

INTERLOCAL COOPERATION AGREEMENT # 09-074/430-2794

THIS AGREEMENT is made by and between PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON ("Chelan"), and PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON ("Grant").

RECITALS

Public Utility Districts are authorized, pursuant to RCW Chapters 39.34 and Title 54, to enter into cooperative agreements for the efficient use of resources.

Grant desires to utilize net pens and barge owned by Chelan located on Lake Wenatchee to perform final acclimation of up to 165,000 spring Chinook.

Grant is defined as any employee, contractor, or agent of Public Utility District No. 2 of Grant County, Washington.

Chelan is defined as any employee, contractor, or agent of Public Utility District No. 1 of Chelan County, Washington.

NOW THEREFORE; in consideration of the mutual promises and covenant contained herein, the parties agree as follows:

I. OBLIGATIONS OF CHELAN AND GRANT

- a. Chelan will allow Grant to use its net pens located on Lake Wenatchee to acclimate up to 165,000 spring Chinook in 2009 for the purposes of meeting Grant's hatchery obligations.
- b. In 2009, Grant shall assemble and install the net pens with Chelan oversight. Assembly by Grant shall include the following: 1) transport of frames and nets from the stored location (typically Chelan's Chiwawa spring Chinook rearing facility) to Grant's assembly location, 2) assemble frames and attach to floats, 3) attach assembled net pen frames to anchoring locations in Lake Wenatchee, and 4) install the nets to the frame after it is secure to the anchor points. Chelan's oversight shall include support for assembly and anchoring. In 2009, the use of the dock and tent typically used for net pen operation shall not be included for Grant's use.
- c. Chelan will allow Grant to use its 37 foot barge located at the Eastbank Hatchery Complex for net pen installation and/or fish transport if Grant so desires. Grant shall be responsible for towing the barge to and from Grant's permitted access location on Lake Wenatchee and operation of the barge for net pen installation and/or fish transport.
- d. In 2009, Grant shall provide Chelan with notice of the net pen installation date at least two (2) business days in advance. Notice shall be in writing (e-mail is satisfactory) addressed to: Alene Underwood at Alene.Underwood@chelanpud.org.

- e. In the event that Grant desires to use Chelan's net pens and/or barge in years 2010 through 2013, Grant shall provide a written request (e-mail is satisfactory) to Chelan no later than December 1 of the year preceding the year of use.
- f. In years 2010 through 2013, after receipt of Grant's request to use Chelan's net pens and/or barge, Chelan shall provide written notice to Grant within 30 calendar days indicating whether or not the requested use will be accommodated.
- g. If Grant utilizes the net pens and/or barge in years 2010 through 2013, all provisions of this Agreement shall apply. Any additional or different terms or conditions must be agreed to in writing by the parties.
- h. Chelan shall only allow installation and use of the net pens after written notification (e-mail is satisfactory) from Grant that appropriate federal, state, and local permits have been acquired.
- i. Grant shall be responsible for securing permission(s) for use of the location(s) for net pen assembly and transport of fish to the net pens. Grant is solely responsible for obtaining necessary access for net pen assembly and transportation of fish. In addition, Grant shall be responsible for any snow removal at such locations if needed.
- j. Grant shall be responsible for the transportation of White River spring Chinook salmon to the net pens.
- k. Grant shall be responsible for the rearing and release of White River spring Chinook salmon reared at this site. Grant shall complete all fish culture activities and release all fish before June 1 of each year.
- l. Chelan shall not use the net pens to rear and release Lake Wenatchee sockeye salmon before June 1 of each year.
- m. Grant shall be responsible for the use of all boats, vehicles, and other equipment necessary for rearing White River spring Chinook in the net pens during the period of this Agreement.
- n. Chelan shall be responsible for the use of all boats, vehicles, and other equipment necessary for rearing Lake Wenatchee sockeye salmon in the net pens during the period of this Agreement.
- o. Grant shall remove its equipment and stop use of Chelan's net pens upon termination of this agreement per Section II.
- p. Grant shall be responsible for and assume financial liability for any damage to Chelan's net pens and/or barge during Grant's period of use. In addition, Grant shall be responsible for and assume financial liability for any damage to the net pens, barge, or other property that occurs as a result of actions related to Grant's installation, towing, or use of Chelan's net pens or barge. Chelan will allow Grant to use its Chiwawa spring Chinook Rearing Facility to store food, vehicles, and other minor equipment. Grant shall be responsible for and assume financial liability

for any damage to the Chiwawa spring Chinook Rearing Facility relevant to Grant's use of Chelan's net pens and/or barge.

II. TERM

This Agreement shall be effective from the date of filing as provided in Section XII and shall remain in full force and effect until December 31, 2013 and may be terminated earlier by written notice issued to the other party at least 30 days in advance of the date of termination. This agreement shall terminate no later than December 31, 2013. For each year in which net pen use occurs, the yearling spring Chinook will be released from Chelan's Lake Wenatchee net pens by June 1.

III. INDEMNITY

Grant and Chelan agree to hold each other harmless and indemnify one another for any acts committed or caused by one of them or their agents, consultants, employees, or sub-contractors against the other or a third party including, but not limited to, property damage, cost, charge or expense, whether direct or indirect and whether occasioned by injury or loss to persons or property. This indemnity obligation specifically includes liability or alleged liability that may arise from injury or loss suffered by any employee of Grant or Chelan or any subcontractor regardless of any immunity provided by the Washington Industrial Insurance Act, RCW Title 51, or any other applicable law.

Grant shall hold Chelan harmless and indemnify Chelan for any loss of fish, damage to fish, or any other alleged damage resulting from the negligence, intentional acts or omissions' of Grant. The terms of this section, specifically including the preceding waiver of immunity, shall be deemed mutually negotiated to the fullest extent allowed by the laws of Washington.

IV. PURPOSE

The purpose of this Agreement is to provide for the limited use of Chelan's net pens located on Lake Wenatchee by Grant for rearing spring Chinook. Both parties deem that through utilization of this Interlocal Agreement, savings to the ratepayers of both utility districts will be achieved.

V. PAYMENT

The parties have discussed the mutual benefits associated with this Agreement and have agreed that no additional compensation by Grant to Chelan for the limited use of the net pens is necessary or appropriate.

VI. ADMINISTRATION OF AGREEMENT

This Agreement shall be jointly administered by a representative of Grant and a representative of Chelan. Absent written notice by one party to the other, the administrators shall be: Chelan – Alene Underwood; Grant – Russell Langshaw.

VII. EFFECT OF OTHER AGREEMENTS

This Agreement shall not change or affect the responsibilities and obligations of Chelan under its Rocky Reach and Rock Island Habitat Conservation Plans. The intent of this Agreement is to facilitate the efficient use of existing hatchery facilities toward meeting Grant's mitigation obligations as outlined in their long-term fish and relicensing agreements.

VIII. JURISDICTION AND ATTORNEY FEES

This Agreement is made, executed under and is to be governed by, construed and enforced in accordance with the laws of the State of Washington. In the event of a suit, the undersigned agree that a visiting judge shall be assigned to the case so that a resident judge, who is also a customer of either Chelan or Grant, will not hear the case. The substantially prevailing party in any legal action herein shall be entitled to reasonable attorney fees and all reasonable costs, including, but not limited to, expert witness fees and travel and lodging expenses.

IX. GENERAL PROVISIONS

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or any authorized representative of each party. Under no circumstances shall Chelan have any liability to Grant (whether in contract, tort or otherwise) or any other entity or person for sickness of, injury to, or death of the yearling spring Chinook which are the subject of this agreement. This Agreement constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

X. AUTHORITY

Each person signing this Agreement has the full authority of the entities on behalf of which they are signing to execute this Agreement and to bind those entities to the terms of this Agreement.

XI. RELATIONSHIP OF THE PARTIES

No agent, employee, or representative of Grant shall be deemed to be an agent, employee, or representative of Chelan for any purpose, and the employees of Grant are not entitled to any of the

benefits Chelan provides to Chelan employees. No agent, employee, or representative for Chelan shall be deemed to be an agent, employee, or representative of Grant for any purpose, and the employees of Chelan are not entitled to any of the benefits Grant provides to Grant employees.

In the performance of the work herein contemplated, the party performing the work is an independent contractor with authority to control and direct the performance of the details of the work; however, the work contemplated herein shall be subject to the general rights of inspection and review of the party requesting the work be done, to secure the satisfactory completion thereof.

XII. FILING

The administrators shall, in compliance with RCW 39.34, upon execution of this Agreement, post an electronic copy of the Agreement on Grant and Chelan's websites at the following addresses:
Grant: <http://www.gcpud.org/stewardship/whiteriver.html> ;
and Chelan: <http://www.chelanpud.org/interlocal-agreements.html>

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below.

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON

By: _____

Title: _____

Date: _____

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY, WASHINGTON

By: _____

Title: _____

Date: _____