

INTERGOVERNMENTAL AGREEMENT

**REGARDING PHASE IV WATERSHED PLAN
IMPLEMENTATION FOR WRIA 20**

**Preliminarily Approved by the WRIA 20
Initiating Governments Representatives on:
April 21st, 2009**

WHEREAS Jefferson and Clallam County approved a Watershed Plan for WRIA 20 on November 5th, 2008; and the Initiating Governments under said plan now desire to form an Implementation Body and establish an Intergovernmental Agreement to further such implementation;

WHEREAS, coordinated efforts for watershed plan implementation in WRIA 20 are a priority; in part because it contains some of the last runs of wild salmonids in Washington State that are not ESA-listed, and

WHEREAS, Chapter 90.82 RCW, Watershed Planning, provides authority for local watershed implementation of approved plans for waters and water rights under State jurisdiction and directions for the initiation of planning and eligibility for grant funds, and

WHEREAS the Interlocal Cooperation Act (Chapter 39.34 RCW) provides authority for governmental entities to exercise their respective powers jointly through intergovernmental agreements; and

WHEREAS, watershed planning and implementation of WRIA 20 under Chapter 90.82 RCW included representation by a wide range of water resource interests in the investigation and planning of actions relating to water quantity, water quality, fish habitat restoration and preservation, and instream flows, and the identification of projects and activities to protect water resources and improve natural resource management; and

WHEREAS, Chapter 90.82.060(2) provides that watershed planning and implementation may only be undertaken with the concurrence of the following entities:

1. All counties in the Water Resource Inventory Area (WRIA); and
2. The largest city or town within the WRIA; and
3. The water supply utility obtaining the largest quantity of water from the WRIA; and

WHEREAS, under Chapter 90.82.060 (4&5), the initiating entities after deciding to proceed, must invite each tribe with reservation lands within the management area to participate as an Initiating Government; and

WHEREAS, the following Indian Tribes have been invited and have agreed to participate as initiating governments: Makah Tribe, Quileute Tribe, and Hoh Tribe--and by their acceptance, the Initiating Governments now consist of these tribes, the City of Forks, Jefferson County and Clallam County, and

WHEREAS, the initiating governments will invite into the Implementation Body (IB) other interested parties, including but not limited to, federal and State government agencies or services, interest groups and individuals to be stakeholders in the process and form caucuses; and

WHEREAS, under Chapter 90.82 RCW, after the Initiating Governments approve the Watershed Plan and commence implementation and invite the Tribes to participate, they must designate a lead agency and indicate how the Implementation Body will be staffed,

NOW, THEREFORE, the Initiating Governments agree to make this Interlocal Agreement (“Agreement”) as follows:

1. Formation of the WRIA 20 Initiating Governments

The Initiating Governments are Clallam County, Jefferson County, City of Forks, Makah Tribe, Quileute Tribe, and Hoh Tribe. Clallam County serves as lead agency for Phase IV implementation of the watershed planning process. The Initiating Governments shall provide for staffing of the watershed planning effort, management of grant funds, resolution of disputes regarding interim decisions, and a public hearing process. The representatives of the Initiating Governments shall consist of one elected or appointed individual and one alternate from each of the six (6) Initiating Governments from WRIA 20. The recognized representative shall be the voting members of the Initiating Governments, provided that a designated, duly authorized alternate representative may vote in their absence.

2. Funding and Accounting

- a. The Initiating Governments are authorized to apply for and accept grants in the name of the WRIA 20 Initiating Governments and to use existing grant funds and appropriations for the purposes specified herein.
- b. The Initiating Governments’ funds shall be retained in a special account established by the Clallam County Treasurer to be known as the “WRIA 20 Watershed Planning & Implementation Account”. All sums received by the Initiating Governments shall be placed in and disbursed from that account. The Clallam County Treasurer shall be the custodian of the account and the Clallam County Auditor shall keep a record of the receipts and disbursements. The Clallam County Auditor shall draw and the Clallam County Treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the Initiating Governments.
- c. The Clallam County Department of Community Development is hereby designated as the fiscal agent for watershed planning funds from the Dept. of Ecology and will perform certain tasks related to the proper administration of funds, and shall keep full and complete accounts of the costs incurred in connection with the planning and implementation process and shall report to the Initiating Governments on a quarterly basis regarding the accounting of revenues and expenditures.
- d. The Initiating Governments shall not acquire real or personal property in the name of the Implementing Body.

- e. The Initiating Governments agree to disbursement and expenditure of funds as set forth by grant contracts and associated budgets.

3. Staffing for Planning and Implementation Purposes

The Initiating Governments may utilize their staff and resources to organize and administer the planning and implementation processes for WRIA 20 and may hire consultants or additional staff to perform various functions related to the watershed planning process.

4. Scope of Planning and Implementation

- a. The Initiating Governments agree that effective watershed planning and implementation cannot take place without sufficient scientific data to support informed decision-making. To achieve this, the Initiating Governments, with technical assistance from tribal, federal, state and local natural resources agencies, will scope, design and include in the scope of work, scientific studies which provide an acceptable level of certainty concerning all the surface and ground water quality and quantity requirements of the ecosystems and water users in the affected watershed.
- b. It is expected that the water quantity assessment shall comply with the requirements of RCW 90.82/ESHB 2514. Water quality, instream flows and habitat studies may be incorporated into the scope of work subject to the unanimous consent of the Initiating Governments and to the extent funds are made available for this purpose.
- c. Watershed planning and implementation under this Agreement for any waters lying wholly within the Makah Indian Reservation, shall occur outside of the framework of Chapter 90.82 RCW, and shall not extend the jurisdiction of the state of Washington over on-reservation water resources. Waters wholly within the Makah Indian Reservation include but are not limited to the following:
 - i) Tsoo-yess River and its tributaries from their headwaters to the river mouth.
 - ii) Archawat Creek and its tributaries from their headwaters to the river mouth.
 - iii) Hobuck Creek, including Hobuck Lake and its tributaries from their headwaters to the river mouth.
 - iv) Ocean Creek and its tributaries from their headwaters to the river mouth.
 - v) Waatch Creek and its tributaries from their headwaters to the river mouth.
- d. Watershed planning and implementation under this Agreement for any waters lying wholly within the Quileute Indian Reservation, including but not limited to Lonesome Creek, Smith Slough, and their tributaries, shall occur outside of the framework of Chapter 90.82 RCW, and shall not extend the jurisdiction of the state of Washington over on-reservation water resources.
- e. Watershed planning and implementation under this Agreement for any waters lying wholly within the Hoh Indian Reservation, including but not limited to Chalaat Creek, Fletcher Creek and their tributaries, shall occur outside of the framework of Chapter

90.82 RCW, and shall not extend the jurisdiction of the state of Washington over on-reservation water resources.

- f. Where the federal government has exclusive jurisdiction this ILA will not apply.

5. Organization of Implementation Body

The Initiating Governments shall cause to be organized a comprehensive public outreach program for the purpose of soliciting all parties of interest to participate in the watershed implementation process as stakeholders of the Implementation Body (IB).

- a. The Implementation Body shall consist of:
1. Initiating Governments, which include Clallam County, Jefferson County, the City of Forks, the Makah Tribe, the Quileute Tribe, and the Hoh Tribe, and
 2. Stakeholder Groups, approved by the Initiating Governments, representing broad interests from government, private, and nonprofit sectors.
 3. Participating State agencies will have an ex-officio status and be able to participate in discussions on the IB.
- b. Each Stakeholder Group, approved by the Initiating Governments, shall provide a representative and an alternate to represent their Stakeholder Group at the Implementation Body.
- c. "Ground rules" and "Bylaws" for the Implementation Body will be established by cooperation between the Initiating Governments and the approved Stakeholder Groups and will define voting rules for the stakeholders.
- d. All meetings of the Implementation Body are open meetings to the public, pursuant to RCW 42.30 et seq.
- e. Concurrence to Obligation: The parties of this contract hereby incorporate herein the entirety of RCW 90.82.130 (3), as it may be amended in the future.

6. Water Rights Disclaimer

Nothing in this Agreement nor any report, study, or other product resulting from the watershed implementation process or any other activity under this Agreement shall impair any treaty, water or other right of an Indian Tribe or its members, and/or any water or other rights of any other entity or person under any applicable law. Water quantity estimates generated in this watershed planning and implementation process are only estimates and are not intended to formally determine or resolve any legal dispute about water rights under state or federal law or Indian Treaties. These estimates cannot be used to limit, prejudice, or in any way impact, the legal rights or obligations of any parties to this Agreement.

7. No real property will be acquired within the framework of this Agreement. Any other property or equipment purchased under this Agreement, which is funded by grants from the Washington Department of Ecology (DOE), will be disposed of according to the guidelines set forth in DOE publication 91-18 (rev. 9/05), "Administrative Requirements For Ecology Grants And Loans".
8. This Agreement constitutes the entire understanding of the parties and supersedes any prior oral or written understandings of the parties, regarding the local watershed planning for WRIA 20, but does not supersede any Indian Treaties.
9. Any signatory parties to this Agreement may terminate their participation with written notice of intent to terminate by a formal termination letter, which gives no less than forty-five (45) days notice. Within such period, the Initiating Governments shall convene a meeting. Unless the withdrawal of such party terminates the process by law, the remaining Initiating Governments shall continue to operate as the WRIA 20 Initiating Governments under this Agreement.
10. This Agreement may be amended by unanimous written consent of the Initiating Governments.

11. **Effective Date and Term of Agreement**

- a. This Agreement, established with six (6) original copies (one for each of the signatory Initiating Governments) shall be effective immediately upon its execution by the final signatory Initiating Government, Clallam County.
- b. This Agreement shall terminate four (4) years from the last date of execution unless otherwise extended by written amendment of all of the Initiating Governments prior to such date. The Agreement may be terminated earlier upon mutual consent of the Initiating Governments. Upon termination, all unexpended funds shall be disbursed as decided in writing by the Initiating Governments, provided that Clallam County shall first certify to the Initiating Governments that such disbursement complies with the terms of all applicable grants, laws, and accounting principles relating to the expenditure of public funds.

12. **Signatures:**

This document may be executed in counterparts, each of which will have the same force and effect of the original.