

**AGREEMENT BETWEEN THE CONFEDERATED TRIBES OF THE COLVILLE
RESERVATION AND THE WASHINGTON DEPARTMENT OF FISH AND WILDLIFE**

PARTIES

This Agreement is entered into by and between the Confederated Tribes of the Colville Reservation, Nespelem, Washington (CCT or Colville Tribes), and the Washington Department of Fish and Wildlife, Olympia, Washington (WDFW).

RECITALS

WHEREAS, the Colville Tribes declare that they have always relied on the wildlife and fisheries resources of the Columbia Plateau and the Okanogan Highlands to the north for their subsistence, culture, trade, and ceremonies, and this way of life was preserved by the 1891 Agreement, which secured for all time the right of Colville tribal members "to hunt and fish in common with all other persons on lands not allotted to said Indians" in the North Half of the Colville Reservation and guaranteed that such rights "shall not be taken away or in anywise abridged"; and

WHEREAS, the Colville Tribes, Colville tribal member C. Vernon Johnson and WDFW are engaged in litigation in the United States District Court for the Eastern District of Washington entitled *Confederated Tribes of the Colville Reservation et al. v. Phil Anderson et al.*, No. CV-09-342-EFS ("*Colville v. Anderson*"), in which CCT and Mr. Johnson challenge WDFW's authority to enforce certain public safety statutes and regulations of the State of Washington against Colville members exercising federal reserved hunting rights under the 1891 Agreement between CCT and the United States in the North Half of the Colville Indian Reservation ("North Half"); and

WHEREAS, independent of *Colville v. Anderson*, CCT has challenged WDFW's law enforcement presence on the Colville Reservation by the Colville Business Council's enactment of Resolution 2011-168 on March 17, 2011, which purports to ban WDFW Enforcement Officers acting in their official capacity from entering the sovereign territories of the Reservation; and

WHEREAS, the Colville Tribes desire to enter into a settlement agreement that furthers their sovereignty by protecting tribal members hunting in the North Half and ensuring that Colville tribal law governs such hunting; and

WHEREAS, the parties wish to resolve these issues in a manner which preserves their respective legal positions, promotes trust and understanding among the parties, enhances their mutual and cooperative efforts to protect public safety and manage wildlife resources, and eliminates the need for further proceedings in this litigation.

NOW, THEREFORE, in consideration of the mutual promises and covenants below, the parties hereby agree as follows:

AGREEMENT

I. Scope of Settlement

A. Laws Regarding Hunting Safety

Except as expressly provided herein, this Agreement is limited to the enforcement of six public safety laws, described in greater detail in Part III below, against CCT members hunting in the North Half. These public safety laws are:

1. Possession of a loaded firearm in a motor vehicle;
2. Negligent shooting across a roadway;
3. Hunting while intoxicated;
4. Spotlighting;
5. Hunting Hours; and
6. Hunter Orange.

Enforcement of any other public safety law, including the state's reckless endangerment provision, RCW 9A.36.050, is outside the scope of this Agreement.

B. Colville Business Council Resolution 2011-168

This Agreement includes CCT's commitment to repeal Resolution 2011-168 and the parties' commitment to work together in good faith to develop written protocols for WDFW Enforcement Officers on the Colville Reservation, as described in Part X below.

C. 2007 Lake Rufus Woods Agreement

This Agreement includes one modification to the December 17, 2007, agreement between WDFW and CCT regarding management and regulation of fisheries at Lake Rufus Woods ("Lake Rufus Woods Agreement"), as described in Part XI below.

II. Reservation of Rights

- A. Nothing in this Agreement shall be deemed to be a concession or admission by either party as to any claim, defense or legal argument with respect to the nature or scope of hunting rights, state or tribal jurisdiction or management authority; or a waiver of the right to refile the litigation or challenge such claims, defenses or legal arguments upon expiration or termination of this Agreement. Except as provided in Part VIII.C, neither this Agreement nor the activities of the parties pursuant to this Agreement shall be utilized to affect the equitable or legal position of either party in any future litigation.

- B. By approving this Agreement, no party waives its sovereign immunity. However, as provided in Part IX.B, below, the parties agree that they will not raise the defense of sovereign immunity in any action to interpret or enforce this Agreement under Part IX, provided that such action does not seek any money award, damages, or attorneys fees.

III. Enforcement Protocols

During the term of this Agreement, the following protocols shall govern WDFW enforcement of the state public safety laws and regulations set forth below against CCT members exercising hunting rights on the North Half. These protocols shall be the only action taken to enforce such laws and regulations.

- A. **Loaded Firearm in Vehicle** *RCW 77.15.460(1) and WAC 232-12-828(6) prohibit possession of rifle or shotgun in a vehicle when a shell or cartridge is either in the chamber or the attached magazine; CCT Tribal Code 4-1-249 prohibits possession of a weapon in a vehicle with a bullet in the chamber.*

If a WDFW Enforcement Officer encounters a CCT member who is hunting and possesses a rifle or shotgun in a vehicle, the WDFW Enforcement Officer may conduct a routine weapons check pursuant to RCW 77.15.080(1) and, following the routine weapons check, shall handle the matter as follows:

1. If the WDFW Enforcement Officer determines that there is a shell or cartridge in the magazine, but not in the chamber of the rifle or shotgun, WDFW shall take no further enforcement action with respect to the loaded firearm in vehicle issue.
2. If the WDFW Enforcement Officer determines that there is a shell or cartridge in the chamber of the rifle or shotgun, WDFW shall refer the matter of the loaded firearm in vehicle to CCT to process as a violation of tribal law.

- B. **Negligent Shooting Across Roadway** *RCW 77.15.460(2) prohibits negligent shooting of a firearm from, across, or along the maintained portion of a public highway; CCT Tribal Code 4-1-248 prohibits negligent shooting of a firearm or arrow from, across, or along the maintained portion of a public highway.*

If a WDFW Enforcement Officer encounters a CCT member negligently shooting a firearm from, across, or along the maintain portion of a public highway, WDFW shall refer the negligent shooting matter to CCT to process as a violation of tribal law upon determining that the member is hunting.

- C. **Hunting While Intoxicated** *RCW 77.15.675 prohibits hunting under the influence of intoxicating liquor or drugs; CCT Tribal Code 4-1-243 prohibits hunting with firearms or bows and arrows, or fishing, while under the influence of intoxicating liquor or drugs.*

If a WDFW Enforcement Officer encounters a CCT member hunting while intoxicated, WDFW may secure the suspect to address any immediate threat to public safety, and shall thereafter refer the hunting while intoxicated matter to CCT to process as a violation of tribal law. If detention of the suspect is reasonably necessary to protect public safety, WDFW shall promptly contact CCT Law Enforcement and, if CCT is able to take custody of the suspect within a reasonable time, transfer the suspect to CCT custody.

- D. **Spotlighting** *RCW 77.15.450 prohibits hunting big game with aid of a spotlight, artificial light, or night vision equipment, while possessing firearm, bow and arrow, or crossbow. "Big game" includes elk, deer, moose, mountain goat, caribou, mountain sheep, pronghorn antelope, cougar, and bear. CCT Tribal Code 4-1-250 prohibits hunting using any artificial light of any kind unless use of such light is approved by regulation for a specific hunt and prohibits hunting using any artificial light which is greater than 10,000 candlepower in magnitude under any circumstances.*

If a WDFW Enforcement Officer encounters a CCT member hunting big game with the aid of a spotlight, artificial light, or night vision equipment, WDFW shall refer the spotlighting matter to CCT to process under tribal law.

- E. **Hunting Hours** *WAC 232-12-289 sets lawful hunting hours for most game species as ½ hour before sunrise to ½ hour after sunset, except for bobcat and raccoon when the area is not open to modern firearm hunting of deer and elk. CCT Regulations set lawful hunting hours for most species as ½ before sunrise to ½ hour after sunset, except for black bear, cougar, bobcat, raccoon, and skunk.*

If a WDFW Enforcement Officer encounters a CCT member hunting outside of the state's established hunting hours, WDFW shall refer the hunting hours matter to CCT to process under tribal law.

- F. **Hunter Orange** *WAC 232-12-055 generally prohibits hunting during modern firearm season unless the hunter is wearing 400 square inches of hunter orange. Hunter Orange is not required for hunting upland game birds with muzzleloader, bow, or falconry. CCT Regulations highly recommend that anyone hunting in an area where there is an open deer or elk modern firearm season for non-members wear 400 square inches of hunter orange.*

If a WDFW Enforcement Officer encounters a CCT member hunting without hunter orange, WDFW will take no enforcement action with respect to WAC 232-12-055.

IV. **Referral to CCT; Reporting**

- A. Upon referral of a matter to CCT as provided for in Part III above, WDFW shall provide to CCT all relevant investigative information, work cooperatively with CCT

Enforcement Officers and prosecutors, and respond to CCT court subpoenas regarding the matter.

- B. Beginning six months from the effective date of this Agreement, and every six months thereafter while this agreement is in effect, CCT shall provide to WDFW a written report of: (1) all active matters referred to CCT under this Agreement; (2) the date of referral; (3) a description of the tribal law violation(s) at issue; (4) name(s) of the defendant(s); (5) the status of the matter; and (6) for any matter disposed during the six-month period, a summary of the disposition (including whether prosecuted or dismissed, and any penalty imposed). Upon request by WDFW, CCT shall provide such information regarding specific enforcement encounters within a reasonable time.
- C. Nothing in this Agreement shall limit the prosecutorial discretion of CCT under tribal law in any matter referred under the Agreement.

V. Notice of Enforcement Encounters; Addressing Complaints

- A. Beginning six months from the effective date of this Agreement, and every six months thereafter while this Agreement is in effect, WDFW shall provide to CCT a list of all WDFW Enforcement Officer encounters with CCT members in the North Half in which a routine weapons inspection of any rifle or shotgun in the vehicle pursuant to RCW 77.15.080(1) occurs, the name of the CCT member(s) involved in the encounter, and a copy of the incident or dispatch report from the encounter. Upon request by CCT, WDFW shall provide such information regarding specific enforcement encounters within a reasonable time.
- B. If a CCT member submits a complaint to WDFW regarding the conduct of a WDFW Enforcement Officer during an enforcement encounter involving one or more of the public safety laws in Part III above, WDFW shall provide notice to CCT of such complaint and investigate the alleged incident on an expedited basis. Following the investigation, WDFW shall prepare a draft report summarizing the findings of the investigation and transmit the draft report to CCT for review. CCT may submit comments on the draft report within thirty days of receipt of the draft report. Upon CCT's request within this period, WDFW shall meet to discuss the investigation and/or the findings set forth in the draft report. WDFW shall consider CCT's feedback before finalizing the report, and shall transmit the final report to CCT.
- C. If a non-member submits a complaint to CCT regarding the conduct of a CCT Enforcement Officer during an enforcement encounter involving one or more of the public safety laws in Part III above, CCT shall provide notice to WDFW of such complaint and investigate the alleged incident on an expedited basis. Following investigation, CCT shall prepare a draft report summarizing the findings of the investigation and transmit the draft report to WDFW for review. WDFW may submit comments on the draft report within thirty days of receipt of the draft report. Upon WDFW's request within this period, CCT shall meet to discuss the investigation

and/or the findings set forth in the draft report. CCT shall consider WDFW's feedback before finalizing the report, and shall transmit the final report to WDFW.

- D. Any complaint transmitted to CCT or WDFW pursuant to Paragraphs B or C above shall, at CCT's or WDFW's request, be included as an agenda item at the annual meeting held pursuant to Part VI below.
- E. In light of the critical role that WDFW Enforcement Officers assigned to regular enforcement duties in the North Half will have in implementing this Agreement, the parties agree as follows:
 - 1. All newly hired or transferred WDFW Enforcement Officers assigned regular enforcement duties in the North Half shall attend a cultural sensitivity training session prepared and presented by CCT. CCT and WDFW shall coordinate the scheduling of the session to ensure WDFW Enforcement Officer availability. CCT shall provide a summary of the material for the session to WDFW, and WDFW shall have a reasonable time in which to review and comment on such material prior to attendance by WDFW Enforcement Officers. CCT shall consider WDFW's feedback before finalizing the material for the session. Current WDFW Enforcement Officers may also attend the sessions.
 - 2. WDFW and CCT shall review the effectiveness of the cultural sensitivity training at the Annual Meeting provided for in Part VI, and discuss whether to modify the foregoing Paragraph V.E.1. Such discussions will include whether to develop a joint CCT/WDFW training that would be required for both WDFW and CCT Enforcement Officers assigned regular enforcement duties in the North Half.
 - 3. WDFW and CCT shall provide a copy of this Agreement and all relevant laws and regulations to all current and future WDFW and CCT Enforcement Officers assigned regular enforcement duties in the North Half.

VI. Annual Meeting

At least ninety days prior to the anniversary date of this Agreement, the parties shall meet to discuss implementation of the Agreement. The parties are committed to addressing any concerns about implementation of the Agreement at the appropriate policy and/or staff level. Agenda items for the annual meeting shall include: (1) WDFW referrals to CCT and the status of such referred matters; (2) complaints by CCT members or by non-members arising from enforcement encounters under this Agreement; (3) implementation of written protocols for WDFW Enforcement Officers entering the Colville Reservation, as discussed in Part X; (4) issues relating to the possible joint funding, joint training, and cross-deputization of North Half enforcement officers; (5) modification of the term or any other provision of the Agreement, including but not limited to Paragraph V.E.1; and (6) any other issue related to the implementation of the Agreement. The parties may agree to meet at other times to discuss the implementation of the Agreement and related issues, and informal communications via telephone or email are encouraged.

VII. Term of Agreement; Automatic Renewal; Termination

- A. The initial term of this Agreement shall be two years from the effective date. During the initial two-year term, this Agreement shall not be terminated except by mutual written consent of the parties or except as provided for in Paragraph C below. Upon expiration of the initial two-year term, this Agreement shall automatically renew for additional one-year terms, except as provided for in Paragraph B below.
- B. During the initial two-year term or any subsequent one-year renewal term, and at least 30 days prior to expiration of the term, a party may transmit written notice of its intent to terminate this Agreement. Upon such notice, this Agreement shall terminate at the end of the term unless the parties mutually agree in writing on a different expiration date.
- C. During the initial two-year term or any subsequent one-year renewal term, WDFW may terminate this Agreement in the event that CCT adopts a resolution concerning WDFW Enforcement Officers' entry to the Colville Reservation that is inconsistent with the written protocols developed by the parties pursuant to Part X below, provided that such termination shall not take effect until WDFW provides CCT written notice that it believes CCT has adopted an inconsistent resolution and provides an opportunity for WDFW and CCT to meet in person within a reasonable time of such notice. Any termination under this Paragraph C shall not take effect less than 30 days after CCT's receipt of the notice described herein.

VIII. Dismissal of Litigation Without Prejudice; Covenant Not to Sue

- A. Concurrent with the execution of this Agreement, the parties shall stipulate to dismissal of *Colville v. Anderson* without prejudice.
- B. Each party shall bear its own attorney fees and costs.
- C. The parties covenant not to sue, and not to assist others to sue, any party with respect to any issue concerning authority to enforce the six public safety laws referenced in Part III while this Agreement remains in effect, provided that the parties may enforce this Agreement pursuant to Part IX below. This Agreement shall be an absolute defense to any litigation filed in violation of this Paragraph C, including any prosecution of CCT members for violating the six public safety laws referenced in Part III.

IX. Dispute Resolution; Enforcement of Agreement

- A. In the event of a dispute regarding interpretation of or compliance with this Agreement, the parties shall attempt to resolve the dispute informally by communication between the designated contacts or by referring the dispute to policy representatives. A party may request a meeting of policy representatives on an issue

in dispute by providing written notice of the existence and nature of the dispute to the other party. The parties may agree to refer any dispute to non-binding mediation.

B. In the event a dispute is not resolved under Paragraph A above, a party may seek to enforce this Agreement through legal action. The venue for such an enforcement action shall be either the United States District Court for the Eastern District of Washington or the Superior Court of the State of Washington for Okanogan County. The parties agree that they will not raise the defense of sovereign immunity in any action to interpret or enforce this Agreement under this Part IX provided that such action does not seek any money award, damages, or attorneys fees.

X. Repeal of CCT Resolution 2011-168

A. CCT shall repeal Colville Business Council Resolution 2011-168. The parties commit to working together in good faith to develop mutually acceptable written protocols for WDFW Enforcement Officers entering the Colville Reservation on official business. The repeal of Resolution 2011-168 shall occur within 45 days of the effective date of this Agreement.

B. Notwithstanding any other provision of this Agreement, WDFW's obligations under this Agreement are conditioned upon repeal of Resolution 2011-168, and a failure of the Colville Business Council to timely repeal the resolution will automatically terminate this Agreement.

XI. Amendment to Lake Rufus Woods Agreement

The parties agree to amend Paragraphs 2 and 8 of the Lake Rufus Woods Agreement, as specified in Appendix 1 attached hereto, to require that they conduct a minimum of two joint patrols per year. No other provision of the Lake Rufus Woods Agreement is modified by this Agreement.

XII. Effect on Existing Agreements

Except as expressly provided in Part XI above, this Agreement does not modify any other agreement between CCT and WDFW, although the parties may coordinate implementation of their various agreements. If this Agreement is terminated, no other agreements between the parties shall be affected, except that the amendment to the Lake Rufus Woods Agreement in Part XI above shall also be terminated.

XIII. Communications

Designated contact persons for each party for all matters pertaining to this Agreement shall be:

CCT

Joe Peone
Director, CCT Fish and Wildlife
P.O. Box 150
Nespelem, WA 99155
(509) 634-2113 (office)
(590) 631-0161 (cell)
(509) 634-2126 (fax)
joe.peone@colvilletribes.com

Mike Palmer
CCT Parks and Recreation Manager
P.O. Box 150
Nespelem, WA 99155
(509) 634-3147 (office)
(509) 322-8065 (cell)
(509) 634-3150 (fax)
mike.palmer@colvilletribes.com

WDFW

A Regional Director and an Enforcement Captain to be designated by the Director of WDFW.

Either party may change its designated contact persons by providing written notice to the other party.

XIV. Amendment

Any amendment to or modification of this Agreement shall be valid only if it is in writing and signed by the parties.


XV. Upon Whom Binding

This Agreement and its mutual promises and covenants shall extend to and be binding upon the assigns, successors, agents and administration of the parties and to all persons acting by or through the parties.


XVI. Signature of the Parties; Effective Date of Agreement

The undersigned persons executing this Agreement represent and warrant that they are authorized signatories of the party for which they are signing, and have sufficient legal authority to execute this Agreement. This Agreement is effective on the date of the last signature of the parties.

We the undersigned accept the provisions in this Agreement and agree to cooperate in implementing the Agreement.


Philip Anderson
Director, WDFW

2-28-12
Date


Michael Finley
Chairman, Colville Business Council

2-24-12
Date

Appendix 1

Paragraph 2 of the Agreement between Confederated Tribes of the Colville Reservation And Washington Department of Fish and Wildlife for a Pilot Project Regarding Management and Regulation of Fisheries At Lake Rufus Woods (“Lake Rufus Woods Agreement”), dated December 17, 2007, is hereby amended by adding the following sentence to the end of the paragraph:

State funding for Colville Tribes’ enforcement positions is conditioned upon the Tribes’ participation in at least two joint enforcement patrols per year pursuant to Paragraph 8.

Paragraph 8 of the Lake Rufus Woods Agreement is hereby amended by adding the following sentence to the end of the paragraph:

The parties shall conduct a minimum of two joint patrols per year.

All other provisions of the Lake Rufus Woods Agreement shall remain in effect without modification.