

WDFW # 17-08792

**INTERAGENCY COOPERATIVE AGREEMENT
HATCHERY OPERATIONS**

June 2017

AGREEMENT BETWEEN:

Public Utility District No. 1 of Douglas County
1151 Valley Mall Parkway
East Wenatchee, WA 98802

and

Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091

TABLE OF CONTENTS

SECTION 1	RIGHTS AND RESPONSIBILITIES.....	1
1.1	District Responsibilities	1
1.2	District Rights	1
SECTION 2	SERVICES	2
2.1	Services	2
2.2	Scope of Services	2
2.3	Time of Performance.....	4
2.4	Amount of Services	4
SECTION 3	COMPENSATION OF WDFW.....	4
3.1	Compensation.....	4
3.2	Billing.....	5
3.3	Records.....	5
3.4	Overhead	6
SECTION 4	TERMINATION	6
4.1	Termination for Default	6
SECTION 5	OWNERSHIP OF DOCUMENTS, EQUIPMENT AND HOUSING.....	7
5.1	Ownership of Documents.....	7
5.2	Ownership of Equipment	8
5.3	Ownership of Hatchery Housing.....	8
SECTION 6	TAXES	9
SECTION 7	NOTICES	9
SECTION 8	COMPLIANCE WITH LAWS/ORDINANCES/REGULATIONS	10
SECTION 9	INDEMNITY	10
SECTION 10	ASSIGNMENT OF RIGHTS	11
SECTION 11	LAW, VENUE, AND ATTORNEY FEES.....	11
SECTION 12	NO WAIVER	11
SECTION 13	EFFECT OF PARTIAL INVALIDITY	12
SECTION 14	MODIFICATION OF AGREEMENT.....	12
SECTION 15	ENTIRE AGREEMENT	13

INTERAGENCY COOPERATIVE AGREEMENT HATCHERY OPERATIONS

This Agreement is made, effective July 01, 2017, by and between Public Utility District No. 1 of Douglas County (the "District"), and the State of Washington Department of Fish and Wildlife ("WDFW"). Collectively the District and WDFW shall be referred to as "the Parties". The Parties are "public agencies" of the State of Washington and are authorized to enter into Cooperative Agreements pursuant to RCW 39.34.

Now therefore the District and WDFW agree as follows:

SECTION 1

RIGHTS AND RESPONSIBILITIES

1.1 District Responsibilities. The Parties acknowledge that the District is responsible for implementing various hatchery mitigation programs pursuant to its Federal Energy Regulatory Commission (FERC) license for the Wells Hydroelectric Project (FERC License No. 2149). Several agreements address the number, size, and rearing and release strategies for the fish raised at the District's two main hatchery facilities, the Methow and Wells hatcheries. These agreements include the Anadromous Fish Agreement and Habitat Conservation Plan (HCP), the Aquatic Settlement Agreement (ASA), and the Off-License Settlement Agreement (OLSA). The activities covered by this Agreement are intended to support the implementation of the FERC license and stated mitigation agreements.

1.2 District Rights. The Parties also acknowledge that the District has the right to contract for additional hatchery production at the District's hatchery facilities in support of contractual obligations related to the terms of various hatchery sharing and interlocal cooperative facility use agreements including but not exclusive of the Agreement Regarding Use

of Douglas PUD's Wells Project and Hatchery Facilities for the Chelan-Douglas Methow Hatchery Interlocal Cooperative Agreement (Chelan-Douglas Methow Hatchery ILA), the Grant-Douglas Methow Hatchery Interlocal Cooperative Agreement (Grant-Douglas Methow Hatchery ILA), the Grant-Douglas Wells Hatchery Interlocal Cooperative Agreement (Grant-Douglas Wells Hatchery ILA), the Yakima Nation-Douglas PUD Facility Use Agreement (Yakama Facility Use Agreement), and Chief Joseph Hatchery Cost Sharing Agreement (BPA-CCT-Douglas Hatchery Agreement).

SECTION 2

SERVICES

2.1 Services. WDFW represents that it is qualified to perform the required services for the District. WDFW acts as an independent contractor for the purposes of this Agreement. Neither WDFW nor any of its employees are or shall be deemed to be employees or agents of the District. WDFW shall perform its services for the District in a good and competent manner and shall provide all services in full compliance with the terms and conditions of this Agreement, exercising professional skill and care consistent with good quality professional practice. WDFW shall be responsible to see that its services are performed in full compliance with all applicable federal, state, and local laws, regulations and codes in effect at the time of the rendering of services.

2.2 Scope of Services. WDFW's scope of services shall include the operation and routine maintenance of the District hatchery facilities including, but not limited to, the Wells Hatchery, Methow Hatchery, Twisp Weir, and Twisp Acclimation Pond. WDFW shall also be responsible for implementing only those hatchery programs authorized in writing by the District. WDFW shall be responsible for all work necessary to meet the annual production targets authorized by the District including the collection of broodstock, spawning, incubation, rearing,

release and completion of pathology. WDFW shall provide trained and certified staff competent in fish husbandry, facility administration, pathology and hatchery maintenance.

WDFW is the District's onsite hatchery operator and as such, WDFW is responsible for obtaining all necessary permits and approvals for all aspects of hatchery operations with the notable exception of ESA section 10 incidental take permits which shall be the District's responsibility to apply for and obtain. WDFW will provide the District with a copy of the permits obtained on behalf of the District. In particular, WDFW shall be responsible for complying with all applicable federal laws, regulations and permits, most notably the Endangered Species Act incidental take permits, associated with the collection, release and management of fish being held at the District's hatchery facilities. WDFW shall be responsible for providing the District with draft and final copies of all ESA compliance reports. WDFW shall also be responsible for the development, approval and implementation of the final broodstock and adult management protocols approved by the HCP Hatchery Committee in association with the implementation of the District's hatchery programs. WDFW shall be responsible for ensuring that the approved broodstock protocol is provided to the District, the National Marine Fisheries Service, the hatchery and complex manager associated with each of the District's hatchery facilities, and the lead monitoring and evaluation biologist(s). WDFW shall also provide oversight for all HCP Coordinating Committee and Hatchery Committee approved volunteer trap and ladder trapping activities associated with non-District supported activities.

WDFW shall also be responsible for complying with the applicable state laws, regulations and permits related to the rearing and release of fish. This includes responsibility for compliance with the discharge of pollutants from the facilities and is responsible for properly monitoring the withdrawal of water from surface and groundwater sources for hatchery rearing

purposes. In the event that a violation occurs for any permit associated with the operation of the hatchery, WDFW shall notify the District within 24 hours from the time the violation is discovered. Notification shall be provided to the District's designated representative noted in Section 7 (Notices) below.

The District is responsible for funding WDFW to implement the District's hatchery programs and to perform routine maintenance. The District is responsible for completing major maintenance of the hatchery facilities. WDFW shall be responsible for notifying the District when major maintenance is required. Following such notice, the District shall respond in a prompt manner toward ensuring that the goals of the hatchery program are achieved with minimal disruption to normal hatchery operations.

2.3 Time of Performance. WDFW's services shall commence on July 1, 2017. This agreement shall conclude on June 30, 2018, unless terminated earlier in accordance with Section 4 (Termination) below.

2.4 Amount of Services. The District makes no representation nor does it provide any guarantee as to amount of services which it will request under this agreement.

SECTION 3

COMPENSATION OF WDFW

3.1 Compensation.

3.1.1 Hatchery Budgets. WDFW shall submit to the District's designated representative a separate budget and work plan for each of the District's hatchery facilities, with program-specific costs clearly defined for the hatchery programs occurring at the facilities. This includes any hatchery program budgets not being directly paid for by Douglas PUD. WDFW shall provide a separate budget and work plan for the sturgeon program occurring at Wells Hatchery. The preliminary budgets shall cover all anticipated hatchery program costs

from July 1, 2017 to June 30, 2018. Once District staff has tentatively approved the budget and work plan, it will then be submitted to the District's Board of Commissioners for final approval. Payment for all services shall, under no circumstances, exceed the amount approved by the District's Board of Commissioners.

3.2 Billing.

3.2.1 Services. For services and reimbursables, WDFW shall submit monthly billing invoices to the District. These billing invoices shall contain sufficient detail and support documentation to enable the District to determine the services which were rendered for which WDFW made payment during the thirty (30) days preceding the billing invoice. All WDFW labor charged to the District's hatchery facilities shall include the actual number of hours worked by each WDFW employee and shall include the name of each full time WDFW employee. Within the first ten (10) days of each month WDFW shall submit a statement to the District itemizing all services incurred within the immediately preceding month. WDFW shall mail all billings to the attention of the District's designated representative listed in Section 7 (Notices) below.

3.2.2 Payment. The District shall pay WDFW within thirty (30) days after receipt of billing for all uncontested amounts. The District reserves the right to withhold payment of any disputed amounts for which it has given WDFW notice, after receipt of WDFW's billing, that the charges are in dispute. All accounts which are not in dispute and are not paid within thirty (30) days from receipt of the billing will bear interest at the rate of ten percent (10%) per annum.

3.3 Records. Upon the District's request, WDFW shall make any time records, records of payment for any services, records of billings and any other documents relating to charges, costs and expenses available to the District.

3.4 Overhead. Under this contract the District will directly reimburse all of the facility specific and regional supervisory labor costs associated with the implementation of its hatchery facilities as outlined in the annual hatchery budget plan.

Overhead costs incurred by the WDFW, on allowable costs for the duration of this contract, will be billed at the rate of no more than 32.46%. If the WDFW's federally approved rate is lower, then that lower rate will be reflected for the entire State Fiscal Year (SFY) covered under this Agreement. It will not be raised if the final rate is higher. By February 1, 2018, WDFW is required to provide the District with a proposed budget inclusive of directly reimbursable activities and the estimated overhead rate for State Fiscal Year 2019 as part of the annual budget approval process described in Section 3.1.1 (Hatchery Budgets).

SECTION 4

TERMINATION

4.1 Termination for Default. The failure of WDFW or the District to fully conform with all the terms and conditions of this Agreement shall constitute a default. If WDFW or the District has failed to cure this default within thirty (30) business days after receipt of a notice specifying the default, WDFW or the District, in addition to all other remedies available to it, may terminate this Agreement. In the event of termination for default by WDFW, the District may have the work taken over and completed by an entity of its own choosing. WDFW shall be responsible to the District for any additional costs caused to the District by reason of this completion by the District. In the event of a default and within thirty (30) days of receiving written notice, WDFW shall deliver to the District all finished or unfinished documents, data, studies, reports and the like prepared by WDFW. In the event of WDFW's failure to timely deliver these, WDFW shall pay to the District any damages it may sustain by

reason of the failure to deliver. Upon termination or default by the District, WDFW may suspend performance of services under this Agreement. In the event of this suspension of services, WDFW shall have no liability to the District for delay or damage caused to the District because of such suspension of services and WDFW shall be compensated for services properly performed prior to termination.

4.2 Termination for Convenience. The District may terminate this Agreement without cause upon ninety (90) days written notice. Upon receipt of notice of termination, WDFW has ninety (90) days to cease performing services. In the event of termination of this Agreement in accordance with this paragraph, WDFW's sole compensation shall be for services properly performed up to and including the ninety (90) day period following receipt of a notice of termination.

SECTION 5

OWNERSHIP OF DOCUMENTS, EQUIPMENT AND HOUSING

5.1 Ownership of Documents. WDFW shall provide data, documents, updates, management plans (e.g., broodstock protocol), permit reports (e.g., ESA take reports), and technical reports to the District. Except for responses required by federal and state (RCW 42.56) public disclosure laws, prior to publication and presentation of the District's data, WDFW is required to receive written approval to release the information. WDFW shall address and incorporate reviews by the District of scientific reports, updates, publications and presentations. WDFW will not publish reports containing social values or unsubstantiated opinions unless expressly agreed to by the District. Further, scientific data collected by WDFW can and will be used for the purpose of preparing peer reviewed scientific publications and will be compared with other state-wide data sets, following rigorous review and consultation with the District and

provided that WDFW adequately addresses District comments and concerns and that WDFW properly recognizes the District's role in the collection of the data.

5.2 Ownership of Equipment. Materials and equipment purchased under this Agreement and billed to the District are the property of the District and that upon completion of work, all such materials or equipment shall be returned to the District prior to final payment. WDFW will notify the District when it is necessary to purchase any equipment that exceeds \$1,000 in value.

During the development of the annual operating budget, WDFW shall provide the District a request for new vehicles, transport tanks, fish pumps or other capital equipment that it believes necessary to complete the project. Included in such list shall be an estimated cost on a per item basis. Such lists shall be reviewed by the District and then, if necessary, negotiated with WDFW and a determination will be made as to which Party will purchase the agreed to item.

The District retains the right to purchase any equipment that exceeds \$1,000. In an emergency situation, WDFW may purchase equipment that exceeds \$1,000 in value so long as immediately afterwards, WDFW notifies the District in writing of the purchase and describes the emergency situation. WDFW is not required to request duplicate authority to purchase items already approved in the annual hatchery operating budget.

5.3 Ownership of Hatchery Housing. The District's Hatchery facilities originally built by the District include hatchery houses located adjacent to the facilities. The District is responsible for performing major maintenance on each of the hatchery houses. WDFW staff is responsible for the general condition, appearance and routine maintenance at each of the hatchery houses and shall be responsible for the payment of utilities within each hatchery house. The hatchery houses shall be maintained in good working order throughout the term of this Agreement. During the term of this Agreement, WDFW shall hold title to the

hatchery houses. The routine maintenance costs associated with the hatchery housing shall be included in the operation and maintenance budget for each hatchery facility. Upon termination of this Agreement, the title to the hatchery housing, including all associated land and improvements, shall revert to the District. The WDFW agrees to do whatever is necessary to facilitate the transfer of said facilities to the District. This reversionary clause is part of the consideration herein.

SECTION 6

TAXES

WDFW shall be exclusively liable for the payment to the appropriate governmental authority of all required contributions and taxes, including taxes imposed under the provisions of any unemployment insurance, Social Security or pension plan insofar as the taxes pertain to the work performed under this Agreement.

SECTION 7

NOTICES

Any notice provided for or concerning this Agreement shall be in writing. Notice shall be considered given either when delivered in person to the recipient or upon receipt by registered U.S. Postal Service or certified receipt of e-mail to the following address:

NOTICE TO THE DISTRICT:

Natural Resources Supervisor
Public Utility District No. 1 of Douglas County
1151 Valley Mall Parkway
East Wenatchee, WA 98802

Attention: Shane Bickford
e-mail: sbickford@dcputd.org
Phone Number: 509-881-2208

NOTICE TO WDFW:

Hatcheries Division Manager
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091

Attention: Kelly Cunningham
e-mail: kelly.cunningham@dfw.wa.gov
Phone Number: 360-902-2325

SECTION 8

COMPLIANCE WITH LAWS/ORDINANCES/REGULATIONS

WDFW shall, in performance of its services, observe and comply with all laws, ordinances and regulations of all federal, state, local and city governments that may in any manner affect the performance of this Agreement.

SECTION 9

INDEMNITY

To the fullest extent permitted by law, the Parties each specifically and expressly agree to defend, indemnify and hold harmless the other Party, its officers, employees and agents from and against all suits, actions, proceedings, claim, demand, judgments, damages, penalties, fines, and expenses (including but not limited to, reasonable attorney fees), from any act, omission, fault, strict liability or negligence of a Party. The parties acknowledge that they have mutually negotiated this indemnity provision. The Parties further agree that each Party hereto is an independent contractor and not the agent or employee of the other Party.

SECTION 10

ASSIGNMENT OF RIGHTS

The rights of each Party under this Agreement are personal to that Party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other Party.

SECTION 11

LAW, VENUE, AND ATTORNEY FEES

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Washington. Venue of any legal action involving the District and WDFW shall be exclusively in a court of competent jurisdiction of Douglas County, State of Washington. In the event that litigation or other proceedings arise in relation to this Agreement, the substantially prevailing Party shall be entitled to recover all costs of suit and collection, including but not limited to, reasonable attorney fees, lodging, meals, and travel.

SECTION 12

NO WAIVER

The failure of either Party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

SECTION 13

EFFECT OF PARTIAL INVALIDITY

The invalidity of any portion of this Agreement may not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the Parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by the Parties subsequent to the removal of the invalid provision.

SECTION 14

MODIFICATION OF AGREEMENT

Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if placed in writing and signed by an authorized representative of each Party.

SECTION 15

ENTIRE AGREEMENT

This Agreement shall constitute 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 upon either Party except to the extent incorporated in this Agreement. The undersigned represent that they each are authorized to execute this Agreement respectively on behalf of the District and WDFW.

**PUBLIC UTILITY DISTRICT NO. 1 OF
DOUGLAS COUNTY**

By W.C. Dobbins
Title: William C. Dobbins, General Manager
Dated: June 26, 2017

**STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE**

By Jeff R. Hugdahl
Title: Jeff R. Hugdahl, Contracts & Purchasing Manager
Dated: 6/16/17