

MEMORANDUM OF AGREEMENT
BETWEEN
THE WASHINGTON STATE DEPARTMENT OF ECOLOGY
AND
MEMBERS OF THE DUNGENESS RIVER AGRICULTURAL WATER USERS ASSOCIATION

I. PURPOSE OF AGREEMENT AND STATEMENT OF INTENT

This *2012 Memorandum of Agreement (MOA) dated September 6, 2012* supersedes the former MOU dated April 14, 1998.

The Dungeness River Agricultural Water Users Association (WUA) and the Washington State Department of Ecology (Ecology or DOE) enter into this MOA for the following reasons:

- To recognize the WUA's efforts on water conservation and their voluntary sacrifice of water rights;
- To indicate commitment by Ecology to actively pursue funding with the WUA and others for implementation of water conservation, storage, and recharge projects;
- To document water put to beneficial use and the number of acres served based on current records and to establish an improved system for recordkeeping;
- To provide the WUA and Ecology increased certainty regarding the water conservation efforts in the Dungeness River valley; and
- To provide a record to the federal government and others of efforts toward water conservation and habitat improvement in the Dungeness River valley.

II. PARTIES TO THIS AGREEMENT

The parties to this Agreement include the Dungeness River Agricultural Water Users Association, its individual members who have individually approved and signed as successors to the rights listed in Appendix A and the Washington State Department of Ecology.

III. WATER RIGHTS

The parties agree that the water rights subject to this MOA are those adjudicated rights to divert water from the Dungeness River owned by the WUA member districts and companies who are signatories to this MOA and are listed in Appendix A. Based on the terms and conditions set forth herein, the parties agree that the rights are defined as follows.

A. Existing Temporary Trust Water Right

All parties agree that all of that portion of the water rights conserved and otherwise saved by the WUA members as of December 31, 2010 is accounted for and is in temporary trust within the Washington Trust Water Right Program (TWRP), chapter 90.42 RCW. The total amount of conserved and saved water as of December 31, 2010 is 45.6 cfs, representing 13,904 annual acre

feet (AF), including water put into trust for specific periods of time under the Irrigation Efficiencies Grant Program. Based on the terms of the 1998 MOU, 1/3 of this water (15.08 cfs, 4,598AF) is available for the WUA members for future uses as provided herein ("WUA Members Temporary Trust Water Right"). Concurrently with execution of this MOA Ecology will provide the WUA members a written decision acknowledging and documenting the 15.08 cfs and 4,598 annual AF in temporary trust for WUA members for future uses as provided in this MOA.

At such time that Ecology issues final superseding adjudicated certificates of water rights as described in Paragraph III.B below, the WUA members shall execute necessary deeds or water right conveyances to Ecology for the purpose of transferring from temporary trust to permanent trust for instream flow purposes 2/3 of the saved water (30.52 cfs, 9,306AF).

Except for the 30.52 cfs and 9,306 AF that will be deeded by the WUA to Ecology and transferred to permanent trust for instream flow purposes, as described above, the WUA Members Temporary Trust Water Right shall be available to WUA members for adjudicated purposes and/or use for mitigation or restoration, as so designated by the WUA. The WUA Members Temporary Trust Water Right will not be subject to the review under RCW 90.03.380 or any other validity and consumptive use analysis when the WUA notifies Ecology of WUA's intent to use WUA Members Temporary Trust Water Right for mitigation or adjudicated purposes, as provided in Paragraph III.C below.

The water in the WUA Members Temporary Trust Water Right shall be considered to be beneficially used and remain instream until such time as the WUA members determine in their sole discretion to withdraw the trust water rights or a portion thereof from the TWRP. Upon notification to Ecology, all water held in TWRP for the WUA members may be utilized immediately by WUA to irrigate up to 7,000 acres.

B. Superseding Certificated Water Rights

In addition to the WUA Members Temporary Trust Water Right of 15.08 cfs and 4,598AF as described in Paragraph 3.A. above, the WUA members shall retain the rights to divert and use water under their adjudicated certificates up to a total instantaneous (Qi) rate of 93.5 cfs and a total annual quantity (Qa) of 20,916 acre-feet per year (AF/Y) for irrigation. WUA members shall also retain the right to divert and use water under their adjudicated certificates for stock watering and domestic supply continuously. Ecology shall issue Superseding Certificates to WUA individual irrigation districts and companies that will specify the right to use water for the purposes confirmed by the adjudication court as documented within the original adjudicated certificates and as may be changed as provided in this MOA. The water quantities to be stated upon the individual superseding certificates shall take into consideration the instantaneous and annual water requirements associated with the beneficial uses being accomplished and not necessarily reflect the historic diversion record. Recognizing each right based upon established beneficial uses is consistent with the State Supreme Court rulings in Department of Ecology v. Grimes, 121 Wn.2d 459, 852 P.2d 1044 (1993) and eliminates effects on

diversions by adjacent diverters. Further, the place of use in the Superseding Certificates shall reflect district or company boundaries as provided to Ecology by the WUA members. The maximum total irrigated acreage for all WUA members in any year is limited to 7,000 acres. Actual irrigated acreage may rotate within individual WUA members' boundaries without further approval from Ecology. All WUA Member water rights shall retain their original priority date.

C. Future Trust Water Rights

All water that the WUA members no longer require for beneficial use under their Superseding Certificates because of either voluntary curtailing their rights or resulting from implementation of water conservation measures ("saved water"), after January 1, 2011, may in WUA's sole discretion be transferred as temporary trust water rights under the TWRP, RCW 90.42, and remain available for future use by individual WUA members as provided in this MOA.

The process to be used for entering any portion of the water rights represented by the superseding certificates into trust beginning January 1, 2011 shall be consistent with RCW 90.42 and the processes contained within Ecology's June 1, 2011 Trust Water Guidance 1220 or as otherwise provided in the law, except that the terms of this MOA shall prevail and supersede any inconsistent terms in the Trust Water Guidance. When the WUA member determines there are savings in water use or that there are water savings created through improvements in infrastructure or system management, the water right holder may file an application to transfer all or any portion of the water savings into the TWRP. The individual WUA Member's Temporary Trust Water Right resulting from the saved water will be credited to each WUA member, as those savings are attributable to each district or company. If water savings are created through any program that specifies the disposition of saved water, those specific terms shall apply rather than this MOA.

D. Relinquishment

The parties recognize and agree the WUA members' water rights are not currently subject to relinquishment of their water rights for any five (5) years of nonuse of the water, to the extent the nonuse is exempt from relinquishment under RCW 90.14.140 (i.e., weather patterns, crop rotations, etc.), including voluntary curtailment described within IV.C.

IV. CONDITIONS OF WATER USE BY THE WATER USERS ASSOCIATION

A. WUA members voluntarily agree to limit their collective diversions from the Dungeness River, authorized to be a maximum of 93.5 cfs under the Superseding Certificates, to no more than one-half the flow in the river as measured at the U.S.G.S. gauging station #1204800, Sequim. Such limitation will be in place year round. This is referred to as the 50% agreement. The 50% agreement is neither a separate instream flow water right nor to be construed as within

the minimum instream flow necessary for protection of instream resources under Chapter 90.54 or 90.22 RCW.

- B. In addition to the 50% agreement, the WUA members voluntarily agree to limit their diversions such that they will not diminish flow in the Dungeness River below 60 cfs, referred to as the 60 cfs agreement. For the purpose of the 60 cfs agreement, the flow of the Dungeness River will be measured at the U.S.Geological Survey (U.S.G.S.) gauge No. #1204800. Flow at U.S.G.S. gauge #1204800 minus total irrigation diversions will not be less than 60 cfs.
- C. When the WUA member districts and companies voluntarily limit their water use to meet the 50% agreement and the 60 cfs agreement as described in Paragraphs IV.A and IV.B above, the estimated quantity of water curtailed will be recorded and reported to Ecology annually, based upon best available data. Curtailed water use is that quantity of water which would have been diverted to meet the water demands of the WUA members, except that to do so would have violated the 50% agreement or the 60 cfs agreement.
- D. Water use for any adjudicated purpose may occur at locations within the described adjudicated place of use and as since modified for each irrigation entity and as assessed by the irrigation companies and districts. The attached maps (Appendix B) will define the irrigation district and company boundaries. All parties agree that each district and company may irrigate any lands within their boundary up to their respective maximum annual irrigated acres, maximum Qi, and maximum Qa, as documented on their superseding certificates. In addition, within the irrigation district and company boundaries, the WUA members may collectively irrigate up to 7,000 acres annually, and use water held in the TWRP for the WUA members, without the need for authorizations through changes or approvals from Ecology.
- E. All parties agree that piping and conservation projects performed by companies or districts may have unforeseen consequences on other companies and districts which are down gradient. The affected company or district may have increased diversions at the river due to a decrease in intra system recapture of water.
- F. Ecology agrees to process change applications for the points of diversion prior to issuing superseding certificates.

V. TRANSFERS OF WATER FROM THE TRUST WATER PROGRAM

A. If there is a need to irrigate more than 7,000 acres

If the total irrigated acreage needed for all Association members exceeds 7,000 acres, the district or company must request the necessary quantity of water from the WUA Members Temporary Trust Water Right account and apply to Ecology to use the trust water right for irrigation of acres exceeding 7,000 or for additional uses. This change will be processed under RCW 90.03.380 and other statutes as applicable.

B. Transferring Temporary Trust Water to Permanent Trust for Mitigation or Restoration Purposes

The WUA may transfer any or all of the WUA Members Temporary Trust Water Right to facilitate management of mitigation or restoration authorized by Ecology. At WUA members' discretion, they may utilize the Dungeness Water Exchange, or another available process. Upon request by WUA or individual members, Ecology will authorize the use of a portion of the WUA Members Temporary Trust Water Right to be used for mitigation or restoration related to the Dungeness River watershed.

Once the amount of water to be used for mitigation or restoration has been identified in an agreement or contract, Ecology will issue an order transferring the water from the WUA Members Temporary Trust Water Right account and placing it into trust as a permanent trust water right. Mitigation credits associated with these trust rights will be managed and accounted for by Ecology or an Ecology-approved entity.

Transfers from the WUA Members Temporary Trust Water Right account may occur multiple times as additional mitigation or restoration is needed.

The quantity of water from the WUA Members Temporary Trust Water Right transferred to permanent trust and used for mitigation of out of stream purposes shall be considered a diversion of water by the WUA subject to the 50% agreement and the 60 cfs agreement. For example, if 2 cfs is transferred from the WUA Members Temporary Trust Water Right account for the purpose of mitigation for out-of-stream purposes, 2 cfs will be added to the actual diversion by WUA members for determining whether they are in compliance with the 50% agreement, and will be added to the 60 cfs minimum to limit diversions under the Superseding Certificates.

VI. MEASUREMENTS AND REPORTING

The WUA shall ensure that water taken at each diversion point from the Dungeness River, at each division/split point, and at each outtake is measured at least weekly throughout the irrigation season. If measurements are recorded on a weekly basis, measurements should not be taken on the same day each week. The WUA members will be responsible for reporting their diversions in cubic feet per second. Reporting of diversion measurements over the irrigation season will be reported to Ecology no later than January 31 each year.

Each irrigation company and district will submit records no later than February 1 of each year to Ecology, which describe as accurately as possible the total number of irrigated acres for each WUA member. It is understood that within each district or company, the actual parcels irrigated may change each year as crops are rotated and land is moved into and out of fallow. Specific identification of irrigated acres or parcels will not be required. Ecology will compare data provided by the WUA with any available gauge data and identify any inconsistencies by March 31st of each year. Ecology will maintain all available flow data, including electronic data and data submitted by the WUA.

VII. APPLICABILITY TO EXISTING WATER RIGHTS

The rights and obligations agreed upon in this MOA shall apply to the water rights held by the WUA members, subject to the termination of, or any amendments or changes to, the MOA agreed to under Section VIII below.

VIII. TERM AND REVIEW

- This MOA shall remain in effect unless terminated by mutual agreement of the parties. At any time, any of the parties to this agreement may convene a review of this MOA under the procedures within IX. All such parties must be represented and any amendments or changes must have the approval of all parties to this MOA. Any amendments or revisions will not apply retroactively, unless it is specifically agreed by the parties that it shall be retroactive.

IX. DISPUTE RESOLUTION

Participation in this MOA by the parties does not constitute any legal advice by one party to another regarding their authorities to sign and implement this agreement.

If a dispute is brought forward by any of the signing parties concerning any provision of this MOA or implementation thereof, any such disputing party may send a written request to the other parties requesting a meeting. Such meeting will be scheduled within 30 days of the parties' receipt of the request. The parties shall then meet to discuss the dispute and attempt resolution. If resolution cannot be reached, both parties agree to enter into mediation.

SIGNATURES

Directors of Agnew Irrigation District
Signed this 6 day of September, 2012

Fred [Signature]

Directors of Clallam Ditch Company
Signed this 6 day of September, 2012

Danny R. Smith
President

Directors of Cline Irrigation District
Signed this 6 day of September, 2012

[Signature]
President

Directors of Dungeness Irrigation Group
Signed this 6 day of September, 2012

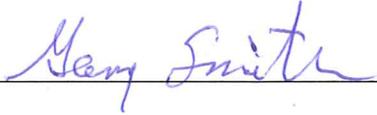
[Signature]

Directors of Dungeness Irrigation District
Signed this _____ day of September, 2012

Directors of Highland Irrigation District
Signed this 6 day of September, 2012

[Signature]

Directors of Sequim Prairie Tri Irrigation Assoc.
Signed this 6 day of September, 2012



Director
Department of Ecology

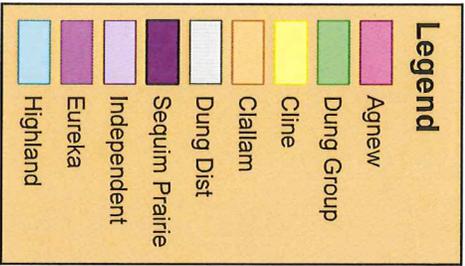


Signed this 6th day of September, 2012

APPENDIX A
ADJUDICATED WATER RIGHT CERTIFICATES DECREED BY SUPERIOR
COURT, 1924

Agnew (formerly Macleay-Lindsay) Irrigation District	Priority date: 1918 146 cubic feet per second Vol. 2, p. 237 Water Right Certificates 1924
Clallam Ditch Company	Priority date: 1902 60 cubic feet per second Vol. 2, p. 224 Water Right Certificates 1924
Cline Irrigation District	Priority date: 1919 46 cubic feet per second Vol. 2, p. 238 Water Right Certificates 1924
Dungeness Irrigation Group	Priority date: 1911 70.94 cubic feet per second Vol. 2, p. 234 Water Right Certificates 1924
Dungeness Irrigation District	Priority date: 1921 42 cubic feet per second Vol. 2, p. 239 Water Right Certificates 1924
Eureka Irrigation and Milling Company	Priority date: 1897 23.08 cubic feet per second Vol. 2, p. 221 Water Right Certificates 1924
Highland Irrigation District	Priority date: 1915 70.14 cubic feet per second Vol. 2, p. 235 Water Right Certificates 1924
Independent Irrigation Company	Priority date: 1906 40 cubic feet per second Vol. 2, p. 232 Water Right Certificates 1924
Sequim Prairie Ditch Company	Priority date: 1895 20 cubic feet per second Vol. 2, p. 220 Water Right Certificates 1924

Dungeness Valley
Irrigation District & Company Boundaries



Map Created by
Clallam Conservation District
May 2012
Photo Date: 2009
Boundaries are approximate.

