

**COST SHARING AGREEMENT
FOR
PLANNING ASSISTANCE BETWEEN
THE U S. ARMY CORPS OF ENGINEERS
AND
THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION**

THIS AGREEMENT, entered into this 31st day of October, 2002 by and between the United States of America (hereinafter called the "Government"), represented by the Walla Walla District Engineer executing this Agreement, and the Confederated Tribes of the Umatilla Indian Reservation (hereinafter called the "Sponsor").

WITNESSETH, that

WHEREAS, the Congress has authorized the Corps of Engineers in Section 22 of the Water Resources Development Act of 1974 (Public Law 93-251) as amended to assist the States and Indian Tribes in the preparation of comprehensive plans for the development, utilization, and conservation of water and related land resources; and whereas, Section 319 of the Water Resources Development Act of 1990 (Public Law 101-640) authorized the Government to collect from non-federal entities fees for the purpose of recovering fifty (50) percent of the cost of the program as reflected in 42 USC 1962d-16; and,

WHEREAS, the sponsor has reviewed the State's comprehensive water plans and identified the need for the planning assistance as described in a Scope of Studies, incorporated into this agreement; and

WHEREAS, the sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in study cost-sharing and financing in accordance with the terms of this agreement;

NOW THEREFORE, the parties agree as follows:

1. The Government, using funds contributed by the sponsor and appropriated by the Congress, shall expeditiously prosecute and complete the study, substantially in compliance with the Scope of Studies attached as Appendix A and in conformity with applicable Federal laws and regulations and mutually acceptable standards of engineering practice.

2. The total study cost is currently estimated to be \$80,000, as specified in the cost estimate attached as Appendix B. The Government shall contribute in cash, fifty (50) percent of all study costs, which is currently estimated to be \$40,000. The Sponsor shall contribute twenty-five (25) percent of all study costs in cash, and twenty-five (25) percent as in-kind service work. The Sponsor agrees to provide a cashier or certified check in the amount of \$20,000 for Fiscal Year 2003 and to provide in-kind service totaling \$20,000. The check shall be made payable to FAO, USAED, Walla Walla, and mailed to the Walla Walla District Office. Prior to any work being performed under this agreement, the Sponsor's \$20,000 check must be received.

3. No Federal funds may be used to meet the local sponsor share of study costs, including the funding of the sponsor's in-kind costs, under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified by the granting agency.

4. The Government obligations under this agreement, subject to and using funds appropriated by the Congress of the United States and using funds provided by the Confederated Tribes of the Umatilla Indian Reservation, shall expeditiously provide assistance for a watershed assessment in the Camas Creek Watershed.

5. The Sponsor obligations (in-kind services) under this agreement are to contact and inform landowners in the study area about the purpose of the assessment, gather and provide data pertinent to the assessment, and provide technical review and comments on draft documents and other items as agreed to by parties.

6. As a condition precedent to a party bringing suit in the United States court of competent jurisdiction, for breach of this agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred costs (subject to availability of Corps appropriations). Such costs shall not be included in Study Costs. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

7. This agreement may be terminated at any time the Sponsor fails to fulfill its obligations under this agreement. The District Engineer shall terminate this agreement or suspend future performance under this agreement unless he/she determines that continuation of the work on the designs is in the interest of the United States.

8. In the event that any one or more of the provisions of this agreement is found to be invalid, illegal, or unenforceable, by a United States court of competent jurisdiction, the validity of the remaining provisions shall not in any way be affected or impaired and shall continue in effect until the agreement is completed.

9. This agreement shall become effective upon the signature of both parties.

For the Confederated Tribes of the
Umatilla Indian Reservation:

By: Debra A. Croswell
Debra Croswell

Title: Executive Director

Date: September 16, 2002

For the U.S. Army Corps of Engineers:

By: Edward J. Kertis, Jr.
Edward J. Kertis, Jr.
Lieutenant Colonel

Title: District Engineer

Date: 31 Oct 02

Appendix A

Scope of Studies

for Watershed Analysis of Camas Creek

Overview

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and US Army Corps of Engineers (Corps) are interested in completing a watershed analysis for the Camas Creek Subbasin of the John Day River Subbasin. The Camas Creek Subbasin is approximately 162,000 acres, centered approximately 50 miles south of Pendleton near Ukiah, Oregon. The subbasin analysis completed under this document shall follow guidelines set forth by the Oregon Watershed Enhancement Board and will eventually be integrated into a subbasin analysis for the entire John Day River Subbasin. Both parties understand that watershed assessment is a developing science and that final contents and format will be modified collaboratively with CTUIR, although the general outline of the contents of the assessments are known at this point. This is not a subbasin summary, but an assessment that integrates the known information and more in depth information to create an assessment of the information and a plan based on information gathered. The assessments will focus on aquatic systems, but will include information about terrestrial systems pertinent to understanding aquatic conditions.

The project will involve review by a group of scientists from agencies involved in the subbasins. This portion will be coordinated by CTUIR, but Corps staff will participate as needed.

A John Day Subbasin Summary was completed in 2001 by the Oregon Department of Fish and Wildlife, for the North West Power Planning Council. This summary documents existing assessments, plans and other information available for the entire John Day Subbasin. The Forest Service completed a subbasin analysis for the Camas Creek watershed (1995). This analysis concentrated on lands under Forest Service control. The Forest Service has completed substantial instream and riparian improvements throughout the Camas Creek Subbasin.

Goal

The ultimate goal of this analysis shall be to provide a report with detailed information to be used in developing site-specific plans for anadromous habitat enhancement. This plan will be used to set management policy and objectives for the subbasin in the future. While site specific detail will be necessary after this document is finished we expect to have information on a watershed scale that delineates expected flows, expected bed load movement, past instream management, past vegetative management, past upland management and effects on instream conditions.

Assessment Contents

1. An introduction that gives an overview of the history, goals of the project, subbasin description-location, drainage area, climate, geomorphology, and major land use maps.
2. A chapter or chapters that provide detailed summary of aquatic habitat quality and quantity in the subbasin.
3. A chapter or chapters that provide detailed information on key aquatic populations in the subbasin plus fish and wildlife status-general presence absence information and relative numbers.
4. A chapter or chapters that provide analysis of ecological functions and changes in those functions relevant to aquatic ecosystems in the subbasin.
5. A chapter or chapters that provide historical and scientific context for issues in the subbasin, watershed assessment- summary and references for past watershed studies and assessments.
6. A chapter that outlines existing and planned activities by various resource agencies that affect anadromous species, activities that are being funded or implemented by all entities. Expected near and long term results of these activities. Include a discussion of management programs or objectives for fish and wildlife populations including explanation of current management objectives, requirements (legal, policy, etc.), permits, etc. from which they are derived; and habitat quality objectives (including any federal, tribal, state or county instituted land or water management guidelines, requirements, or restrictions with the general objective of protecting fish, wildlife or habitat); and general methods, approaches, or strategies to achieve these objectives.
7. A limiting factors chapter or chapters, including a matrix of conditions and limiting factors by six field hydrologic unit code (HUC) and management unit and supporting analysis with an emphasis on aquatic species. The analysis must also include existing hydrological or physical factors, which may limit anadromous populations, including potential causes of high bedload events and subsequent deposition as well as results of these events. Locations where limiting factors may be most problematic should also be identified.
8. A chapter on research, monitoring, and evaluation activities (RM&E). Comprehensive RM&E activities for ongoing projects (reference projects listed above).
9. A recommendations or next steps chapter discussing data gaps, general lessons learned during the process, and any recommendations not fully covered in previous chapters.

10. Summary

11. References

12. Budget summary detailing the costs expended during the analysis.

Timeline for the Camas Creek Subbasin Assessment

1. Work will begin immediately upon written authorization by the Corps of Engineers.
2. A progress report will be submitted by January 1, 2003.
3. A draft report will be prepared for the Corps and CTUIR staffs and submitted prior to March 1, 2003.
4. An agency and public informational meeting will be completed by February 15, 2003.
5. A final report submitted by May 31, 2003.

Deliverables:

Three color copies of the assessment and a CD with a digital copy of the assessment will be delivered to CTUIR. In addition, the Corps will post a digital copy in PDF format on their website for one year, or whatever period of time requested by CTUIR.

Additional Work

Additional scope and tasks will be discussed between the project sponsor and the Corps. Written Cost Share Agreement modifications will be required prior to initiation of any additional work. Budget will reflect initial allocation of available funds in addition to and anticipation of allocated funds.

Appendix B

Cost Estimate

for Watershed Analysis of Camas Creek

Corps administration	\$ 1,500
Subbasin assessment	\$58,500
CTUIR public outreach (in-kind service)	\$ 2,600
CTUIR data gathering (in-kind service)	\$ 8,300
CTUIR review and input (in-kind service)	<u>\$ 9,100</u>
Total	\$80,000

CERTIFICATE OF AUTHORITY

I, J. D. Williams, do hereby certify that I am Tribal Attorney for the Confederated Tribes of the Umatilla Indian Reservation, that the Confederated Tribes of the Umatilla Indian Reservation has full authority and legal capability to perform the terms of the Agreement between the Department of Army and the Confederated Tribes of the Umatilla Indian Reservation, in connection with the watershed assessment activities for the Camas Creek Watershed, and that the persons who have executed this Agreement on behalf of the Confederated Tribes of the Umatilla Indian Reservation, have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 16th day of September, 2002.


