Memorandum of Understanding Concerning the State of Washington's Columbia River Initiative

PARTIES

This Memorandum of Understanding (MOU) is entered into between the State of Washington (State), acting through the state agencies which are signatories hereto; the Pacific Northwest Region of the U.S. Bureau of Reclamation (Reclamation); and the South Columbia Basin Irrigation District, the East Columbia Basin Irrigation District, and the Quincy-Columbia Basin Irrigation District (collectively, the Districts). The State, Reclamation, and the Districts are collectively referred to as the "parties" herein.

EFFECT

Section 1. This MOU is intended only to coordinate and facilitate cooperation between the parties to advance the actions described in this MOU and is not intended to and does not create a legally binding contract or any right or benefit, substantive or procedural, enforceable at law or in equity by any party against another party, its directors, officers, employees or other persons. This MOU does not constitute an explicit or implicit agreement by the parties to subject any of the parties to the jurisdiction of any federal or state court over and above any rights or procedures presently available to the parties. This MOU does not create any right or benefit, substantive or procedural, enforceable at law or in equity, by any person or entity against the parties. This MOU shall not be construed to create any right to judicial review involving the compliance or noncompliance of the parties with this MOU.

Section 2. Nothing in this MOU shall (a) result in any impairment to the existing water supplies or water rights for the Columbia Basin Project (Project), (b) result in an amendment or modification of the rights and obligations of the Districts and Reclamation under the existing Project repayment contracts, (c) affect the priority dates of any existing water rights, (d) impair the current operations of the Project, (e) impair or interfere with eventual completion of the Project as congressionally authorized, or (f) result in an increase in the Districts' construction cost obligations and operation and maintenance obligations under the existing Project repayment contracts.

PURPOSE AND OBJECTIVES

Section 3. The parties will use their best efforts in working collaboratively and in good faith to secure economic and environmental benefits from improved water management both within the federal Project and along the mainstem of the Columbia River by advancing the actions described in this MOU.

Section 4. Through the Columbia River Initiative (CRI), the State is developing a program for the mainstem of the Columbia River that will allow access to the river's water resources while

providing support for salmon recovery. The objectives of the CRI are to meet the water needs of growing communities and their rural and agricultural economies along the mainstem of the Columbia River, and to do so in a manner that reduces the risk to fish resulting from out-of-stream use of water. While the CRI is focused on the mainstem of the Columbia River, the State recognizes that there are important needs within the Project that remain unmet and that require and warrant increased attention and resources from the State. As established in state statute and state-based water rights, the parties hereby affirm their long-standing and mutual commitment to the Project as congressionally authorized.

MAINSTEM STORAGE PROGRAM

Section 5. The parties recognize the growing water needs of the region will require development and use of new water storage facilities that are properly designed, constructed and managed to meet both economic and environmental needs – including power production, municipal water supplies, irrigation development, and improved stream flows to assist salmon recovery.

Section 6. The parties will cooperate in initiating an appraisal level assessment of the potential to store additional water from the Columbia River mainstem, including an assessment of the costs and benefits of alternative water storage sites (the Storage Assessment). The State will be responsible for conducting the Storage Assessment with existing state funds. The State will, in consultation with other parties, develop a scope of work for the Storage Assessment by December 31, 2004. The State will also secure by February 28, 2005, a contractor to conduct the Storage Assessment. The State will request additional state funding for the Storage Assessment for the coming state fiscal biennium. Reclamation will participate in and support the Storage Assessment to the extent funding is available to it within its Washington Investigations budget line item in federal fiscal years 2005 and 2006, as determined by it.

Section 7. If and as warranted by the initial results of the Storage Assessment, the State and the Districts will propose by July 2005 federal legislation to authorize and fund a mainstem storage program, including feasibility studies by Reclamation for proposed storage projects; provided, however, the Districts may participate and support one or more of these feasibility studies, as they determine. By December 20, 2004, the State will submit a budget request to support the new mainstem storage program during the state 2005-2007 biennium to include funding for feasibility studies. Reclamation's position regarding the authorization and funding of the mainstem storage program and feasibility studies will be determined by the views of the Administration at the time Congress considers authorizing legislation and appropriations. If and as authorized by Congress, the State and Reclamation will negotiate and enter into one or more feasibility study contracts. If federal authorization is not secured by January 2006, the State will fund the initiation of one or more feasibility studies to evaluate potential new storage sites, while continuing to pursue federal authorization. By July 2006, the parties will develop a schedule of future milestones for the mainstem storage program.

Section 8. If and as warranted by the feasibility studies, the State and the Districts agree to pursue federal authorization of mainstem storage projects to be undertaken by Reclamation, with the State as local sponsor for the storage projects. As authorized and as necessary to support the

new mainstem storage program, or as specific storage projects are identified for feasibility studies, Reclamation and the State will work together to secure a new federal withdrawal of water from the mainstem pursuant to Chapter 90.40 RCW.

MAINSTEM DROUGHT RELIEF

Section 9. Reclamation and the State, acting through the Department of Ecology (Ecology), will use their best efforts to negotiate and enter into a contract by March 31, 2005 (the Drought Relief Contract), to make available up to 50,000 acre-feet from the Project storage rights from Lake Roosevelt for release into the Columbia River in any year in which the March 1 runoff forecast at the Dalles for April through September, as provided by the National Weather Service in their "Water Supply Outlook for the Western United States," is less than 60 MAF, and in which the Governor of the State of Washington makes a formal request in accordance with the Reclamation States Drought Relief Act of 1991 (P.L. 102-250) (the Drought Relief Act).

Section 10. The Drought Relief Contract, if entered into, will allow the use of the water to be made in accordance with applicable state and federal laws by existing water rights which divert from the Columbia River downstream of Grand Coulee Dam and to benefit fish in the Columbia River. Of the amount to be made available under the Drought Relief Contract, if entered into, up to 33,000 acre-feet would be made available for existing state-based water rights along the mainstem and up to 17,000 acre-feet would be made available for improving stream flows for fish during the drought. The Drought Relief Contract, if entered into, will be effective for a term not exceeding the maximum period authorized by law and will, as needed and if and when allowed by law, provide for renewal of the contract for a longer period of time.

Section 11. The parties acknowledge that the Drought Relief Act is set to expire on September 30, 2005, and that any subsequent renewals of the Drought Relief Contract, if entered into, will be contingent, in part, upon the Drought Relief Act being extended or otherwise reauthorized. The State and the Districts agree to seek and support favorable congressional action to extend or otherwise reauthorize the Drought Relief Act and to pursue authorization for drought relief contracts that could exceed the current two-year statutory limit. Reclamation's position will be determined by the views of the Administration at the time Congress considers any such extension, amendment or reauthorization. The State will request support for reauthorization of the Drought Relief Act from the Western States Water Council and the Western Governor's Association and will introduce federal legislation by no later than March 2005.

MUNICIPAL AND INDUSTRIAL WATER SUPPLY

Section 12. Reclamation and the State, acting through Ecology, will use their best efforts to negotiate and enter into a water service contract, in accordance with subsection 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1187) by December 31, 2005 (the M&I Contract) to make available up to 37,500 acre-feet of water annually from the storage rights of the Project, of which up to 25,000 acre-feet would be available for municipal and industrial purposes and up to 12,500 acre-feet would be available to benefit stream flows and fish in the Columbia River. Most of this water would be delivered to the State by Reclamation in the Columbia River at the foot of Grand Coulee Dam, though a smaller portion of this water would be made available for

direct withdrawal from Lake Roosevelt. Under the terms of the M&I Contract, if entered into, the State would accept this water and place it into the state trust water rights program as a water right for instream flow purposes to serve as mitigation for new water rights to be issued to qualifying municipalities and industries along the Columbia River.

Section 13. The term of the M&I Contract, if entered into, will be as allowed under federal reclamation law and policy and may be renewed as provided by the Act of June 21, 1963 (77 Stat. 68) pertaining to the renewal of certain municipal, domestic, and industrial water supply contracts entered into under the Reclamation Project Act of 1939. Allocation of water under the M&I Contract shall be in increments of time and quantity based on satisfactory performance in meeting the terms and milestones provided for the Odessa Subarea in Section 14 of this MOU. Water allocated for a given increment will be made available for the duration of the M&I Contract, while the remaining portion of the unallocated water will remain subject to satisfactory performance under this MOU. The initial increment for the contract will be the period of January 2006 through December 2007. Thereafter, the increments will run for a six-year period, to align water supply decisions with the next increment of municipal growth as projected through municipal water supply plans required by state law. These timeframes may be amended by the parties during negotiation of the contract. Release of future increments of water is subject to performance deemed satisfactory by all parties to this MOU. A decision to limit access to water under the contract based on unsatisfactory performance shall not result in loss of water previously committed and distributed under the contract. The amount of water available during the initial increment shall be specified in the contract, and the amount of water available for future increments shall be based on projected municipal and industrial water supply needs.

ODESSA SUBAREA

Section 14. The parties will cooperate to support and pursue the diversion and delivery of an additional 30,000 acre-feet of water from Lake Roosevelt to the Odessa Subarea. In an effort to satisfy this objective, Reclamation will file by March 2005 an application with the State for a water right permit to divert 30,000 acre-feet of water from the federal withdrawal and storage rights for the Project to serve the Odessa Subarea. The State will process the application and issue a permit decision by September 2005. If the permit decision is challenged, the State commits to active and good faith defense of the permit, with assistance from Reclamation and the Districts, as appropriate. The goal is to make up to 30,000 acre-feet of water available to the Odessa Subarea no later than December 2006 for use during the 2007 irrigation season. Use of this water is limited to existing agricultural lands, with priority for use on lands currently irrigated under state ground water permits in areas where the Odessa aquifer is declining. Lands receiving water under this section which are also covered by state ground water permits shall not divert water under the permits. This water is separate from and in addition to other ongoing programs to deliver water within the Project.

Section 15. In addition to the quantity of water described in Section 14, the parties will cooperate to explore opportunities for delivery of water to additional existing agricultural lands within the Odessa Subarea. As opportunities become known, the State will seek state funding to cost share the potential development of infrastructure to deliver this water. Reclamation's

position regarding the future delivery of water under this section will be determined by the views of the Administration at the time.

Section 16. In addition, the State will conduct an appraisal level assessment of the potential to store additional water from the Columbia mainstem in the Odessa aquifer (the Odessa Assessment). Reclamation will participate in the Odessa Assessment to the extent funding is available in its Washington Investigations program. The Districts will assist in evaluating the infrastructure implications of delivering water to the aquifer.

POTHOLES RESERVOIR OPERATIONS

Section 17. The parties will cooperate in completing by March 2006 an appraisal level assessment of alternatives for managing Potholes Reservoir, including an alternative water feed route, changes in the storage rule curves, improving the water evacuation route, and evaluating potential solutions to the delivery constraints of the East Low Canal below Interstate 90 (the Potholes Assessment). The parties will cooperate to develop and execute a study contract to define and assign the remaining tasks of the Potholes Assessment. As part of the Potholes Assessment, Reclamation will initiate by January 2005 an appraisal level analysis of the hydrology of Potholes Reservoir and the implications of changes in the feed route, increased seasonal storage and flood evacuation. The State will request funding for its 2005-2007 biennium to complete the Potholes Assessment. Reclamation and the Districts will make available, subject to Reclamation security policies, studies and cost estimates previously prepared for the Potholes feed and evacuation routes, and for the improvements to the East Low Canal.

Section 18. The purpose of the Potholes Assessment is to determine whether changes in operations could secure additional benefits without jeopardizing existing Project benefits. These additional benefits could include increased reliability of irrigation water supply, the ability to irrigate additional lands, improved water quality in Project reservoirs, increased fish and wildlife habitat within the Project, and reduced reliance on the Columbia mainstem during the summer months. The parties recognize that Potholes Reservoir is first and foremost a water supply for two of the Project districts, and agree that the actions under this MOU are not intended to, and shall not, jeopardize the reliability of this water supply. The parties further recognize that any evaluation of the reservoir must be conducted within the context of the overall Project, as the feed route, reservoir operations and evacuation route must be considered together, and that the reservoir is central to the proper functioning of the Project as a whole.

Section 19. If and as warranted by the results of the Potholes Assessment, the State and the Districts will pursue appropriate feasibility level studies, including the authorization and funding of feasibility studies by Reclamation. Reclamation's position regarding authorization and funding of such feasibility studies will be determined by the views of the Administration at the time Congress considers authorizing legislation and appropriations. The State will cost share in any such feasibility studies should Reclamation be authorized and funded to conduct the studies. The State will request feasibility study funds for the next state fiscal biennium. The tasks and responsibilities for feasibility studies will be specified by contract. If and as warranted by the results of such feasibility studies, the parties will work in good faith to develop and implement a

specific proposal for changes to the operation of Potholes Reservoir. Subject to congressional authorization, feasibility studies, if undertaken, would be completed by June 2008.

WATER FROM CANADA

Section 20. The parties acknowledge that the State will seek to secure, through the United States, water from Canadian reservoir storage facilities. The State and Reclamation will use their best efforts to cooperate in ensuring that water released from Canadian facilities is moved through Lake Roosevelt in an acceptable manner. In this regard, the State and Reclamation will consider whether a written agreement regarding the delivery of water from Canada through Lake Roosevelt would be desirable. If so, they will endeavor in good faith to negotiate and execute an operating agreement in this regard during calendar year 2005 and invite the Bonneville Power Administration to be a signatory to any such operating agreement.

ADDITIONAL PROVISIONS

Section 21. Reclamation will submit to the State a proof of appropriation form to request issuance of a state water right certificate for the perfected portions of the existing permit held by Reclamation for the Project. The State will issue a water right certificate reflecting the amount of Project water and land developed under the existing permit, and will issue a superceding permit for the amount of Project water and land that may continue to be developed under the superceding permit.

Section 22. In partial consideration of the State's contribution toward the Storage Assessment, the Potholes Assessment including an alternative feed route, improved evacuation route and solutions to East Low Canal delivery constraints, and the State's timely implementation and performance of other actions described in this MOU, the parties will cooperate to make available up to 15,000 acre-feet of water annually from the Project storage rights in Lake Roosevelt to benefit stream flows for fish. This water will be made available after December 2006. The timing of release of the water will be determined by Reclamation, in consultation with parties responsible for salmon recovery on the mainstem.

Section 23. The State will consult with the Colville Confederated Tribes and the Spokane Tribe of Indians regarding the CRI and will secure the concurrence of these tribal governments. Given the concurrence obtained by the State, Reclamation will be responsible for Government to Government consultation with the Tribes.

Section 24. The State will consult with NOAA Fisheries and the US Fish and Wildlife Service (USFWS) regarding the CRI and will obtain their concurrence. Given the concurrence obtained by the State, Reclamation will consult with NOAA Fisheries and USFWS as required by the Endangered Species Act.

IMPLEMENTING CONTRACTS

Section 25. Implementation of the actions described in this MOU is subject to the authority of the parties and the availability of funding as approved by the State Legislature and Congress and

will be undertaken pursuant to any contracts that may be subsequently entered into among the parties as described in this MOU. The contracts involving Reclamation as a party shall be prepared, negotiated, and executed in accordance with federal reclamation laws, rules and regulations, and policies.

Section 26. Any contracts prepared under this MOU shall be available for review by all parties to this MOU prior to execution of the contract. Where a party will not be a signatory to a contract, such party may request consultation with the other MOU parties to address any questions or concerns with a proposed contract. Any party requesting consultation concerning a contract shall be provided an opportunity for consultation before the contract is executed.

OVERSIGHT PANEL

Section 27. The parties will create an Oversight Panel to provide oversight and coordination for all aspects of this MOU. The Oversight Panel shall consist of one designated representative of each of the signatories to this MOU. The Oversight Panel's functions include, but are not limited to: (a) monitoring implementation of the actions set forth in this MOU, (b) tracking and reporting of performance by the parties under any contract executed under this MOU, (c) reviewing and evaluating, at least on an annual basis, this MOU and its implementation by the parties, and (d) resolving disagreements between the parties.

Section 28. In the event disagreements arise between the parties and cannot be resolved, any party to this MOU may request the Oversight Panel to attempt to resolve the disagreement. Within 45 days of any such request, the Oversight Panel shall notify the parties of its recommended proposal for resolving the disagreement; provided, however, such decision or proposal shall be advisory only and not binding on the parties.

GENERAL PROVISIONS

Section 29. The period of performance of this MOU shall commence on the date when it is signed by the last signatory. This MOU shall terminate on December 31, 2014, unless it is extended by mutual written consent of the parties. Termination of this MOU does not invalidate contracts executed under the MOU.

Section 30. Notwithstanding Section 29 above, any party desiring to terminate its participation in this MOU will give 90 days written notice to the other parties. Upon receipt of a notice of termination, the parties may meet or elect to convene the Oversight Panel within 45 days in a good faith effort to resolve any disagreements relating to the notice of termination. Termination by a party does not in any way invalidate contracts executed under this MOU; contracts may be terminated only through the provisions of the contract. Where one party terminates from this MOU, other parties may agree to continue to implement the MOU within the scope of their authority and funding.

Section 31. This MOU may only be amended by mutual written consent of the parties. No amendment shall be effective for any purpose unless it is made in writing and signed by authorized representatives of all the parties to this MOU.

Section 32. Notwithstanding any other provision of this MOU, the parties acknowledge that Reclamation's actions are subject to federal reclamation law, as amended and supplemented, and the policies, rules and regulations promulgated by the Secretary of the Interior under federal reclamation law; and applicable federal law, including but not limited to, the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA). NEPA compliance activities may include public scoping meetings and hearings, Fish and Wildlife Coordination Act and cultural resource consultations, and consultations with Tribes on Indian Trust Assets. ESA activities may include consultation with NOAA Fisheries and the USFWS.

Section 33. Notwithstanding any other provision of this MOU, the parties acknowledge that any contract executed under this MOU where Project benefits are afforded shall be subject to federal reclamation law, policies, and rules and regulations governing recovery of Project costs. The parties further acknowledge that the costs of development, review and approval of proposed actions, including but not limited to, environmental compliance activities, preparation, negotiation and execution of contracts, and any costs of mitigation determined to be required, shall be incurred by the benefiting contractor. Costs to the benefiting contractor may be mitigated by other enhancements or contributions that benefit the parties to this MOU, at the discretion of Reclamation. Any contract executed under this MOU that implements a joint federal and state program, as authorized and directed by federal law and funded through federal appropriations, shall be subject to federal cost sharing laws, policies and practices.

Section 34. The signatures of the Districts on this MOU shall not be interpreted as an acknowledgment or endorsement by the Districts of the technical conclusions and proposed policies of the State related to the Columbia River mainstem water management program, or in any way to be acceptance of or agreement with a "no net loss" policy for management of water resources in the Columbia River.

Section 35. As necessary to support budget development and legislative review of budget requests, the State and/or the Districts may request an estimate of costs for actions proposed under this MOU. Reclamation will provide estimates based on information available at the time of the request.

Section 36. All actions and schedules called for by this MOU are subject to and contingent upon the availability and allocation of future federal and state appropriations, existing and future limitations on a party's statutory authorities, and state and federal regulatory approvals as needed. The parties recognize that if any necessary authority and/or funding is not forthcoming, the schedules identified in this MOU will be reviewed and adjusted as necessary, by mutual consent.

Section 37. This MOU is executed in multiple originals, with one originally executed copy for each of the below signatories.

SIGNATORIES

Director, Pacific Northwest Region, U.S Bureau of Reclamation — DATE: Dec 17, 2004

Governor, State of Washington — DATE: Dec 17, 2004

Director, Washington State Department of Fish and Wildlife — DATE: Dec 17, 2004

Attest:

Secretary

SOUTH COLUMBIA BASIN IRRIGATION DISTRICT
PO Box 1066
Pasco WA 99301

By _____
President, Board of Directors

Attest:

Secretary

EAST COLUMBIA BASIN IRRIGATION DISTRICT
PO Box E
Othello WA 99344

By _____
President, Board of Directors

Attest:

Asst Secretary

QUINCY-COLUMBIA BASIN IRRIGATION DISTRICT
PO Box 188
Quincy WA 98848

By _____
President, Board of Directors