INTERLOCAL COOPERATION AGREEMENT

THIS AGREEMENT is made by and between PUBLIC UTILITY DISTRICT NO. 1 OF CHelan COUNTY, WASHINGTON ("Chelan"), and PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON ("Grant").

Recitals:

Public Utility Districts are authorized pursuant to RCW Chapter 39.34 to enter into Cooperative Agreements.

Chelan and Grant intend to use passive integrated transponder (PIT) tag arrays for hatchery monitoring and evaluation activities in the (1) White River and (2) Little Wenatchee River. Two arrays will be used to enumerate passing fish during the period of June 1, through October 15, 2009. The development of functional PIT tag arrays in the White and Little Wenatchee rivers will assist both Chelan and Grant in meeting monitoring obligations required by the Habitat Conservation Plans (HCP) and Priest Rapids Coordinating Committee Hatchery Committees. This Agreement also provides a mechanism to reduce the individual costs incurred by either PUD through sharing monitoring equipment when monitoring obligations overlap.

Chelan installed and will operate the arrays from June 1 through October 15 during 2009.

Grant is participating in this project and will collect data specific to spring Chinook with the PIT tag arrays to determine the suitability of the arrays for their spring Chinook hatchery monitoring and evaluation program in the White and Little Wenatchee Rivers.

Grant is defined as including any employee, contractor or agent of Public Utility District No. 2 of Grant County, Washington.

Chelan is defined as including any employee, contractor or agent of Public Utility District No. 1 of Chelan County, Washington.

NOW THEREFORE; in consideration of the mutual promises and covenant contained herein, the parties agree as follows:

I. OBLIGATIONS OF CHELAN AND GRANT

a. Chelan will purchase all of the supplies and equipment necessary to install and operate two individual PIT Tag arrays one each in the (1) White and (2) Little Wenatchee Rivers. Chelan will also fund the services required for installation and operation of the arrays through a separate contract with Washington Department of Fish and Wildlife (WDFW).

b. Chelan’s contractor, WDFW, will install the arrays prior to June 1, 2009. WDFW will operate the arrays from June 1, 2009, through October 15, 2009. Installation will include the assembly of all necessary parts to construct the arrays and affix them to the sampling location in each river.

c. Grant will pay Chelan $15,000 for access to the project data. In addition, in the event that the components of either array are destroyed or rendered useless while being used to collect
information about spring Chinook on Grant’s behalf, Grant shall reimburse Chelan up to $17,000 for the replacement or repair of the component(s).

d. Data collected from the arrays will be entered into the PIT Tag Information System (PTAGIS) web site (http://www.ptagis.org) on a weekly basis by WDFW and accessible at that time to both Grant and Chelan.

II. TERM

This Agreement shall be effective from the date of execution and shall remain in full force and effect until December 31, 2009. This Agreement may be terminated earlier by written notice issued to the other party at least 30 days in advance of the date of termination. Payment and reimbursement provisions in Section V shall remain effective after termination of the Agreement.

III. INDEMNITY and WAIVER OF CLAIMS

Grant and Chelan agree to hold each other harmless and indemnify one another for any acts committed or caused by one of them or their agents, consultants, employees, or sub-contractors against the other or a third party including, but not limited to, property damage, cost, charge or expense, whether direct or indirect and whether occasioned by injury or loss to persons or property. This indemnity obligation specifically includes liability or alleged liability that may arise from injury or loss suffered by any employee of Grant or Chelan or any subcontractor regardless of any immunity provided by the Washington Industrial Insurance Act, RCW Title 51, or any other applicable law.

Notwithstanding any other provision, Chelan shall have no liability to Grant, or any third party, for any loss of fish or incidental or consequential damages arising from or as a result of Chelan’s performance of this Agreement. Grant shall hold Chelan harmless and indemnify Chelan for any loss of fish, damage to fish, or any other alleged damage resulting from the operation or placement of the arrays from June 1 through August 1, 2009.

IV. PURPOSE

The purpose of this Agreement is to identify responsibilities of Chelan and Grant associated with the implementation of the PIT tag array projects on the White and Little Wenatchee rivers.

V. PAYMENT

Chelan will invoice Grant $15,000 upon execution of this agreement. Payment will be due and payable within thirty (30) days of the receipt of the invoice. Interest will accrue on unpaid balances at twelve percent (12%) per annum after due date.

VI. ADMINISTRATION OF AGREEMENT

This Agreement shall be jointly administered by a representative of Grant and a representative of Chelan. Absent written notice by one party to the other, the administrators shall be:

Chelan County PUD
Attn: Alene Underwood
PO Box 1231
327 N. Wenatchee Avenue
Wenatchee, WA 98807

Grant County PUD
Attn: Russell Langshaw
PO Box 878
30 C Street SW
Ephrata, WA 98823
VII. EFFECT OF OTHER AGREEMENTS

This Agreement shall not change or affect the responsibilities and obligations of Chelan under its Rocky Reach and Rock Island Habitat Conservation Plans. This agreement shall not change or affect the responsibilities and obligations of Grant under its Biological Opinion and settlement agreements.

VIII. JURISDICTION AND ATTORNEY FEES

This Agreement is made, executed under and is to be governed by, construed and enforced in accordance with the laws of the State of Washington. In the event of a suit, the undersigned agree that a visiting judge shall be assigned to the case so that a resident judge, who is also a customer of either Chelan or Grant, will not hear the case. The substantially prevailing party in any legal action herein shall be entitled to reasonable attorney fees and all reasonable costs, including, but not limited to, expert witness fees and travel and lodging expenses.

IX. GENERAL PROVISIONS

Any modification of this Agreement or additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or any authorized representative of each party. This Agreement constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

This Agreement shall be governed by, construed and enforced in accordance with laws of the State of Washington. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or authorized representative of each party.

This Agreement constitutes the entire agreement between the Parties, and any prior understanding or representation of any kind preceding the date of the Agreement shall not be binding on either party except to the extent incorporated in the Agreement.

X. AUTHORITY

Each person signing this Agreement has the full authority of the entities on behalf of which they are signing to execute this Agreement and to bind those entities to the terms of this Agreement.

XI. RELATIONSHIP OF THE PARTIES

No agent, employee or representative of Grant shall be deemed to be an agent, employee, or representative of Chelan for any purpose, and the employees of Grant are not entitled to any of benefits Chelan provides to Chelan employees. No agent, employee or representative for Chelan shall be deemed to be an agent, employee or representative of Grant for any purpose, and the employees of Chelan are not entitled to any of the benefits Grant provides to Grant employees.

In performance of the work herein contemplated, the party performing the work is an independent contractor with authority to control and direct the performance of the details of the work; however, the work contemplated herein shall be subject to the general rights of inspection and review of the party requesting the work be done, to secure the satisfactory completion thereof.
XII. FILING

The administrators shall, in compliance with RCW 39.34, upon execution of this Agreement, post and electronic copy of the Agreement on Grant and Chelan’s Websites at the following addresses:
Grant: http://www.gepud.org
And Chelan: http://www.chelanpud.org/interlocal-agreements.html

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below.

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON

By: [Signature]
Title: Director
Date: 9-25-09

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY, WASHINGTON

By: [Signature]
Title: Director
Date: 10-1-09