

2 August 2010

MEMORANDUM FOR Commander, Walla Walla District

SUBJECT: Lemhi River Planning Assistance to States Cost Share Agreement – submitted for execution

1. Enclosed are four (4) copies of the Lemhi River Planning Assistance to States (PAS) cost share agreement that have been signed by the Idaho Governor's Office of Species Conservation (OSC) Administrator, Mr. Nate Fisher.
2. The purpose of this project is to develop a detailed project plan on how to characterize the ground water component of the Lemhi River Basin, including ground water flow paths, locations and timing of return flows from irrigation extractions to stream systems, and Basin ground water underflow/outflow that will assist the OSC in future planning efforts pertaining to salmon recovery.
3. This agreement has been reviewed by Walla Walla District's Office of Counsel (OC) and determined to be legally sufficient as demonstrated by the legal certification dated 30 July 2010, signed by Linda Kirts, Chief of OC.
4. Upon review please sign as appropriate. Please return three (3) signed agreements to Mark Mendenhall in the Boise Outreach Office, so he may provide maintain one copy in the project files and two may be provided to the OSC. The fourth executed agreement should be filed with the PAS Program Manager in Walla Walla District.
5. Please contact Mr. Mark Mendenhall, PM at 208-345-2064, if you have any questions.



Encl

MARK A MENDENHALL, PE, PMP
Project Manager, Boise Outreach Office

MENDENHALL/PM-PD/ss
NEWCOMB/PD-PF *GN*
KALAMASZ/PD-PF *ELIC*
GRAHAM/PD *ELIC*
KIRTS/OC *TLK*
JONES/PPPM *BES 8-5-10*
FEISTNER/DPM *8/5/10*
GRECO/EA *20 5A/9 10*
DECKER/XO
CALDWELL/CO
PgM/PM FILES.

CERTIFICATION OF LEGAL REVIEW

The Cost Share Agreement between the Idaho Governor's Office of Species Conservation and the US Army Corps of Engineers for Planning Assistance to States under Section 22, WRDA 1974, for studying ground water and subsurface flow in the Lemhi Basin of Idaho to use in analysis of current water changes and effects on fish habitat, has been fully reviewed by the Office of Counsel, US Army Corps of Engineers, Walla Walla District, and is legally sufficient .



Linda Kirts
District Counsel, USACE-NWW

Dated: 30 July 2010

COST SHARING AGREEMENT
FOR
PLANNING ASSISTANCE BETWEEN
THE U S. ARMY CORPS OF ENGINEERS
AND
IDAHO GOVERNOR'S OFFICE OF SPECIES CONSERVATION
FOR THE
LEMHI RIVER GROUNDWATER – SURFACE WATER INTERACTION PLAN

THIS AGREEMENT, entered into this 5th day of August, by and between the United States of America (hereinafter called the "Government"), represented by the Walla Walla District Engineer executing this Agreement, and the Idaho Governor's Office of Species Conservation, represented by the Administrator. (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, local governments, 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, Section 208 of the Water Resources Development Act of 1992 (Public Law 102-580) as amended by Section 2013, WRDA 2007 (Public Law 110-114) authorizes the Sponsor to contribute up to 100% of the non-federal contribution for preparation of a Plan, by the provision of services, materials, supplies or other in kind services necessary to prepare the Plan; 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 Work, attached to this agreement as Appendix A; and

WHEREAS, the Sponsor has the authority and capability to furnish the performance 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 a detailed project plan to characterize the ground water component of the Lemhi River Basin, including ground water flow paths, locations and timing of return flows from irrigation extractions to stream systems, and Basin ground water underflow/outflow. See Appendix A for the Scope of Work (SOW) for further information.

2. The Sponsor shall contribute cash and in-kind services equal to fifty (50) percent of Study Costs. If agreeable to all parties, in-kind services may comprise up to 100% of the Sponsor's contribution.
3. The total cost of the Lemhi River Ground Water-Surface Water Interaction Planning Assistance to States (PAS) Project is estimated to be \$78,000 as specified in Appendix A. The Government shall contribute fifty (50) percent of all study costs, which is currently estimated to be \$39,000. The Sponsor shall contribute fifty (50) percent of all study costs and estimate \$39,000 will be attributed through in-kind service. Prior to any work being performed, the Sponsor agrees to provide required funds for Fiscal Year 2010 in the amount of \$0 to the Government. The Sponsor shall make the full amount available to:

Finance and Accounting Officer, USAED, Walla Walla
201 North 3rd Avenue
Walla Walla, Washington 99362

Any sponsor funding not spent shall be deobligated and returned to the Sponsor. Upon request of the Sponsor, the Government shall provide satisfactory evidence of the completed work or services to the Sponsor.

4. 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.

5. The Government, subject to and using funds appropriated by the Congress of the United States and using in kind services and funds provided by the Sponsor, shall prepare a Project Plan as described herein and in Appendix A. In the event the Government identifies a need for additional funds, the Government will notify the Sponsor to determine a plan of action for obtaining additional funds or reducing the scope.

6. IN KIND SERVICES: It is estimated that approximately \$39,000 of the sponsor's share will be provided by in-kind services. These services include initial capital investment of materials and equipment to perform initial phase of testing to better develop a plan for implementation of the work described in Appendix A. It is also anticipated that the Sponsor will provide staff as part of the Project Delivery Team. The remaining Sponsor's share shall be provided in cash as determined during final accounting and project closeout.

7. 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.

8. This agreement may be terminated at any time by either party if either party 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 project is in the interest of the United States.

9. 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.

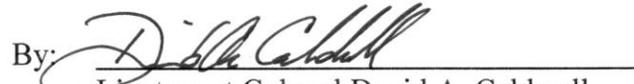
10. This agreement shall become effective upon the signature of both parties.

For the Idaho Governor's:
Office of Species Conservation

By: 
Nate Fisher
(LEGAL COUNSEL)

Title: Administrator

For the U. S. Army Corps of Engineers:

By: 
Lieutenant Colonel David A. Caldwell

Title: District Commander

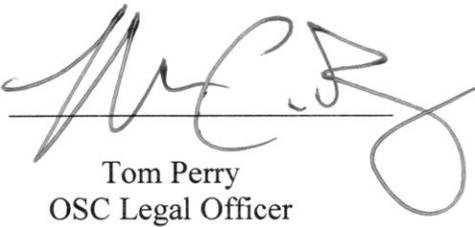
Date: Aug 3, 2010

Date: 5 Aug 10

CERTIFICATE OF AUTHORITY

I, THOMAS C. PERRY do hereby certify that I am the principal legal officer of the Idaho Governor's Office of Species Conservation and that the Idaho Governor's Office of Species Conservation is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Idaho Governor's Office of Species Conservation, in connection with Lemhi River Ground Water-Surface Water Interaction Plan, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the Idaho Governor's Office of Species Conservation, have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 3rd day of August 2010.

BY: 
Tom Perry
OSC Legal Officer

CERTIFICATION REGARDING LOBBYING

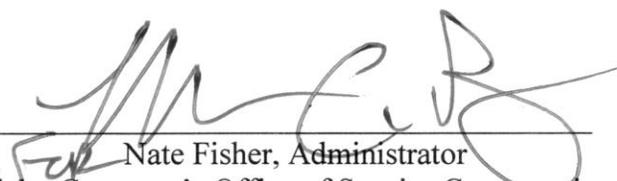
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Nate Fisher, Administrator
Idaho Governor's Office of Species Conservation

DATE: Aug 3, 2010

APPENDIX A

SCOPE OF WORK LEMHI RIVER GROUNDWATER – SURFACE WATER INTERACTION PLAN SECTION 22 PLANNING ASSISTANCE TO STATES

1.0 **General**

The proposed project aims to undertake a series of planning and technical review sessions and hydrologic tests to better characterize the role(s) of subsurface flow in the Basin at multiple scales. The expected outcome of this project is improved understanding of water resources in the Lemhi River Basin, from a Basin-scale water budget standpoint but also, more importantly, from a site-to site water management perspective. Ideally, information gathered by this project will also be directly applicable to increasing the functionality and accuracy of the Lemhi River Basin MIKE BASIN Model, and will supplement the tool set used by the Upper Salmon Basin Watershed Program Technical Team (USBWPTT) in ranking proposed water transactions projects. This scope specifically shall address the necessary planning to perform this subject work.

Specific priority objectives of this project have been posed by the Irrigation Recharge subcommittee of the USBWPTT:

- i. Detail the return rates, and locations and magnitudes of return flows, of surface water rights extracted from the following Basin tributaries:
 - Big Timber Creek
 - Mill Creek
 - Lemhi Little Springs Creek
 - Bohannon Creek
 - Kenny Creek
- ii. Describe the relative contribution of high flow water rights and base flow rights to ground water in the Basin
- iii. Estimate the changes that occur to ground water recharge when irrigation practices are converted from flood to sprinkler irrigation
- iv. Delineate the contributions of surface and ground water from the upper to lower portions of the Basin (i.e. total outflow of the upper Basin entering downstream of Hayden Creek)
- v. Quantify the Basin's ground water outflow

1.1 **Develop Detailed Project Plan**

In general coordination with OSC, and the Idaho Department of Water Resources, the Corps is to develop a detailed project plan to accomplish the five main objectives as described above. Specific sections of the plan include at a minimum:

- Logistics of tracer tests -- site selection, deployment options (existing ditches and/or wells, constructed trenches), and measurement schemes (charcoal

packets initially, followed by field fluorometer deployments and simultaneous use of chloride tracer and conductivity measurements)

- Selection of existing wells for water level measurements -- need multiple wells in each of the five tributary catchments of interest, preferably some downgradient of flood irrigation practices and some downgradient of sprinkler irrigation practices; all must be accessible to measurement tape
- Selection of existing wells for borehole dilution tests -- preferably three wells at the mid-Basin divide and three at the downgradient Basin boundary; all must be accessible to measurement tape
- Discussion on approaches to determine sprinkler vs. flood irrigation recharge in addition to the well level measurements, soil moisture measurements are needed to provide direct data on recharge
- Timing -- Conduct tracer tests, borehole dilution tests, and seepage runs during both the spring high flow season and the late summer base flow season, and well level and soil moisture measurements throughout the course of the project. A detailed schedule incorporating all activities (many will be occurring simultaneously) is needed
- Personnel -- this project will demand considerable field and laboratory hours, namely considering the simultaneous nature of the tracer tests. Provide an estimate of recommended disciplines of personnel to complete work as described in the plan to be developed.
- Equipment and materials -- some items must be purchased (at least two field fluorometers, activated charcoal, dyes, temperature loggers, conductivity loggers, and various deployment equipment), and some should probably be borrowed from universities and/or other agencies (depth loggers, soil moisture meters, possibly automated samplers, and possibly additional field fluorometers) – Prepare list of equipment, materials and source.
- Safety -- all chemicals proposed for this project are extremely safe, but explicit documentation and approval through the DEQ will be required before implementation begins. Provide this documentation.
- Schedule – develop a project schedule to accomplish the project as described.
- Budget – based upon list of recommended personnel, provide expected hourly wages, and hours expected to complete each task as outlined in this SOW.
- The detailed project plan shall be delivered in a report format.

2.0 **Project Background**

Higher stream flows and greater stream connectivity are sought in the Lemhi River Basin to provide quality habitat for native anadromous fish spawning, rearing, and migration. In support of this effort, stream flow enhancement projects are suggested to the USBWPTT by landowners and water users, state and federal agencies, and non-profit organizations. However, successful implementation of these projects depends on an accurate understanding of the Basin hydrology,

which comprises interconnected systems of natural surface flows in stream channels, ground water flows in unconfined alluvial aquifers, and water rights extracting and introducing flows to both surface and subsurface systems. An understanding of the relationships between the Basin's water resources, water rights, and hydrologic processes is key to the analysis of current water usages and proposed changes, and how these changes may affect fish habitat and water supplies for domestic and agricultural purposes.

2.0 Cost share and In Kind Service

It is anticipated that 100% of the sponsor's share will be attributed through in kind services for work and capital investment costs for equipment and material that the OSC and IDWR (on behalf of OSC) provide to accomplish the subject work.