

DRAFT INTERAGENCY AGREEMENT
BETWEEN THE
DEPARTMENT OF ECOLOGY
AND
WASHINGTON STATE CONSERVATION COMMISSION

This Agreement is made and entered into by and between the Department of Ecology, PO Box 47600, Olympia WA 98504-7600, hereinafter referred to as ECOLOGY and the Washington State Conservation Commission, 300 Desmond Drive, P.O. Box 47721, Olympia, WA 98504-7721, hereinafter referred to as the CONSERVATION COMMISSION.

PURPOSE

It is the purpose of this Agreement to provide THE CONSERVATION COMMISSION with funds from ECOLOGY to find new water for instream and out of stream uses through the retiming of return flows through water conservation. Under the program the CONSERVATION COMMISSION provides grants to conservation districts to implement agriculture and non-agricultural water efficiency improvements that provide net water savings into the State Trust Water Right Program.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

The CONSERVATION COMMISSION shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of work set forth in the Attachment "A" which is incorporated herein.

PERIOD OF PERFORMANCE

The period of performance of this Agreement shall commence on July 1, 2009, and be completed on June 30, 2011, unless terminated sooner as provided herein.

PAYMENT

Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34.130. The parties have estimated that the cost of accomplishing the work herein will not exceed **\$1,000,000**. Payment for satisfactory performance of work shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work, which will cause the maximum payment to be exceeded. Compensation for services shall be based on the rates and terms set forth in Attachment "B" which are incorporated herein.

BILLING PROCEDURES

The CONSERVATION COMMISSION shall submit invoices quarterly. Payment to the CONSERVATION COMMISSION for approved and completed work will be made by warrant or account transfer by ECOLOGY within 30 days of receipt of the invoice. Upon expiration of this Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

RECORDS MAINTENANCE

The CONSERVATION COMMISSION shall maintain books, records, documents and other evidence, which sufficiently and properly reflect all direct and indirect costs expended by the CONSERVATION COMMISSION in the performance of the services described herein. These records shall be subject to inspection, review, or audit by personnel of ECOLOGY, other personnel duly authorized by ECOLOGY, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access to and the right to examine any of these materials during this period.

Records and other documents, in any medium furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned equally. Data shall include, but not be limited to reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to use, copyright, patent, register and the ability to transfer these rights.

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

TERMINATION

Either party may terminate this Agreement upon 30 days prior written notification to the other party. If this Agreement is so terminated, the terminating party shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement rendered prior to the effective date of termination.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15

working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a dispute board in the following manner: each party to this Agreement shall appoint a member to the dispute board. The members so appointed shall jointly appoint an additional member to the dispute board. The dispute board shall evaluate the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The determination of the dispute board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable State and federal statutes and rules;
2. *Statement of Work*; and
3. Any other provisions of this Agreement, including materials incorporated by reference.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

AGREEMENT MANAGEMENT

The Project Coordinator for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Project Coordinator for ECOLOGY is :	The Project Coordinator for the CONSERVATION COMMISSION is:
Department of Ecology Dave Burdick PO Box 47600 OLYMPIA WA 98504-7600 Phone: (360) 407-6094	Washington State Conservation Commission Jon Culp 921 Murray St. Okanogan, WA 98840 Phone: (509) 826-7212

IN WITNESS WHEREOF, the parties have executed this Agreement.

DEPARTMENT OF
ECOLOGY

WASHINGTON STATE
CONSERVATION COMMISSION

By: _____
Polly Zehm
Deputy Director

Date

By: _____
Mark Clark
Executive Director

Date

APPROVED AS TO FORM ONLY BY
THE ASSISTANT ATTORNEY GENERAL

Attachment A STATEMENT OF WORK

ECOLOGY will provide funds to the CONSERVATION COMMISSION for the implementation of a funding program to generate available water for new uses through water delivery and application system upgrades in the Columbia River Basin. Funding for the grant program will consist of:

1. Funds for the CONSERVATION COMMISSION for administering the grant program.
2. Competitive grants to qualified conservation districts for technical assistance for outreach, project identification, project design, and project oversight. The grants will be awarded based on demonstrated need and environmental benefit criteria.
3. Financial Assistance agreements to implement specific water efficiency improvement projects will be awarded on a first-come, first-served basis, project by project. Projects will need to meet or exceed a threshold score for environmental benefits and water availability based on a threshold score for adequate retiming of return flows. In order to complete the environmental and retiming ranking, several variables must initially be described or calculated. Among them are the new alternative irrigation systems, the quantity and timing of saved water, and the projected project cost. Once significant environmental benefit and adequate retiming is demonstrated, the project must have approval from ECOLOGY for the Trust Water calculation and water purchase provisions. Once ECOLOGY and the CONSERVATION COMMISSION approve the project, financial assistance funds sufficient to complete the project will be awarded to the conservation district. Irrigators cannot be paid in advance; the conservation districts will reimburse them after implementation is finished and approved.
4. The CONSERVATION COMMISSION will continue to use the Washington Association of Conservation District's Irrigation Work Group to oversee the program. ECOLOGY will have representation on the Irrigation Work Group.

Reporting Requirements:

In addition to the quarterly billing, the following additional information is required:

1. A budget status report that compares the budgeted object of expenditures to current quarter expenditures, prior period expenditure, encumbrance, total accumulative expenditure plus encumbrances, remaining budget. As reported on the A19, the invoice will identify by budget object, current quarter expenditures, prior period expenditures and the total accumulative expenditure with remaining budget.
2. A Status of Cost Share Agreements that includes: District Name, Landowner Name, Total Contract Value, Landowner Share, State Share, Current Quarter Expenditures Disbursed by landowner, Prior Period Expenditures Disbursed by landowner, Total Expenditures Disbursed, Remaining State Share Contract Amount. For any Cost Share Agreement completed during the quarter indicate the date the project was completed.

Attachment B
BUDGET

	Total
Salaries	\$45,000
Benefits	\$11,700
Personal Service Contract	\$6,300
Goods and Service	\$13,140
Travel	\$12,060
Equipment	\$1,800
Subtotal Administration	\$90,000
Grants	\$910,000
Total	\$1,000,000

The following is not part of the contract just for
internal FYI:

Budget breakout
Draft

Budget Item	2009	2011	Biennium Total
Research and Dev. Hydro-Geo Model	\$100,000		\$100,000
Technical Assistance Pass Through to Districts	\$247,500	\$90,000	\$337,500
Pilot Project Funding		\$472,500	\$472,500
WSCC Administration	\$45,000	\$45,000	\$90,000
Totals	\$392,500	\$607,500	\$1,000,000