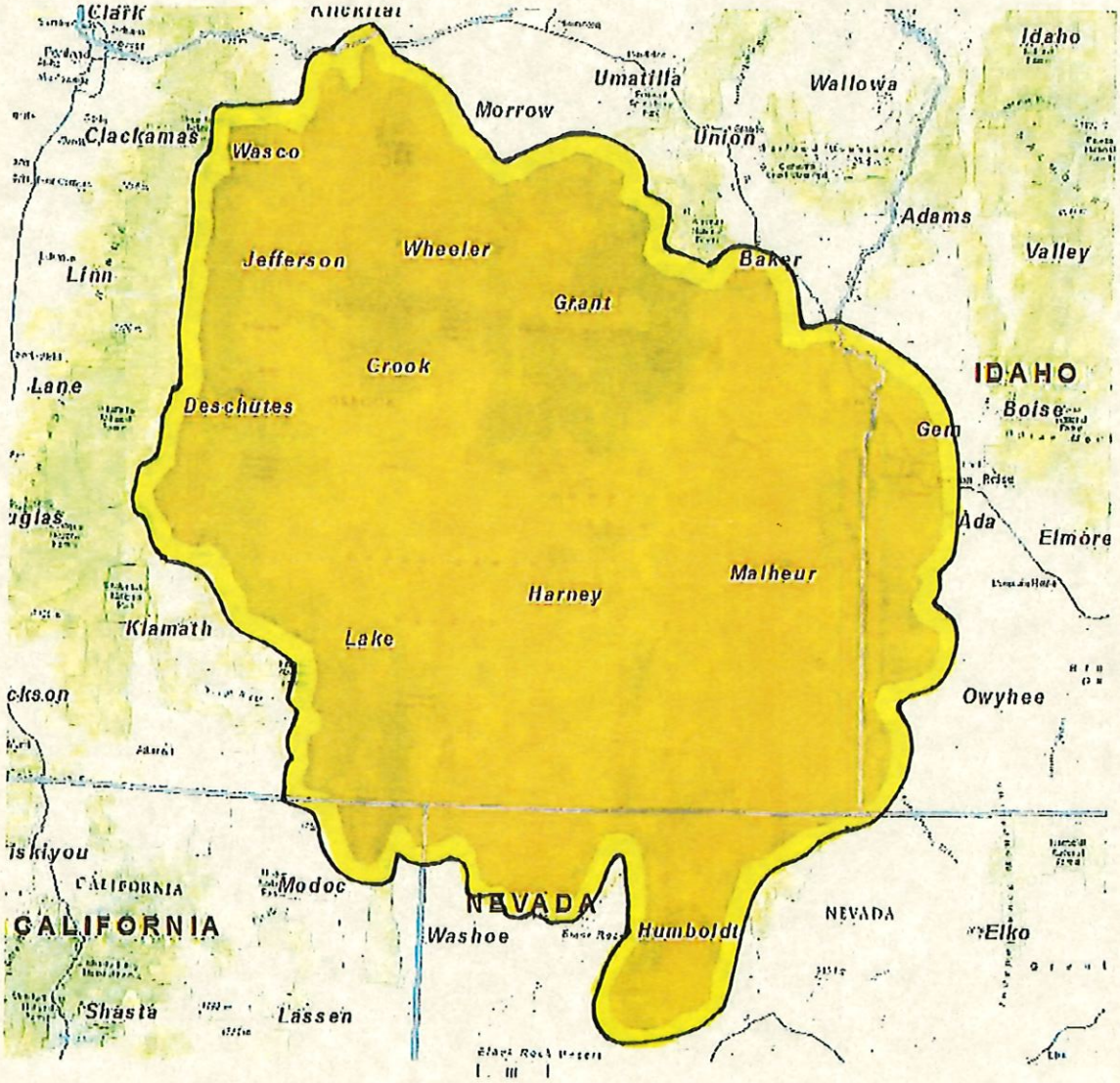
This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

Attachment 1:

Description and map of BPT's asserted traditional Aboriginal territory

Traditional Territory (Burns Paiute Tribe)

The Burns Paiute Tribe traditional aboriginal territory extends from the east foothills of the Cascades up north to The Dalles, extending east into Boise, Idaho, south to Smokey Spring, Nevada, and into California, to the southern tip of Goose Lake.



Scale: 1:3,000,000

6.11 NO PRESUMPTION AGAINST DRAFTING PARTY

The Parties acknowledge that each Party has participated in the drafting of this Agreement, and that any ambiguity should not be construed for or against any Party on account of such drafting.

In witness of the foregoing provisions, the Parties have signed this Agreement below:

BURNS PAIUTE TRIBE

D L Teeman

Hon. Diane Teeman
Tribal Chair
Date: 3 OCT 2022

OREGON DEPARTMENT OF FISH AND WILDLIFE

Curtis E Melcher

Curtis E. Melcher
ODFW Director
Date: October 3, 2022

GOVERNOR OF THE STATE OF OREGON

Kate Brown

Hon. Kate Brown
Governor, Oregon
Date: 10/3/22

Attachment 1:

Description and map of BPT's asserted traditional Aboriginal territory