



Kittitas County Conservation District  
607 E. Mountain View Ave - Ellensburg, WA 98926  
Phone (509) 925-8585 Fax (509) 925-8591

March 28, 2008

Alvin Josephy  
Department of Ecology  
Water Resources Program  
PO Box 47600  
Olympia, WA 98504-7600

RECEIVED

MAR 31 2008

Water Resources Program  
Department of Ecology

**RE: CRBWMP Application for Kittitas County Conservation District  
Manastash Creek Restoration Project: Menastash Ditch Pipeline**

Dear Mr. Josephy:

Thank you for the opportunity to apply for the CRBWMP grant. Please find the enclosed application and attachments for the Manastash Creek Restoration Project: Menastash Ditch Pipeline. The Project proposes to pipe the Menastash Ditch with an estimated water savings of 1.4 cfs. One hundred percent of the water saved would be trusted in perpetuity to the State Trust Water Program.

Please let me know if you have any questions or need any additional information.

Thank you for your consideration.

A handwritten signature in cursive script that reads "Sherry Swanson".

Sherry Swanson

Enclosures



# COLUMBIA RIVER WATER MANAGEMENT PROGRAM GRANT APPLICATION

OFFICE USE ONLY: CR 01 07 01
<input type="checkbox"/> Draft/Worksheet
<input type="checkbox"/> Submission/ Final Date Rcvd: ___/___/___

**Project Name: Manastash Creek Restoration Project: Menastash Ditch Pipeline**

**County: Kittitas County**

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS

1. APPLICANT INFORMATION		
APPLICANT/BUSINESS NAME Kittitas County Conservation District	PHONE NO. (509) 925-8585	FAX NO (509) 925-8591
ADDRESS 607 East Mountain View		
CITY Ellensburg	STATE WA	ZIP CODE 98926

2. NEW (PROPOSED) WATER USE AND PROJECT BUDGET
PROJECT NAME Menastash Ditch Pipeline
PROJECT LOCATION Ellensburg, WA
STREAM REACH MILE/ LOCATION Manastash Creek, RM 5.6
PROJECT DESCRIPTION (TYPE) (Type: Conservation and Construction). The Manastash Creek Restoration Project was formed in 2001 and is governed by the Manastash Steering Committee. The Committee is comprised of Manastash Creek Irrigators, Kittitas County Conservation District, Washington Department of Fish and Wildlife, Washington Department of Ecology, Yakama Nation, Bonneville Power Administration, Washington Environmental Council and National Marine Fisheries Service. The project is working to provide fish screening and passage and enhance instream flow conditions in Manastash Creek. The project is being managed by the Kittitas County Conservation District. The Steering Committee proposes to consolidate 3 irrigation diversion up to the Menastash Water Ditch Association (MWDA) diversion. Providing 6 cfs for instream flow is part of the mitigation for the change applications. The Steering Committee proposes to pipe the Menastash Water Ditch Association earthen unlined ditch from the diversion to Hanson Road, approximately 5,450'. The first section of piping the MWDA ditch, from the diversion to the Kittitas Reclamation District (KRD) South Branch will be completed with an existing Department of Ecology grant. The first section the ditch is about 1,010' long. The second section of piping the MWDA ditch, from the KRD South Branch to Hanson Road, is the

additional section of piping proposed for this grant application. The second section of the ditch is about 4,440' in length. It is estimated that this stretch of MWDA ditch has a loss of 1.4 cfs. 100% of the saved water would be trusted to the State's Trust Water Program in perpetuity.

FEASIBILITY STUDY BUDGET

OPERATIONS AND MAINTENANCE BUDGET  
(INDICATE DURATION OF AGREEMENT PROPOSED)

	MATERIALS	LABOR
ESTIMATED CONSTRUCTION COST	\$181,880.16 including tax	\$150,000.00 including tax
DESIGN FEES		\$50,000.00 from BPA grant
PROFESSIONAL FEES		
SOFT COSTS (ALL PERMITS, LOCAL FEES, AND SO ON)	\$10,000.00 assistance with pipeline easements. MWDA will be negotiating and holding the pipeline easement	\$24,821.00 for KCCD staff salaries for project management and support, and a cultural resource survey from BPA grant.
OTHER CONTINGENCIES	10% project cost increases.	

**3. DETAILED PROJECT DESCRIPTIONS**

(PROVIDE EXPLANATIONS AS REQUESTED. ESTIMATE PROJECT AMOUNTS (COSTS, WATER QUANTITIES, AND SO ON) AS CLOSELY AS POSSIBLE.

**A. PROJECT COSTS AND FUNDING SOURCES**

TOTAL PROJECT AMOUNT REQUESTED FROM THIS PROGRAM  
(DOLLAR TOTAL AND PERCENT OF PROJECT BUDGET)

\$376,068.18, 100%, of construction (materials and labor) and easement assistance for the pipeline is being requested from the CRBWMP grant. Engineering, KCCD staff salaries for project management and support, and a cultural resource survey will be paid for out of an existing Bonneville Power Administration grant.

TOTAL EXPECTED COST (PROGRAM GRANT) PER ACRE FOOT OF WATER GAINED FOR THE PROGRAM FROM THIS PROJECT.  
Total estimated savings is 453.62 acre feet/year and the total estimated cost for construction is \$376,068.18. The total expected cost per acre foot requested for the CRBWMP grant is \$829.04.

**B. FUNDING SOURCE INFORMATION**

TOTAL PROJECT AMOUNT EXPECTED TO BE PROVIDED BY SOURCES OTHER THAN THIS PROGRAM (DOLLAR TOTAL AND PERCENT OF PROJECT BUDGET)

\$74,821.00 will be provided by an existing BPA grant for engineering, KCCD staff salaries for project management and support, and a cultural resource survey which is % of the total project.

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IDENTIFY SOURCES AND TYPE OF FUNDING OTHER THAN THROUGH THIS PROGRAM GRANT. INCLUDE EXPECTED DATES OF PARTICIPATION. INCLUDE AS AN ATTACHMENT; LETTERS OF COMMITMENT, OFFER LETTERS, APPLICATION APPROVALS, AND SO ON.

SOURCE AND TYPE OF FUNDING: Bonneville Power Administration, Instream Flow Enhancement

AMOUNT: \$74,821.00

STATUS: The BPA grant is paying for engineering and design of the pipeline, KCCD staff salaries for project management and support, and a cultural resources survey.

DATES OF PARTICIPATION: 2007-2009

SOURCE AND TYPE OF FUNDING: \_\_\_\_\_

AMOUNT: \_\_\_\_\_

STATUS: \_\_\_\_\_

DATES OF PARTICIPATION: \_\_\_\_\_

SOURCE AND TYPE OF FUNDING: \_\_\_\_\_

AMOUNT: \_\_\_\_\_

STATUS: \_\_\_\_\_

DATES OF PARTICIPATION: \_\_\_\_\_

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AMOUNT: \_\_\_\_\_

STATUS: \_\_\_\_\_

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SOURCE AND TYPE OF FUNDING: \_\_\_\_\_

AMOUNT: \_\_\_\_\_

STATUS: \_\_\_\_\_

DATES OF PARTICIPATION: \_\_\_\_\_

SOURCE AND TYPE OF FUNDING: \_\_\_\_\_

AMOUNT: \_\_\_\_\_

STATUS: \_\_\_\_\_

DATES OF PARTICIPATION: \_\_\_\_\_

**C. ESTIMATED TOTAL WATER SAVINGS**

**CONSERVATION PROJECT:** ESTIMATE THE WATER TO BE CONSERVED THROUGH THIS PROJECT. PROVIDE ENGINEERING OR TECHNICAL ANALYSIS TO SUPPORT THIS ESTIMATE

MONTH	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOT
Qa (ACRE-FEET)	6.148 85 ac ft	5.752 15 ac ft	6.148 85 ac ft	83.30 7 ac ft	86.08 ac ft	83.30 7 ac ft	43.04 195 ac ft	43.04 195 a ft	41.65 35 ac ft	43.04 195 a ft	5.950 5 ac ft	6.148 85 ac ft	453.6 2 ac ft
Qi (CFS)	0.1 cfs	0.1 cfs	0.1 cfs	1.4 cfs	1.4 cfs	1.4 cfs	0.7 cfs	0.7 cfs	0.7 cfs	0.7 cfs	0.1 cfs	0.1 cfs	

HOW MUCH WATER IS THE APPLICANT PREPARED TO PLACE IN TRUST? 100% of the saved water, 453.62 acre feet/year.  
\_\_\_\_\_ AF

(NOTE: THE MINIMUM TRUST QUANTITY IS PROPORTIONATE TO FUNDING UNDER THIS PROGRAM.)

HOW MUCH OF THE TRUST WATER QUANTITY ACCRUES IN A TRIBUTARY? (AMOUNT) 100%

TRIBUTARY NAME Manastash Creek

HOW MUCH OF THE TRUST WATER QUANTITY ACCRUES TO THE COLUMBIA RIVER? (AMOUNT) NA

**STORAGE PROJECT:** ESTIMATE THE WATER TO BE STORED UNDER THIS PROJECT. PROVIDE ENGINEERING OR TECHNICAL ANALYSIS TO SUPPORT THIS ESTIMATE. ESTIMATED ACRE-FEET= \_\_\_\_\_ AF

ESTIMATE THE TOTAL QUANTITIES AND TIMING WATER WILL BE DIVERTED INTO STORAGE BELOW.

MONTH	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOT
Qa (ACRE-FEET)													
Qi (CFS)													

HOW MUCH STORED WATER IS THE APPLICANT PREPARED TO ASSIGN FOR STATE USE FOR THE COLUMBIA RIVER PROGRAM?  
\_\_\_\_\_ AF

NOTE: THE MINIMUM QUANTITY ASSIGNED IS PROPORTIONATE TO FUNDING UNDER THIS PROGRAM.

HOW MUCH OF THE STORED WATER QUANTITY WILL BE RELEASED IN A TRIBUTARY? \_\_\_\_\_ AF

TRIBUTARY NAME \_\_\_\_\_

HOW MUCH OF THE STORED WATER QUANTITY WILL BE RELEASED TO THE COLUMBIA RIVER? \_\_\_\_\_ AF

FOR THE PORTION OF STORED WATER ASSIGNED TO THE STATE, DESCRIBE ANY CONSTRAINTS (HYDRAULIC, DEMAND, ETC.) ON THE RELEASE OF THE WATER FOR STATE USE.

<b>D. TO WHAT EXTENT IS THE PROJECT CONSISTENT WITH, SUPPORTIVE TO, OR CITED IN LOCAL NATURAL RESOURCE PLANS?</b>			
<b>CITATION PROVIDED</b> ✓	<b>PLAN TYPE</b>	<b>PLAN TITLE</b>	<b>PAGE NUMBER OR OTHER CITATION</b>
<input checked="" type="checkbox"/>	WATERSHED PLAN	Watershed Management Plan Yakima River Basin	7-8, 7-19
<input checked="" type="checkbox"/>	CONSERVATION DISTRICT	MOU: KCCD and Manastash Steering Committee, MOA: Manastash Creek Irrigators, BPA, WDFW, KCCD, and Washington Environmental Council (WEC).	
<input checked="" type="checkbox"/>	LEAD ENTITY STRATEGY	Yakima River Basin Fish and Wildlife Recovery Board	50, 61-63
<input checked="" type="checkbox"/>	NPCC SUBBASIN PLAN	Yakima Subbasin Salmon Recovery Plan Yakima Subbasin Plan Supplement	12, 55, 68, 70 8
<input type="checkbox"/>	SALMON RECOVERY PLAN		
<input type="checkbox"/>	OTHER RECOVERY PLAN		
<input type="checkbox"/>	COMPREHENSIVE WATER SYSTEM PLAN		
<input type="checkbox"/>	GMA COMPREHENSIVE PLAN		
<input checked="" type="checkbox"/>	OTHER PUBLISHED PLAN	MOA: Manastash Creek Irrigators, BPA, WDFW, KCCD, and WEC. The Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan was an attachment to the MOA. The Resolution to adopt the Implementation Plan was signed by the major irrigators on Manastash Creek, WEC, and WDFW.	
<input type="checkbox"/>	OTHER PUBLISHED PLAN		
<b>E. ATTACH LETTERS OF SUPPORT FROM LOCAL COMMUNITY ENTITIES INVOLVED IN NATURAL RESOURCES. Provide entity type and title, and attach letters to application.</b>			

LETTER PROVIDED ✓	PLANNING ENTITY TYPE	PLANNING ENTITY TITLE
<input checked="" type="checkbox"/>	TRIBE	The MOU. KCCD and Manastash Steering Committee was signed by Phil Rigdon of the Yakama Nation. The Yakama Nation participated in the development of and voiced support for the MOA and the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan.
<input type="checkbox"/>	COUNTY	
<input type="checkbox"/>	WATERSHED PLANNING UNIT	
<input checked="" type="checkbox"/>	CONSERVATION DISTRICT	The MOU and MOA were signed by the KCCD Board Chair, Mark Moore.
<input type="checkbox"/>	IRRIGATION DISTRICT	
<input type="checkbox"/>	SALMON RECOVERY LEAD ENTITY	
<input checked="" type="checkbox"/>	OTHER PLANNING ENTITY	Manastash Steering Committee. The Committee is comprised of the Manastash Creek Irrigators, Yakama Nation, Ecology, WDFW, WEC, NOAA, and BPA. Attached is a copy of the signed MOU, MOA and the Resolution of the Manastash Steering Committee Regarding Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan.

F. RESOURCES CURRENTLY COMMITTED TO ENSURE LONG-TERM PERFORMANCE OF THE PROPOSED PROJECT (OPERATION AND MAINTENANCE).

WHO IS RESPONSIBLE FOR LONG-TERM OPERATION AND MAINTENANCE OF THE PROJECT? Menastash Water Ditch Association (MWDA)

HAVE OPERATION AND MAINTENANCE COSTS BEEN IDENTIFIED?  YES  NO IF YES, PROVIDE REFERENCE \_\_\_\_\_

HOW WILL ONGOING OPERATION AND MAINTENANCE COSTS BE FUNDED? MWDA will be responsible for Operation and Maintenance of their irrigation pipeline.

ARE MEASUREMENT DEVICES OTHER THAN DIVERSION SOURCE METERS NECESSARY TO MONITOR COMPLIANCE WITH THE PROJECT INTENT OR PLAN? IF YES, DESCRIBE IN THE BOX BELOW.  YES  NO

DOES A WATER MEASUREMENT DEVICE EXIST ON THE SOURCE AND DOWNSTREAM OF THE PROPOSED PROJECT?  YES  NO

IF NO, WILL A WATER MEASUREMENT DEVICE BE INSTALLED AS PART OF THIS PROJECT?  YES  NO

IF YES, DESCRIBE LOCATION AND OPERATING ENTITY Water measuring devices will be installed when the fish screening and passage components of the Manastash Creek Restoration Project are implemented. Construction of the fish screening and passage facility is planned for October 2008 and will be funded with an existing Department of Ecology grant. Currently, as part of the Manastash Creek Restoration Project, there are 18 flow monitoring sites on the ditches and Creek managed by the KCCD. After the fish screen facilities are built and metered, the KCCD will remove the ditch sites and continue to monitor the Creek sites as long as funding is available.

IF YES, PROVIDE RIVER MILE Water metering and fish screening and passage facilities will be constructed for MWDA/Consolidated diversion RM 5.6, Keach Jensen diversion RM 5.5, and Barnes diversion RM 1.4. There is an existing flow monitoring site located below the Keach Jensen diversion at RM 5.4.

WHAT IS THE NEAREST STREAM GAGE DOWNSTREAM OF THE PROPOSED PROJECT? SOURCE NAME Keach Jensen diversion will be the next downstream metered diversion RM 5.5. Construction is scheduled for October 2008. The next downstream KCCD flow monitoring site is below Keach Jensen at RM 5.4.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

RIVER MILE : Keach Jensen is at RM 5.5 and the next downstream KCCD flow monitoring site is at RM 5.4.

\_\_\_\_\_

**G. PROPONENT'S READINESS TO PROCEED:**

DESCRIBE STATUS OF FEASIBILITY REPORTS, ENGINEERING DESIGN, AND PERMITS. PROVIDE DOCUMENTATION FOR THESE DELIVERABLES AND DESCRIBE THE PROJECT EFFORT TIMELINE AS APPROPRIATE. (SUBMIT TWO (2) COPIES OF ALL REQUIRED DOCUMENTS)

The Kittitas County Conservation District entered a multiple projects contract with HDR Engineering Inc, on February 14, 2008, to begin designing the Menastash Ditch pipeline. A task order for design is being negotiated. Final design (100%) for the Menastash Ditch pipeline from KRD South Branch Road to Hanson Road is expected by September 2008. Construction for this section of the Menastash Ditch pipeline is planned for October 2009.

DOES PROJECT PROPONENT OWN THE LAND FOR THE PROPOSED PROJECT? IF NOT, DOES THE PROPONENT HAVE DOCUMENTED ACCESS TO THE RIGHT OF WAY OR OWNS AN EASEMENT TO THE PROPERTY PROPOSED (PLEASE ATTACH APPROPRIATE DOCUMENTATION INCLUDING TITLE REPORTS AS APPLICABLE)

Menastash Water Ditch Association has an existing easement for their diversion and from the diversion down to the KRD South Branch Road. Currently MWDA is investing the extent of their easement.

**DESIGN/ ENGINEERING STATUS:**

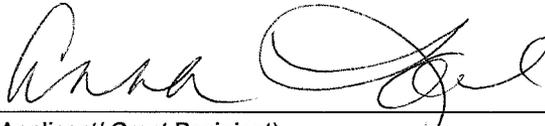
- PRE-PLANNING (Pre – permitting)  Status: A task order is being negotiated with HDR  
Engineering Inc for the design of the pipeline. \_\_\_\_\_
- PRE-DESIGN (DESIGN REPORTS) (10%)  Status: \_\_\_\_\_
- SCHEMATIC DESIGN (30%)  Status: \_\_\_\_\_
- DESIGN DEVELOPMENT (75%)  Status: \_\_\_\_\_
- CONSTRUCTION DOCUMENTS (95%)  Status: \_\_\_\_\_
- BID DOCUMENTS (Ready for bid)  Status: \_\_\_\_\_

**PERMIT STATUS**

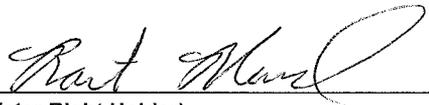
- SEPA completed \_\_\_\_\_  Status: SEPA will be completed after 50% pipeline design is completed
- 401  Status: \_\_\_\_\_
- FISH AND WILDLIFE CONSULTATION  Status: \_\_\_\_\_
- STORAGE AND /OR SECONDARY USE PERMIT  Status: \_\_\_\_\_
- OTHER (US Army Corps 404 permit \_\_\_\_\_)  Status: A pre-permitting meeting is scheduled with the US Army Corps of Engineers, KCCD, an Archeologist and HDR April 15th, 2008. \_\_\_\_\_
- OTHER (Cultural Resource Survey \_\_\_\_\_)  Status: A pre-permitting meeting is scheduled with the US Army Corps of Engineers, KCCD, an Archeologist and HDR April 15th, 2008. \_\_\_\_\_
- OTHER ( \_\_\_\_\_ )  Status: \_\_\_\_\_

## 4. SIGNATURES

*I certify that the information above is true and accurate to the best of my knowledge. I understand that in order to process my application, I am hereby granting staff from the Department of Ecology access to the above site(s) for inspection and monitoring purposes. If assisted in the preparation of the above application, I understand that all responsibility for the accuracy of the information rests with me. I also understand that I may rescind this application at any time prior to signing the Agreement with no other obligations or requirements.*

  
\_\_\_\_\_  
(Applicant/ Grant Recipient)

3/27/2008  
(Date)

  
\_\_\_\_\_  
(Water Right Holder)

3/27/2008  
(Date)

\_\_\_\_\_  
(Land Owner(s) of Existing Place of Use)

/ /  
(Date)

### For More Information

**Contact:** Alvin Josephy  
**Voice:** (360) 407-6456  
**Email:** [ajos461@ecy.wa.gov](mailto:ajos461@ecy.wa.gov)  
**Web:** <http://www.ecy.wa.gov/programs/wr/cwp/crwmp.html>

*If you need this document in an alternate format, please call the Water Resources Program at 360-407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*

**MEMORANDUM OF AGREEMENT**  
**between the**  
**MANASTASH CREEK IRRIGATORS,**  
**BONNEVILLE POWER ADMINISTRATION,**  
**WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE,**  
**KITTITAS COUNTY CONSERVATION DISTRICT, and**  
**WASHINGTON ENVIRONMENTAL COUNCIL,**  
**regarding**  
**THE MANASTASH RESTORATION PROJECT**

The Manastash Creek Irrigators (Irrigators), Bonneville Power Administration (Bonneville), the Washington State Department of Fish and Wildlife (WDFW), Kittitas County Conservation District (KCCD), and Washington Environmental Council (Council) have agreed to: 1.) implement up- and down-stream fish passage improvements at existing water diversion facilities on Manastash Creek used by the Irrigators to divert water under rights they own and that the Washington State Superior Court confirmed in *Ecology v. Acquavella*, Yakima County Cause No. 77-2-01484-5 (*Acquavella*) and 2.) develop and implement a consensus flow enhancement plan for Manastash Creek. These two elements together are hereafter referred to as the "Manastash Project".

**RECITALS**

**1. Parties.**

- A. Manastash Creek Irrigators are farmers, ranchers and landowners who are individuals and entities that divert water from Manastash Creek at six (6) different locations on Manastash Creek, a tributary of the Yakima River in Kittitas County, Washington. They are a subset of the Manastash Creek Water Right Holders, a group constituting all water right holders on Manastash Creek. The six diversion locations are referred to herein as follows:
1. The Menastash Water Ditch Association (MWDA), identified in Appendix A, uses the diversion identified in Appendix A.
  2. The Keach/Jensen water right holders identified in Appendix B use the diversion identified in Appendix B.

3. The Hatfield Diversion (Hatfield) water right holders identified in Appendix C use the diversion identified in Appendix C.
  4. The Reed Diversion (Reed) water right holders identified in Appendix D use the diversion identified in Appendix D.
  5. The Anderson Diversion (Anderson) water right holders identified in Appendix E use the diversion identified in Appendix E.
  6. The Barnes Diversion (Barnes) water right holders identified in Appendix F use the diversion identified in Appendix F.
  7. All of the above water right holders are collectively referred to herein as Manastash Creek Water Right Holders. The Manastash Creek Irrigators are a subset of this group including representatives of MWDA and individual irrigators from Keach Ditch, Jensen Ditch, Hatfield Ditch, Reed Ditch, Anderson Diversion and Barnes Road Diversion, are signatories to this agreement and are referred to as the Irrigators. The signatories of the respective irrigators to this agreement represent only their own respective interests and do not represent any water right holders that are not signatories to this Agreement.
- B. Bonneville is a federal power marketing agency within the United States Department of Energy. In entering into this Agreement it is exercising its authorities under Section 4(h)(10) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839b(h)(10)(A), and other laws to help protect, mitigate, and enhance fish and wildlife affected by the federal hydroelectric projects in the Columbia River Basin.
- C. The WDFW is an agency of the State of Washington whose statutory mandate is to preserve, protect, perpetuate, and manage the fish and wildlife of the state.
- D. The KCCD formed under state law to provide private landowners in Kittitas county with technical and financial assistance to protect and improve the natural resources.
- E. The Washington Environmental Council is a non-profit group working to protect Washington's environment and natural heritage for current and future generations by advocating for improved state protections and better enforcement of existing laws.
- F. The individuals and entities described in Recitals (1)A-E are referred to herein as the "Parties."

2. **Background.**

- A. Manastash Creek is a tributary of the Yakima River which flows into the Yakima River west of Ellensburg. Manastash Creek provides irrigation water to about 4,000 acres; some acres have dual water rights with Kittitas Reclamation District or West Side Irrigating Company. In 2000, steelhead were listed under the Endangered Species Act and the Irrigators approached the KCCD about technical and financial assistance to assist with improvements to Manastash Creek fish passage.
- B. In February 2001, WEC sent a draft notice of intent to sue under the Endangered Species Act to the operators of the diversions, the WDFW, Kittitas Reclamation District and West Side Irrigating Company. Although WEC threatened litigation, it offered to sit down with the affected parties to develop a mutually agreeable plan which would enhance fish passage and instream flows in Manastash Creek while ensuring the viability of local agriculture. The Irrigators deny that they have violated the Endangered Species Act in any manner. Nothing in this agreement or any statement by a party made in the negotiation of this Agreement may be used as an admission in any manner that there has been any non-compliance with the Endangered Species Act or any other laws or regulations.
- C. Initial negotiations involved the Irrigators, WDFW, the Washington Department of Ecology (Ecology), Yakama Nation, Kittitas Reclamation District and the Washington Environmental Council. This group formed the Manastash Steering Committee, which focused on finding a way to eliminate the barriers to fish passage and unscreened irrigation water diversions on Manastash Creek by consolidating some of the irrigation diversions and redesigning the fish passage facilities along Manastash Creek. It was decided to consider flow enhancement as a later, second phase of the project. Through this collaborative effort, the Manastash Steering Committee secured commitments for funding from the State of Washington (\$2.24 million) and Bonneville (\$1.937 million). The funding appropriated by the Washington State Legislature is made available to the project through a grant from Ecology to the KCCD. The Bonneville funds were originally requested by WDFW, but all funds have been contracted to HDR Fishpro for engineering, permitting, design, and construction of fish passage facilities.
- D. In 2006, at the direction of the Manastash Steering Committee, KCCD submitted proposal number 2007-020-00 Manastash Creek Flow Enhancement as part of the FY 07-09 F&W Program Solicitation. In 2007, Bonneville approved funding for project flow enhancement measures in the amount of \$892,998 through FY 09. All parties have subsequently agreed to integrate both passage and flow components into a single project (2003-001-00) and that construction on the fish passage components of the project will proceed when the plan for enhancing flows in Manastash Creek has been developed and adopted by resolution of the Manastash Steering Committee.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**I. Manastash Fish Passage Improvements**

**A. Description.** As a result of the collaborative process described above, the Parties have developed a plan for improving fish passage that involves implementing the following Manastash Project elements or improvements:

1. At the existing Manastash Diversion, currently used by the MWDA and henceforth referred to as the "Consolidated Diversion":
  - a) The Hatfield, Reed, and Anderson diversions will be relocated and consolidated.
  - b) A fish screen and appurtenant structures will be designed and constructed to screen juvenile fish from the canal/ditch while allowing water diversion by the users to exercise their full adjudicated water rights.
  - c) The check dam and/or stream channel at the diversion facility will be modified, and/or fish passage structures will be installed, to achieve compliance with WDFW fish passage criteria.
  - d) The relocation and consolidation of the diversions are contingent on receiving the necessary approvals to change the point of diversion on applications filed with Ecology. If Ecology doesn't approve one or more of the applications for change in point of diversion, the consolidation will not occur, and Bonneville agrees to then work with the other parties to amend this Agreement to allow construction of individual fish passage improvements at the Hatfield, Reed, Anderson, and Manastash diversions
  - e) The facility design is depicted in Appendix G.
2. At the existing Hatfield, Reed and Anderson diversions, if consolidation is approved,
  - a) The existing diversion facilities will be removed by Bonneville and abandoned by the owners.
  - b) The stream channel will be restored by Bonneville to achieve compliance with WDFW fish passage criteria.
3. At the existing Keach/Jensen diversion,
  - a) A fish screen and appurtenant structures will be designed and constructed to screen juvenile fish from the canal/ditch while

allowing water diversion by the users to exercise their full adjudicated water rights.

- b) The check dam and/or stream channel at the diversion facility will be modified, and/or fish passage structures will be installed, to achieve compliance with WDFW fish passage criteria
  - c) The facility design is depicted in Appendix H.
4. At the Anderson Abandoned Dam, the full span concrete diversion structure will be removed by the KCCD to accommodate fish passage. The stream channel will be allowed to regrade naturally.
5. At the existing Barnes Road diversion,
- a) A fish screen and appurtenant structures will be designed and constructed to screen juvenile fish from the canal/ditch while allowing water diversion by the users to exercise their full adjudicated water rights.
  - b) A roughened channel within concrete walls (henceforth "fish ladder") will be constructed adjacent to the screen and part of the overall new facility, to improve fish passage.
  - c) The facility design is depicted in Appendix I.

**B. Effect on Water Rights of Parties to this Agreement.** Except for the changes in points of diversion contemplated herein, nothing in this Agreement, nor in any of the references made in this Agreement or its recitals (including specific references to federal legislation, any programs adopted by the Northwest Power and Conservation Council, or pursuant to the Northwest Power Act), shall in any way limit, impair, define, diminish or prejudice any parties water right adjudicated in *Ecology vs. Acquavella* to divert, transmit, and use water for agricultural, irrigation, stock water, fish and aquatic life or domestic purposes, nor authorize any party to hinder, interfere with, or limit any such rights; provided that, nothing is intended to limit the application of Treaty nor federal or state law.

**C. Permits.**

1. Bonneville will comply with federal law requirements, including National Environmental Policy Act (NEPA) and Endangered Species Act compliance, and obtain federal permits, necessitated by the construction and initial testing of the Manastash Project improvements. Bonneville will provide non-monetary assistance to KCCD, the Irrigators, and any affected state or local agencies for compliance with the Washington State Environmental Policy Act and other state or local permits as needed.
2. Bonneville has completed NEPA and ESA compliance documentation for Manastash Project improvements at Barnes Road.
3. Bonneville will complete the NEPA and ESA compliance documentation for the Manastash Project improvements at the Consolidated Diversion and the Keach/Jensen diversions.
4. The Irrigators using the Consolidated Diversion will apply for the permits and authorizations from Ecology as required for changes in the points of diversion needed to complete the project. The Irrigators agree to cooperate fully and reasonably in requesting and processing the changes in point of diversion.
5. WDFW and the KCCD will apply for any remaining permits and authorizations needed to lawfully proceed with the construction of the diversions and fish passage and screening facilities.
6. No party will have an obligation to defend any other party's environmental compliance, permits, or authorizations as addressed in this section in a court or any other forum.

**D. Design.** Bonneville will design the Manastash Project improvements, as shown in Appendices G, H, and I that will comply with current fish screening and passage criteria as defined by state and federal standards. The Irrigators consent to allow Bonneville to design these facilities.

1. The Irrigators have the right to review and approve the design and construction plans for the Manastash Project improvements prior to BPA issuing a request for bids. Manastash Project improvements are being completed in stages. As facility design and construction plans are completed for each Manastash Project element (e.g Barnes Road fish screen and fish ladder, the Keach/Jensen fish screen and passage structures, or the consolidated diversion fish screen and passage structures), BPA will provide the plans through the KCCD to the Irrigators associated with each Manastash Project element. If the Irrigators associated with a given Manastash Project element have not rejected that element's design and construction plan in writing within 30 days of receipt

and transmitted such rejection to Bonneville through the KCCD, then Bonneville and the affected Irrigators shall be assumed to be authorized to proceed. If designs are rejected for a particular element the Agreement will, however, continue for the other Manastash Project improvements. Rejected designs may be remanded back to a technical sub committee as appointed by the Steering Committee for review.

2. Bonneville shall make reasonable efforts to give the Irrigators reasonable advance notice in writing of any changes in the design of the facilities being constructed after the associated Irrigators have reviewed and approved the designs pursuant to this Agreement

#### **E. Construction**

1. Parties understand that, due to funding limitations, Bonneville will not be solely responsible for funding all elements of the Manastash Project improvements listed above. Bonneville will fund each Manastash Project improvement to the extent possible up to the final BPA-approved funding level. The Parties intend that any remaining elements of the Manastash Project will be implemented using Ecology funds already available to the KCCD, up to the limit of those funds. Should the cost of constructing all facilities exceed the available funding through the KCCD and Bonneville, the Manastash Steering Committee shall work to locate and secure additional funding to complete the projects. Currently, the Parties expect that Bonneville will construct the Manastash Project improvements at the Consolidated Diversion and the Keach/Jensen diversion. The KCCD will construct one Manastash Project element using Ecology funds, the Barnes Road diversion. Bonneville and the KCCD will each be responsible for the facility or facilities that each entity constructs. Neither entity is responsible for the other's obligations.
2. Bonneville and the KCCD will coordinate the timing for their respective Manastash Project improvements with the Irrigators.
3. Bonneville and the KCCD shall give the Irrigators reasonable advance notice in writing of the place, date, and time of a final inspection of the construction of their respective Manastash Project improvement built under this Agreement. The Irrigators must make any objections to Bonneville's or the KCCD's performance in carrying out such construction at or before the final inspection. Any differences as to such matters shall be resolved, if possible, by negotiation and agreement of the parties.
4. By the time of the final inspection of the construction, Bonneville or the KCCD will leave the construction staging areas in a condition similar to that which existed prior to construction.

**F. Access to Facilities.**

1. The KCCD will assist BPA in obtaining all necessary and applicable access and occupancy easements, including temporary construction easements, for design, construction, operation, maintenance, replacement, monitoring, and evaluation of the Manastash Project improvements identified in Appendices H (Keach/Jensen) and I (Barnes) (except for the Kittitas County franchise agreement, which will be acquired and held by others) and for facilities, access routes, and construction staging areas shown in Appendix M. Bonneville will hold these easements and rights of way and transfer them to whatever entity or entities own the facilities at the time of project completion.
  - a. The real property acquisition activities shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and regulations issued pursuant to that Act
  - b. Easements will generally be in the form of the sample included in Appendix K.
2. The Irrigators using the Consolidated Diversion agree to provide Bonneville easements over and across real property they own or otherwise control as necessary for the design, construction, operation, maintenance, replacement, monitoring or evaluation of the Manastash Project improvements described in Appendix G. Such rights easements shall be provided at no additional cost to Bonneville, the KCCD, or WDFW beyond the consideration provided by this Agreement.
3. The approved easements required in this section of the Agreement must be acquired before Bonneville solicits for construction contractors.

**G. Facility Ownership.**

1. With respect to all the Manastash Project improvements to be constructed under this agreement, Parties agree that Bonneville will retain title only to the following facilities:
  - a. The fish screens at
    - i. Barnes Road,
    - ii. Consolidated Diversion, and
    - iii. Keach/Jensen.
  - b. The concrete fish ladder adjacent to the screen at Barnes Road Diversion; and

- c. Other appurtenances to these fish screen facilities and the Barnes Road fish ladder necessary for their proper functioning, including, but not limited to, piers holding fish screens, up- and down-stream control gates, fish bypass pipes, trash racks, automated equipment, and security fences. See Appendix N for maps of the ownership boundaries at each facility.

BPA will not hold title to, own, control, possess or have any liability for the irrigation diversion/delivery features described below under Paragraph I.G.3. or any of the other Manastash Project improvements, including dams, stream grade controls or channel restoration features.

2. Title to the above named Manastash Project fish screen facilities and fish ladder, including those constructed by the KCCD under this Agreement, shall be vested in Bonneville for five (5) years beginning on the date of each facility's final construction inspection. All Parties acknowledge that Bonneville accepts ownership of these newly constructed facilities, easements, and rights-of-way only to facilitate their construction and seeks to divest itself of ownership expeditiously. Therefore, before the end of the second year of operation of each diversion facility, the Parties, convened by the Council and WDFW, will participate in developing a plan to (1) transfer ownership of the facilities to an entity or agency other than Bonneville or the Irrigators, and (2) establish operation and maintenance protocols. Each Party to this Agreement agrees to participate earnestly in such discussions in good faith and at its own costs.
3. Title to all other features of the Irrigators' irrigation facilities, including without limitation diversion dams, modifications thereto from the Manastash Project, gates, weir structures, measuring devices, diversion/conveyance canals, and other appurtenant structures shall be and remain vested in the current owners of the respective facilities subject only to the terms and conditions of this Agreement.

#### **H. Instream Fish Passage Structures.**

1. All parties desire to accomplish fish passage at the facilities in the most efficient manner to provide the greatest benefit. During the design phase, a cooperative decision was made to pursue "roughened channel" designs as opposed to more traditional concrete fish ladders at the Keach-Jensen and MWDA/Consolidated Diversion. This decision elevates the project beyond the minimum of meeting the state and federal passage criteria to agreeing on a solution that provides better habitat features and a more naturalized design.
2. Given the complexity of the design, construction and long-term monitoring required to achieve success, responsibility for these

structures is shared jointly amongst the parties. No individual party shall be solely responsible for these structures. The construction phase must be closely overseen by the design engineers. Long-term monitoring and maintenance is necessary for all fishways, regardless of type. For roughened channel fishways, determination of exactly what maintenance activities should occur requires a level of expertise similar to that required for the original design and engineering phase.

## I. Facility Repair.

### 1. Bonneville Responsibilities

- a. Bonneville will be responsible for any extraordinary repair that exceeds normal wear-and-tear needed at each Manastash Project fish screen and ladder facility identified in paragraph I.G.1. in this Agreement for five years following the final construction inspection for that facility.
- b. "Extraordinary" repairs are those arising from natural causes in excess of normal wear-and-tear, but not including those repairs caused by negligence or other human causes.
- c. "Normal wear-and-tear" means typical, anticipated facility degradation that results from ordinary operations and that does not require more than the types of routine maintenance listed in paragraph I.I.3. below.
- d. Bonneville shall make such repairs to the Manastash Project fish screen and ladder facilities in a manner consistent with the Irrigators' valid water rights in a manner that does not unreasonably interfere with the exercise of their water rights.
- e. In the event of natural disaster—such as but not limited to flood, fire, or earthquake— affecting a Manastash Project fish screen or ladder facility during a five year period from the final construction inspection for each such facility, the affected Irrigators shall immediately notify Bonneville of the nature and extent of damage. The Irrigators may make emergency repairs of such damage up to seven-hundred fifty dollars (\$750.00) for labor, equipment and materials. Repairs exceeding said amount must have Bonneville's prior approval and authorization or Bonneville will have no obligation to repay the repair costs.
- f. Bonneville may contract with others for the performance of its duties under this Agreement. In case of default by the assignee(s), Bonneville shall be responsible for performance of their work.

2. Irrigator Responsibilities. Irrigators shall be responsible for any and all repairs, replacements, operation, and maintenance of facilities to which they hold title, as necessary to continue to divert water in accordance with their legal water right. Irrigators shall make any such repairs in a timely and prompt fashion where failure to do so would adversely affect the ability of the Manastash Project fish screen and passage facilities to operate properly and within state and federal guidelines.

#### J. Operation and Maintenance

1. The Irrigators shall operate and maintain their irrigation systems, including their diversion dams, headworks, and canals on or in which the Manastash Project fish screen and fish passage facilities are located, in a workmanlike manner and shall use reasonable care not to impair the operation and maintenance of the Manastash Project fish screen and fish passage facilities.
2. The Irrigators, or their agents, shall have the sole power and discretion and exclusive right to adjust and maintain control of waters flowing into their ditches and delivery systems through their respective headgates.
3. The Irrigators, or their agents, shall perform routine maintenance tasks as needed to assure proper and continuous operation of the Manastash Project fish screen and fish passage facilities. The Irrigators or their agents shall follow the routine operation and maintenance plan attached as Appendix L to this Agreement. Routine maintenance includes but is not limited to the following:
  - monitoring equipment for maladjustment, distress, wear, or shutdown;
  - lubricating bearings and replacing shear pins;
  - resetting tripped breakers and restarting equipment;
  - clearing trash and debris from structures;
  - cleaning out silt deposits from behind the screens;
  - picking up litter and controlling weeds;
  - monitoring site security; and
  - making minor equipment repairs and adjustments.

During the first five years after the final construction inspection for each Manastash Project fish screen and fish passage facilities, the Irrigators or their agents are responsible to perform the routine maintenance and shall ensure that problems or malfunctions are reported timely to Bonneville. Any work performed shall be documented in a daily log provided by

Bonneville. Documentation shall include time started, time completed, a brief description of work done, equipment used, and the names of the person(s) performing the work.

4. The roughened channel structures at the Keach/Jensen and Consolidate/MWDA diversions require annual monitoring and adaptive management to ensure they continue to meet fish passage criteria. Annual monitoring will occur by persons qualified to determine whether the structures are meeting fish passage criteria. This may include licensed engineers or WDFW staff. Those determinations will be reported back to the Steering Committee, keeping the Steering Committee aware of the long-term function of these structures and allowing the Steering Committee to pursue additional funding if major improvements are necessary to maintain fish passage.
5. The KCCD, through the aforementioned Ecology funding and with Ecology's approval, shall place \$75,000 in an account to be available for reimbursement to the Irrigators or their agents for proven costs incurred in the operation and maintenance of the fish screen and fish passage facilities at Barnes Road, Keach/Jensen and the MWDA/consolidated diversion. Dispersals are subject to Steering Committee approval. The Steering Committee shall work to replenish this fund as needed. Other than this provision of funding, KCCD is not responsible for maintenance or operations of any of the facilities.

## **II. Manastash Flow Enhancement Improvements**

- A. The Manastash Steering Committee has collaborated to develop a consensus plan to enhance stream flows in Manastash Creek. This plan, called the Manastash Creek Restoration Project, Instream Flow Enhancement Implementation Plan ("Implementation Plan") includes measures as described in Proposal 2007-020-00, including water right purchase, on-farm efficiencies, conveyance and delivery piping or improvements, etc. The plan is attached as Appendix O.
- B. The Manastash Steering Committee has passed a resolution, included in Appendix O, signifying its concurrence in the Implementation Plan and its members commitment to implement the plan to address any outstanding concerns about flow levels in Manastash Creek to the extent that implementation of the fish passage measures under I. above can proceed.
- C. The Irrigators have requested and Bonneville expects to provide funding to begin to implement the Implementation Plan. Bonneville does not expect that actual implementation of all measures will be required as a condition for implementing fish passage measures under I. above.

## **III. General Provisions**

- A. **Effective Date-Amendments-Termination.** This Agreement shall be effective from the date of the last Party to sign until renewed, amended, supplemented, terminated, or superseded by mutual written consent of the Parties thereto.
- B. **Compliance with State Law.** Compliance with this agreement does not exempt any party from compliance with Washington State law, including laws regarding fish passage and screening.
- C. **Attorneys' Fees.** In the event of litigation involving this Agreement each Party shall bear its own costs and attorney fees, including those incurred on appeal.
- D. **Notices.** Subject to the requirements of any applicable statute, any notices required or permitted by law or under this Agreement shall be in writing and shall be (i) personally delivered, (ii) sent by first class certified or registered mail, return receipt requested, with postage prepaid, or (iii) dispatched by facsimile transmission (accompanied with reasonable evidence of receipt of transmission and with a confirmation copy mailed no later than the day after transmission) to the Parties' addresses set forth below or in the Appendixes. Any party may change its address for notice. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if mailed, on the earlier of receipt or two (2) days after deposit thereof in the U.S. mail.
- E. **Section Headings.** The word or words appearing at the commencement of sections and subsections of this Agreement are included only as a guide to the contents thereof and are not to be considered as controlling, enlarging or restricting the language or meaning of those sections or subsections.
- F. **Invalidity.** In the event any portion of this Agreement should be held to be invalid by any court of competent jurisdiction, such holding shall not affect the remaining provisions hereof unless the court's ruling includes a determination that the principal purpose and intent of this Agreement are thereby defeated.
- G. **Legal Relationships.** No partnership, joint venture or joint undertaking shall be construed from these presents, and except as herein specifically provided, no Party shall have the right to make any representation for, act on behalf of, or be liable for the debts of any others. No third party is intended to be benefited by this Agreement.
- H. **Assignment; Successors.** Subject to the restrictions contained herein, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective estates, heirs, executors administrators, successors, successors-in-trust and assigns. Each of the Irrigators agrees to execute and record with the Kittitas County Auditor's office a "Notice of

Participation in Memorandum of Agreement Relating to Irrigation Water Diversion and Fish Screen Facility Ownership, Maintenance and Operation” in the form set forth on Appendix J, except that in the event any Irrigator or their Successor(s) no longer hold any water rights in Manastash Creek, then any obligations or responsibilities of that Irrigator or their Successor (s) under this Agreement shall terminate and this Agreement shall no longer be binding on that Irrigator or their Successor(s).

- I. **Entire Agreement.** All understandings and agreements previously existing between the Parties, if any, are merged into this Agreement, which alone fully and completely expresses their agreement, and the same is entered into after full investigation, no party relying upon any statement or representation made by the other not embodied herein.
- J. **Interpretation.** This Agreement has been reviewed by all the Parties and each Party has had the opportunity to consult with independent counsel with respect to the terms hereof and has done so to the extent that such Party desired. No stricter construction or interpretation of the terms hereof shall be applied against any Party as the drafter hereof.
- K. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original instrument. All such counterparts together shall constitute a fully executed Agreement.
- L. **Amendment.** This Agreement may not be modified or amended except by the written agreement of the Parties.
- M. **Tort Liability.** Bonneville’s responsibility for any loss or damage to property, or injury to persons resulting from Bonneville’s acts or omissions, shall be in accordance with the Federal Tort Claims Act, 62 Stat. 982, as amended.
- N. **Hold Harmless.** The Irrigators jointly and severally assume and will indemnify and hold Bonneville harmless against all environmental clean-up costs arising out of their acts and or omissions related to the operation and maintenance of the Project fish screen facilities. However, Bonneville shall be responsible for all environmental clean-up costs for releases of hazardous materials, petroleum products, or both, that occur during and as a result of the construction of the Project passage improvements.
- O. **Dispute Resolution.** These dispute resolution provisions may be triggered by any Party to address issues arising in the implementation of this Agreement. If, however, any Party has served notice on any other pursuant to Section VII above, then the Parties shall agree in writing prior to any one referring any dispute between them to dispute resolution. The Parties may either mediate or arbitrate a dispute, but they may not do both.

1. If no Party has initiated litigation or mediation, any Party may initiate arbitration for any controversy or claim arising out of or relating to this contract, or the breach thereof. Arbitration shall be administered by the American Arbitration Association in its Seattle, Washington, office in accordance with its Commercial Arbitration Rules, unless the Parties agree to different rules. The arbitration will be done using a single arbitrator—unless the Parties agree to more than one arbitrator, following the Federal Rules of Civil Procedure, and with each Party paying its own costs and attorney fees and an equal proportion of all arbitration costs. There will be no discovery; however, if any Party receives information pertaining to the controversy or claim through anyone's use of the Freedom of Information Act with the Department of Energy or Bonneville, then, at Bonneville's option, other discovery shall be permitted and, if thus permitted at all, shall be opened fully to all Parties and follow the Federal Rules of Civil Procedure. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Parties understand that WDFW and KCCD are subject to Washington State Public Disclosure Act and may be required to produce documents related to this agreement if a request for those documents is received.
  
2. If no Party has initiated litigation or arbitration, any Party may initiate mediation. The Parties agree that a controversy arising out of or relating to this Agreement shall be submitted to Judicial Arbitration and Mediation Service (JAMS), or its successor, for mediation. The Parties may commence mediation by providing to JAMS a written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs and fees. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any Party, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties. There will be no discovery; however, if any Party receives information pertaining to the controversy or claim through anyone's use of the Freedom of Information Act with the Department of Energy or Bonneville, then, at Bonneville's option, other discovery shall be permitted and, if thus permitted at all, shall be opened fully to all Parties and follow the Federal Rules of Civil Procedure. The Parties understand that WDFW and KCCD are subject to Washington State Public Disclosure Act and may be required to produce documents related to this agreement if a request for those documents is received.

- P. Contracting Authority.** The Irrigators will provide Bonneville with documentation that meets Bonneville's satisfaction showing both the authority of each of them or their governing bodies to enter into this Agreement and their unqualified acceptance of it.
- Q. Appendices.** All appendices referenced in this Agreement are incorporated within it.
- R. Condition.** This Agreement is conditioned upon receiving the necessary funding to implement the actions identified herein.

IN WITNESS WHEREOF, the Parties to this Agreement have set their hands below.

Signed:

**MANASTASH CREEK IRRIGATORS:**

By: Scott Bland, President, Manastash Water Ditch Association

Date: 12/18/07

By: Clarence Harrell, Clarence Harrell

Date: \_\_\_\_\_

By: Jay Anderson, Jay Anderson, Anderville Farms

Date: 12/18/07

By: Carroll R. Richards, Carroll Richards

Date: Dec 18, 2007

By: Larry Bland, Larry Bland

Date: 12-18-07

By: Brian Mellergaard, Brian Mellergaard, Circle Lazy H

Date: 12/18/07

**BONNEVILLE POWER ADMINISTRATION:**

By: St. Delwood, Vice President Environment, Fish and Wildlife

Date: 12-17-07

By: Margaret H. Wolcott, Manager Real Property Services

Date: December 18, 2007

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

By: Jill Taylor, Regional Director

Date: 12-18-2007

**KITTITAS COUNTY CONSERVATION DISTRICT**

By: Mark A. Moran, Chair

Date: 12/18/2007

**WASHINGTON ENVIRONMENTAL COUNCIL**

By: John K., Director

Date: 12-18-2007

**List of Appendices**

- A: Manastash Water Ditch Association water right holders and diversion identification
- B: Keach/Jensen water rights holders and diversion identification.
- C: Hatfield Diversion water rights holders and diversion identification.
- D: Reed Diversion water rights holders and diversions identification.
- E. Anderson Diversion water right holders and diversion identified.
- F. Barnes Diversion water right holders and diversion identified.
- G. Construction design for new Consolidated Diversion.
- H. Keach /Jensen construction design for new diversion.
- I. Barnes Road construction design for new diversion.
- J. Irrigators' Notice of Participating in MOA for O&M
- K. Sample easement
- L. Non-Federal Parties Operation and Maintenance Plan
- M. Legal Descriptions for Construction Easements for all Manastash Improvement Projects
- N. Facility Ownership Drawings
- O. Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan and Manastash Steering Committee Resolution.

**RESOLUTION OF MANASTASH STEERING COMMITTEE REGARDING  
MANASTASH CREEK RESTORATION PROJECT INSTREAM FLOW  
ENHANCEMENT IMPLEMENTATION PLAN**

**Whereas**, the Manastash Creek Restoration will be implemented by the Manastash Creek Steering Committee with assistance from the Kittitas County Conservation District (KCCD).

**Whereas**, the Manastash Steering Committee was formed in 2001 and consists of representatives of the Manastash Water Ditch Association (MWDA), and representatives of the largest water users on Keach Ditch, Jensen Ditch, Hatfield Ditch, Reed Ditch, Anderson Diversion and Barnes Road Diversion, as well as the Washington Department of Ecology, Washington Department of Fish & Wildlife, Washington Environmental Council, and the Yakama Nation.

**Whereas**, the Washington State Legislature appropriated \$2.24 million dollars for construction of fish screens and fish passage structures at the Manastash Creek diversions. In addition to those funds, the Bonneville Power Administration awarded \$1.4 million to the Manastash Project through an application submitted by the Washington Department of Fish & Wildlife in 2002. Both of these funding sources were provided to construct fish screen and fish passage facilities.

**Whereas**, the current plan for implementation of fish screen and fish passage facilities includes consolidating the Reed Ditch, Anderson Diversion and Hatfield Ditch diversions to the MWDA diversion site. The Keach-Jensen and Barnes Road diversions will be screened at their present locations.

**Whereas**, the water right owners on the Hatfield Ditch, Reed Ditch and Anderson diversions have submitted applications to the Department of Ecology to change their points of diversion to the MWDA diversion.

**Whereas**, in connection with the change applications, the members of the Manastash Steering Committee have developed the "Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan," a two stage plan for improvements to instream flow conditions in Manastash Creek.

**Whereas**, the first stage of the plan addresses the 3,950 foot reach between the Reed Ditch diversion and the Manastash Water Ditch Association (MWDA) diversion that is most significantly impacted by the proposed consolidation. The objective of this stage is to provide 6 cfs (before pro-rationing) of water rights for instream flow in addition to existing instream conveyance losses measured between MWDA and the Reed and Anderson diversions under current irrigation practices.

**Whereas**, projects to achieve the above instream flow goal will be implemented concurrent with or immediately after construction of the fish screen and fish passage facilities.

**Whereas**, the second stage of the plan will be a long term effort to work toward the goal of perennial flow in the entire lower six miles of Manastash Creek. This stage will require continuing involvement and good faith efforts by all members of the Manastash Steering Committee to find and develop projects, secure funding, and implement projects.

**Whereas**, the second stage will reach a conclusion only when there is a consensus of the Manastash Steering Committee that all reasonable options have been implemented.

**Whereas**, the provisions of Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan are intended by the Manastash Steering Committee to serve as recommendations for water right holders to use as conditions submitted by each of the individuals in their change applications to the Department of Ecology.

**Whereas**, nothing in the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan is intended or shall be construed to affect, waive, abrogate, diminish or define any existing water rights, including but not limited to the rights of the Yakama Nation.

**Now, therefore be it resolved**, that the members of Manastash Steering Committee agree that the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan addresses their outstanding concerns about flow levels in Manastash Creek to the extent that implementation of the fish screen and fish passage measures in the Manastash Creek Restoration Project can proceed.

**And, may it be further resolved**, that all members of the Manastash Steering Committee will work in good faith to implement both stages of the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan.

**And, may it be further resolved**, that no member of the Manastash Steering Committee will oppose the approval of pending applications submitted by the water right owners on the Hatfield Ditch, Reed Ditch and Anderson diversions, provided that the provisions of the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan are included in the approved certificates of change as conditions for the operation of the consolidated diversion.

Signatories:



President  
Manastash Water Ditch Association

12-18-07  
Date

Clarence Harrell  
Clarence Harrell

12-18-07  
Date

Larry Bland  
Larry Bland

12-18-07  
Date

Carroll Richards  
Carroll Richards

Dec. 18, 2007  
Date

Jay Anderson  
Jay Anderson  
Anderville Farm

12/18/07  
Date

Brian Mellergaard  
Brian Mellergaard  
Circle Lazy H

12/18/07  
Date

John Arum  
John Arum  
Washington Environmental Council

12/18/07  
Date

Jeff Tayer  
Jeff Tayer  
Washington Department of Fish & Wildlife

12-18-2007  
Date

## **MEMORANDUM OF UNDERSTANDING**

Between  
KITTITAS COUNTY CONSERVATION DISTRICT  
and  
MANASTASH CREEK RESTORATION PROJECT STEERING COMMITTEE

### **I. PARTIES**

This document constitutes an agreement between the Kittitas County Conservation District, hereinafter referred to as the **KCCD**, and the Manastash Creek Restoration Project Steering Committee, hereinafter referred to as the **Committee** for the purpose of executing the Manastash Creek Restoration Project.

### **II. PURPOSE**

The purpose of this agreement is to define the relationship between the **KCCD** and the **Committee** as it pertains to the implementation of the Manastash Creek Restoration Project and the expenditure of funds appropriated by the Washington State Legislature and funds awarded by the Bonneville Power Administration or other groups or agencies. This agreement is intended to reflect the commitment by parties to work together to meet project goals and is not intended to limit the rights of any party. This document replaces a similar document in effect through December 31, 2006.

### **III. BACKGROUND**

#### **A. Manastash Creek or Watershed Significance**

Manastash Creek is an important Yakima River tributary, which drains a 100-square mile watershed in Kittitas County lying west of Ellensburg, Washington. There are approximately 30 miles of potential high-quality salmonid habitat remains in the upper portions of the watershed, which lie primarily within the Wenatchee National Forest.

On March 25, 1999, NMFS listed the Middle Columbia River Basin steelhead ESU as "threatened," effective May 24, 1999, 64 Fed. Reg. 14,517. This ESU includes the Yakima River and its tributaries. On February 16, 2000, NMFS designated the Yakima River and its tributaries as critical habitat for Middle Columbia River steelhead, 65 Fed. Reg. 7779.

#### **B. History of Collaborative Efforts**

In May 2000, the Manastash Water Ditch Association became the first of many private diverters in Kittitas County, to request financial and technical assistance from the **KCCD** to address fish screening and passage issues. In response to those requests, the **KCCD** performed surveys (both general informational surveys and professional topographic surveys) on five diversion structures on Manastash Creek.

The **KCCD** was also able to utilize regional engineering assistance from the Central Klickitat Conservation District engineer to perform both the topographic surveys and to begin engineering design for screening and passage structures for these sites. This work

continued through March of 2003 and involved numerous consultations with Washington Department of Fish & Wildlife (WDFW) and NOAA Fisheries engineers. While the technical assistance was provided to the diverters, the **KCCD** and the Kittitas County Water Purveyors (KCWP) began searching for funds to construct and implement the screening and passage structures.

In February 2001, the Washington Environmental Council (WEC) sent the WDFW, and the largest private water users on Manastash Creek, the Kittitas Reclamation District (KRD) and the Westside Irrigating Company (Westside) a draft notice of intent to sue under Section 11(g) of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g). The draft notice alleged that continued operation of the six irrigation diversions on Manastash Creek would result in an unlawful "take" of threatened steelhead under Section 9 of the ESA, 16 U.S.C. § 1538(a). The WEC contended that prior to the advent of irrigated agriculture, Manastash Creek produced steelhead, coho and spring chinook salmon.

The draft notice was accompanied by a cover letter inviting the water users to work with WEC in a collaborative process which would protect both threatened fish and the future of Manastash Creek related irrigated agriculture in Kittitas County. The parties met initially on March 1, 2001, and agreed to move forward with a collaborative process to address the issues raised in WEC's draft notice. These collaborative efforts proceeded and a relationship of cooperation and trust between the parties developed. That relationship is the result of an agreement between the WEC and irrigators to recognize and respect each others goals, even though they had different positions. The WEC's goal is to eliminate fish passage barriers, screen unscreened diversions and improve in-stream flows. The irrigators' goal is to cooperate in the improvement of fish habitat on Manastash Creek while at the same time remaining whole and being able to manage and operate their land and water rights as a viable agricultural enterprise.

A conceptual watershed restoration plan was the fruit of many months of collaborative efforts. That plan included two phases. In Phase I, the major water diversions on Manastash Creek will be consolidated and reconstructed so as to eliminate manmade barriers or impediments to fish passage and to properly screen diversions. The goal of Phase II was the restoration of more natural summer/fall flows in the lower part of Manastash Creek while at the same time protecting the vested water rights of the Manastash Creek water users.

In 2003, the collaborative work on Manastash Creek resulted in two funding sources to implement solutions. Through an application by the Washington Department of Fish & Wildlife, the Bonneville Power Administration was working to award more than \$1 million to address fish screening and passage at the Manastash diversions. The second was an appropriation by the 2003 Washington State Legislature totaling \$2.24 million to address "Phase I" of the "PROTECTING AND RESTORING ANADROMOUS FISH IN MANASTASH CREEK-A COLLABORATIVE WATERSHED RESTORATION PLAN." Those funds were appropriated to the Washington Department of Ecology (DOE). DOE, through Agreement #C0400167, signed September 17, 2003, is providing those funds to the KCCD to implement Phase I.

Collaborative project work continued through 2006. Designs and permitting for the construction of fish screen, fish passage and water measuring facilities is in various stages of completion. The plan to consolidate diversions was abandoned and then partially revived. The current consolidation involves the Reed, Hatfield and Anderson diversions

moving up to the Manastash Water Ditch Association (MWDA) diversion. Ownership and operations & maintenance of the screening and passage facilities is being addressed as well. An agreement between all parties is close to completion. The agreement includes the Bonneville Power Administration taking at least short-term ownership of the screening and passage facilities, with all parties looking for a permanent solution. Ecology has agreed to allow a portion of the \$2.24 million appropriated by the Legislature to be placed in a operations & maintenance fund.

It is difficult to divide the Manastash Restoration Project into Phases. In-stream flow is intertwined with the proposed consolidation because the impact of moving the diversions upstream includes reducing the amount of in-stream flow between the Reed Diversion and the MWDA diversion. Work is underway to define and prepare to implement actions to mitigate for the upstream move. Those actions also begin to address in-stream flow in the entire lower reach of Manastash Creek.

Additional funding has been pursued since 2003. Applications were submitted to the Bonneville Power Administration for continuation of funding for the fish screen and fish passage facilities and for funds to begin addressing in-stream flow. Both applications appear to be successful, but official contracts have not yet been completed. **KCCD** also worked with irrigators to provide approximately \$47,000 per diversion for water measuring and telemetry equipment.

#### IV. RESPONSIBILITIES OF THE PARTIES

##### A. General.

1. The Parties agree to jointly participate in the Manastash Creek Restoration Project for the design, development, and construction of the fish screening, fish passage and water measuring facilities and associated irrigation water delivery systems, as well as implementation of activities to improve in-stream flow.
2. All Parties agree to work in good faith and with respect for one another, while not impairing the landowners' ability to pursue economic viability, and significantly improving fish habitat conditions in Manastash Creek.
3. All Parties agree that a consensus process is the approach of choice for decisions that may be required during the execution of this agreement.

B. **KCCD**. The **KCCD** agrees to perform the following activities and provide the following resources in support of the Manastash Creek Restoration Project:

1. Provide up to a full time position (Project Manager) to facilitate implementation of the project:
  - a. Coordination with **Committee**
    1. Define overall project scope and individual task scope.
    2. Provide budgets for review and approval.
    3. Provide timely progress reports.
  - b. Coordination and communication with concerned stakeholders (including the **Committee**)
    1. Scheduling, facilitating and reporting on meetings.

2. Distribution of project materials including meeting minutes, progress reports, etc.
3. Utilizing a website for project information.
- c. Management of funding sources
  1. Manage existing funding sources through contracts with funding agencies (Ecology, Bonneville Power Administration).
  2. Research and apply for additional funding as needed to implement the project.
2. Provide up to a full time position to administer all contracts for engineering, design, construction, and any additional work needed to obtain permits, environmental clearance or cultural resource clearance for project implementation.
  - a. Contracts and contracting completed with the Ecology funds shall occur according to **KCCD's** policy and in accordance with standards set by the State of Washington.
    1. **KCCD** shall procure contractors, provide progress updates and progress payments, and administer change order requests.
    2. **KCCD** shall prepare contract document templates to ensure appropriate legal requirements are met and all parties are protected.
    3. **KCCD** shall act as the primary contractor, entering into written contracts with consultants, construction contractors, etc.
  - b. Coordination with **Committee**
    1. Prior to advertisement, all requests for qualifications (RFQ) or requests for proposals (RFP) will be available for **Committee** review and approval.
    2. Selections of contractors or consultants will occur by consensus of the **Committee** and **KCCD** Board of Supervisors.
  - c. Coordination with concerned stakeholders (including **Committee**)
    1. Stakeholders shall be notified of pending advertisements for RFPs or RFQs.
    2. Stakeholders shall be notified of all selections of contractors or consultants.
3. Provide staff support to the Project Manager including, but not limited to the District Manager, Financial Manager, GIS Specialist, Resource Technicians, and the District Engineer.
  - a. Mapping and Geographic Analysis
    1. **KCCD** staff will make maps of the project area as needed. Maps may include water rights, points of diversion, soils, contour lines or other layers.
  - b. Stream Flow Monitoring
    1. **KCCD** staff will manage and monitor approximately 18 flow monitoring stations on Manastash Creek and in the diversion ditches and canals as necessary.
  - c. Project Construction
    1. **KCCD** staff will provide construction management and oversight as necessary.

C. **Committee**. The **Committee** consists of project stakeholders to include representatives of the current Manastash Water Ditch Association, Reed Ditch, Keach and/or Jensen Ditches, Anderson Ditch, Barnes Road Ditch, Hatfield Ditch, WEC, DOE, WDFW, KRD, Yakama Nation and other parties. The **Committee** agrees to perform the following activities and provide the following resources in support of the Manastash Creek Restoration Project:

1. Establish the parameters of the **Committee**:
  - a. Establish a written roster of membership and provide that roster to the **KCCD** to allow for meeting facilitation and communication of all project activities.
  - b. Meet monthly or as necessary to provide adequate project direction to the **KCCD**.

2. Designate an individual or individuals from the **Committee** to serve as the key contact(s) for the Project Manager and **KCCD District Manager**. These contacts will be available between meetings of the full Steering **Committee** to answer questions, provide additional input, and monitor activities to ensure the direction given by the **Committee** is being implemented.
3. Where possible, provide input and overall and technical review of contracts, designs, plans, agreements and other documents
  - a. The **Committee** will review all requests for proposals (RFP) and requests for qualifications (RFQ) prior to advertisement.
  - b. The **Committee** will provide input and review of all plans and designs for the piping of ditches and the installation of fish screening and passage facilities.
4. The **Committee** shall ensure that a written agreement on the disposition of water conserved by an action of the Manastash Creek Restoration Project is executed.

**V. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION**

This Agreement will become effective when signed by participating parties. The Agreement will terminate on December 31, 2009, but may be amended at any time by mutual agreement of the parties. Either party may terminate this Agreement by providing sixty (60) days written notice to the other party. This Agreement is subject to the availability of funds.

Signatories:

  
\_\_\_\_\_  
Mark A. Moore, Chair  
Board of Supervisors  
Kittitas County Conservation District  
607 E Mountain View  
Ellensburg WA 98926

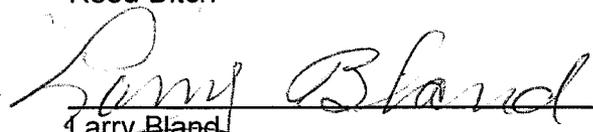
3/8/07  
Date

  
\_\_\_\_\_  
Dave Duncan  
Manastash Water Ditch Association

3/15/07  
Date

  
\_\_\_\_\_  
Clarence Harrell  
Reed Ditch

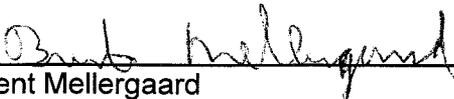
3-18-07  
Date

  
\_\_\_\_\_  
Larry Bland  
Keach-Jensen Ditch

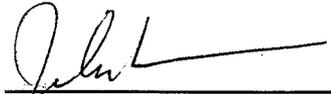
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\_\_\_\_\_  
Jay Anderson  
Anderson/Barnes Rd Diversions

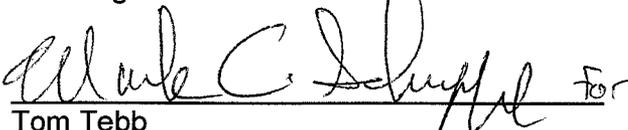
3/16/07  
Date

  
\_\_\_\_\_  
Brent Mellergaard  
Barnes Rd Diversions

4/3/07  
Date

  
\_\_\_\_\_  
John Arum  
Washington Environmental Council

5/9/07  
Date

  
\_\_\_\_\_  
Tom Tebb  
Washington Department of Ecology

3/15/07  
Date

  
\_\_\_\_\_  
Jeff Tayer  
Washington Department of Fish & Wildlife

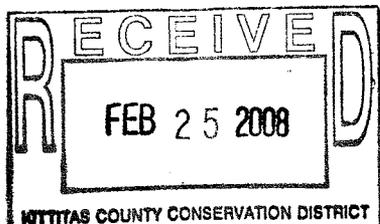
6-5-07  
Date

  
\_\_\_\_\_  
Ed Wakkuri  
Kittitas Reclamation District Board of Directors

5-1-07  
Date

  
\_\_\_\_\_  
Phil Rigdon  
Yakama Nation

3-26-07  
Date



KCCD Contract #: 08-0101  
January 13, 2008

**MULTIPLE PROJECT AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT** is made as of this 10<sup>th</sup> day of January 2008, between the Kittitas County Conservation District, hereinafter referred to as "KCCD", and HDR Engineering, Inc. hereinafter referred to as "ENGINEER," for professional engineering and design services as described in this Agreement.

**WHEREAS**, KCCD desires to retain ENGINEER, a professional ENGINEERING firm, to provide professional engineering, design, consulting and related services ("Services") on one or more projects in which the KCCD is involved; and

**WHEREAS**, ENGINEER desires to provide such services on such projects as may be agreed, from time to time, by the parties;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:

**SECTION I. PROJECT TASK ORDER**

- 1.1 This Agreement shall apply to as many projects related to irrigation water conveyance improvements and other projects to produce "trustable" water to benefit Manastash Creek as KCCD and ENGINEER agree will be performed under the terms and conditions of this Agreement. Each project ENGINEER performs for KCCD hereunder shall be designated by a "Task Order." A sample Task Order is attached to this Agreement and marked as Exhibit "A". No Task Order shall be binding or enforceable unless and until it has been properly executed by both KCCD and ENGINEER. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
- 1.2 In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control.
- 1.3 ENGINEER will provide the Scope of Services as set forth in Part 2 of each Task Order.

**SECTION II. RESPONSIBILITIES OF KCCD**

In addition to the responsibilities described in paragraph 6 of the attached "Terms and Conditions for Professional Services," KCCD shall have the responsibilities described in Part 3 of each Task Order.

### SECTION III. COMPENSATION

Compensation for ENGINEER'S Services shall be in accordance with Part 5 of each Task Order and item 10 under Section IV below.

### SECTION IV. TERMS AND CONDITIONS OF ENGINEERING SERVICES

1. **STANDARD OF PERFORMANCE:** The standard of care for all professional ENGINEER, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of the ENGINEER'S profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied under this Agreement or otherwise, in connection with ENGINEER'S services.
2. **INSURANCE:** ENGINEER agrees to procure and maintain, at its expense, Worker's Compensation insurance as required by statutes; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. KCCD shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the KCCD.
3. **CONSTRUCTION PROCEDURES:** ENGINEER'S observations or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or others parties on the project. ENGINEER shall be entitled to review all construction contract document sand to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. KCCD agrees to include ENGINEER as an indemnified party in KCCD's construction contracts.
4. **SERVICES AND INFORMATION:** KCCD will provide all criteria and information pertaining to KCCD's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. KCCD will also provide copies of the any KCCD-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project. The KCCD agrees to bear full responsibility for the technical accuracy and content of KCCD-furnished documents and services.
5. **SUCCESSORS AND ASSIGNS:** KCCD and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither KCCD nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.
6. **RE-USE OF DOCUMENTS:** All documents including reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. KCCD may retain copies of the documents for its

information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse of KCCD or others on extension of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at the KCCD's sole risk and without liability or legal exposure of ENGINEER, and KCCD will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by KCCD and ENGINEER.

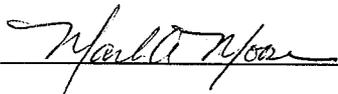
7. **TERMINATION OF AGREEMENT:** KCCD or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice, if the other party fails to fulfill its obligations under the agreement through no fault of the terminating party. Where the method of payment is "lump sum" or cost reimbursement, the final invoice will include all services and expenses associated with the project upon the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination and for a reasonable profit for services performed.
8. **SEVERABILITY:** If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.
9. **INVOICES:** ENGINEER will submit monthly invoices for services rendered and the KCCD will make prompt payments in response to the ENGINEER invoices. ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by KCCD's auditors upon request. If KCCD disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, KCCD may temporarily delete the disputed item and pay the remaining amount of the invoice. KCCD will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.
10. **CHANGES:** The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Under no circumstance will a change order be authorized for payment if notice of the proposed change in scope of work, services or time of performance was not given to the KCCD board for written approval **in advance** of either performance of the new scope of work or services or the delay in performance by the ENGINEER. Proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined unless the ENGINEER submits a fixed-price or not-to-exceed amount, in which case the ENGINEER is presumed to have proposed and agreed to the fixed-price or not-to-exceed amount, as the case may be. For only those projects involving conceptual or process development services, activities may not be fully definable at the initial planning stage, in which case, as the project progresses, the facts may be developed that create a change in the services to be performed, in which case, the ENGINEER will immediately inform KCCD of the change in scope and adjustment to the time of performance and will request a written modification to the compensation provision of this Agreement prior to undertaking the additional or modified work.

11. **CONTROLLING AGREEMENT:** These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.
12. **EQUAL EMPLOYMENT AND NONDISCRIMINATION:** In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity and other employment statutes and regulations.
13. **EXECUTION:** This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and KCCD, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.
14. **INDEMNITY:** ENGINEER shall defend, indemnify and hold harmless KCCD, its officers, agents and employees, from and against any and all claims, demands, losses and liabilities to or by third parties arising from contractual liability and ENGINEER's negligent acts, errors or omissions in connection with, resulting from, or connected with, services performed or to be performed under this contract by ENGINEER or ENGINEER's agents, employees, and subcontractors to the fullest extent permitted by law.
- ENGINEER's duty to indemnify shall not apply to liability from damages arising out of bodily injury to persons or damages to the property caused by, or resulting from, the sole negligence of the KCCD or its agents and employees.
- ENGINEER's duty to indemnify for liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of KCCD and ENGINEER, or its agents or employees shall apply only to the extent of negligence of the KCCD's and ENGINEER's agents, employees, subcontractors and suppliers.
- ENGINEER specifically and expressly waives any immunity that may be granted under the Washington State Industrial Act, Title 51, RCW. Further, the indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount of type of damages, compensation, benefits payable to or by any third party under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefit acts.
- ENGINEER's duty as described to defend, indemnify, and hold harmless shall include all related costs, reasonable attorney fees, court costs and related expenses asserted against or incurred by the KCCD, its officers, agents and employees.
- The parties hereby certify that these indemnification provisions were mutually negotiated and agreed to by the parties.
15. **FEDERAL FUNDS:** ENGINEER hereby certifies, warrants, and represents that neither the ENGINEER nor any of its sub-contractors are presently under any debarment, suspension, or any other type of ineligibility to contract with the United States Department of Energy, United States Department of Commerce or with any other federal department, division, or agency as of the date of this Agreement; and further, the ENGINEER agrees to immediately notify the KCCD, in writing, of any change in its eligibility status, or, if known, in the status of any sub-contractor, which occurs during the term of the contract.
16. **INDEPENDENT CONTRACTOR:** ENGINEER and KCCD agree that ENGINEER and its agents, employees, subcontractors and suppliers are independent contractors with respect to services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither the ENGINEER nor any of its agents, employees, subcontractors and suppliers shall be entitled to any benefits accorded KCCD employees by virtue of the services provided under this Agreement. The KCCD shall not be responsible for paying, withholding, or

otherwise deducting any customary state or federal payroll deductions, including but not limited to FICA, FUTA, state industrial insurance, state workers' compensation, or otherwise assuming the duties of an employer with respect to the ENGINEER or its agents, employees, subcontractors and suppliers.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Kittitas County Conservation District  
"KCCD"

BY:   
NAME: Mark Moore  
TITLE: Chair, Board of Supervisors  
ADDRESS: 607 E Mountain View  
Ellensburg WA 98926

HDR Engineering, Inc.  
"ENGINEER"

BY:   
NAME: Mike McGowan  
TITLE: VP  
ADDRESS: 4717 97th St NW  
Gig Harbor WA 98332  
PHONE: 253-858-5262  
UBI: 601-021-437  
Fed ID: 47-0680568

**EXHIBIT A**  
**TASK ORDER**

*SAMPLE*

This Task Order pertains to an Agreement by and between \_\_\_\_\_, (“KCCD”), and HDR Engineering, Inc. (“ENGINEER”), dated \_\_\_\_\_, 20\_\_\_\_, (“the Agreement”). ENGINEER shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

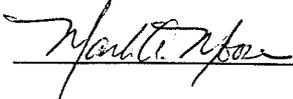
TASK ORDER NUMBER:  
PROJECT NAME:

- PART 1.0 PROJECT DESCRIPTION:
- PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY ENGINEER ON THE PROJECT:
- PART 3.0 KCCD’S RESPONSIBILITIES:
- PART 4.0 PERIODS OF SERVICE:
- PART 5.0 PAYMENTS TO ENGINEER:
- PART 6.0 OTHER:

This Task Order is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Kittitas County Conservation District  
"KCCD"

HDR Engineering, Inc.  
"ENGINEER"

BY: 

BY: \_\_\_\_\_

NAME: Mark Moore

NAME: \_\_\_\_\_

TITLE: Chair, Board of Supervisors

TITLE: \_\_\_\_\_

ADDRESS: 607 E Mountain View  
Ellensburg WA 98926

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_