INTERLOCAL COOPERATION AGREEMENT

THIS AGREEMENT is made by and between PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON (Grant) and PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON (Chelan), hereinafter referred to, collectively, as the "Parties."

Recitals:

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

Chelan and Grant desire to co-fund the stranding and entrapment evaluations to estimate fry losses in the Hanford Reach during 2011 through 2013. Chelan and Grant believe it is important for the hydro-operators to maintain a unified front in the collection of robust scientific information necessary to evaluate the biological effectiveness of the current Hanford Reach Fall Chinook Protection Program.

I. PURPOSE

The purpose of this Interlocal Agreement is to address a funding commitment between the Parties to advance scientific studies associated the Hanford Reach Fall Chinook Protection Plan (HRFCPP). Grant is seeking co-funding commitments from hydroelectric project operators who are signatories to the HRFCPP for stranding and entrapment evaluations to estimate fry losses in the Hanford Reach during 2011-2013. This evaluation is designed to monitor and better understand impacts on fall Chinook as a result of flow fluctuations resulting from operations under the existing provisions of the HRFCPP and cumulative effects of the operation of the seven dam system.

II. BACKGROUND

The HRFCPP was executed by the National Oceanic and Atmospheric Administration (NOAA - Fisheries), Washington Department of Fish and Wildlife (WDFW), Public Utility District No. 1 of Chelan County, Washington (Chelan), Public Utility District No. 1 of Douglas County, Washington (Douglas), Confederated Tribes of the Colville Indian Reservation, United States Department of Energy acting by and through the Bonneville Power Administration (BPA), US Fish and Wildlife Service (USFWS), Yakama Nation (YN) and the Public Utility District No. 2 of Grant County (Grant), Washington on April 19, 2004. The HRFCPP was incorporated in Grant’s FERC license on April 17, 2008.

The HRFCPP was intended to resolve, for at least 10 years, various issues related to flows in the Hanford Reach of the Columbia River below the Priest Rapids Dam for the purpose of protecting and enhancing fall Chinook salmon. The HRFCPP was intended to extend throughout the term of a new license for the Priest Rapids Project, but beginning on the 10th anniversary date of the HRFCPP (April 19, 2014) any party to the HRFCPP may request that the HRFCPP be reopened and that additional or modified fall Chinook salmon protection measures be adopted for the Hanford Reach.
The HRFCPP provided for a continuation of the Vernita Bar Agreement flows during the term of the new license to protect and enhance fall Chinook salmon on Vernita Bar during the spawning, pre-hatch, post hatch and emergence periods and, in addition, also provided for minimum flows and regulation of flow fluctuations in the Hanford Reach to protect fall Chinook salmon fry during the rearing period.

The 401 Water Quality Certification (401 Certification) for the Priest Rapids Project (FERC 2114) was issued by the Washington Department of Ecology (WADOE) on April 3, 2007 and amended on March 6, 2008. The 401 Certification incorporated the HRFCPP and required Grant to study its contribution to flow fluctuation in the Hanford Reach. Additional requirements included the formation of a Fall Chinook Working Group and identification of additional studies that may be of significant importance to monitor and better understand impacts on fall Chinook of flow fluctuations resulting from operations under the existing provisions of the HRFCPP. The 401 Certification required that studies identified should include a controlled flow study to evaluate effects of different flow fluctuation bands and timing on fall Chinook and that priority (generally) should be given to studies that are capable to be completed prior to the 2014 re-opener of the HRFCPP, but longer term studies of significant priority should also be considered.

The 401 Certification also required Grant to develop a list of evaluations, identify what evaluations it proposes to fund in part or whole and then identify the funding source or sources for the proposed studies (that Grant would not solely fund). Once funding has been identified, Grant is required to notify WADOE. If Grant cannot secure adequate funding for an evaluation, Grant is required to report to WADOE and file a report identifying all efforts that Grant has made to obtain funding.

Based on the results of the evaluations conducted above or on existing information, Grant is also required to evaluate potential measures to avoid, reduce, or mitigate adverse impacts on fall Chinook in the Hanford Reach and, if appropriate, implement reasonable and feasible measures in cooperation with other affected entities to reduce these impacts. To accomplish this, Grant is required to develop a comprehensive list of potential measures that may avoid, reduce, or mitigate the adverse impacts on fall Chinook in the Hanford Reach and then evaluate each measure in terms of its reasonableness and feasibility, which will consider benefits and effectiveness of the measure and costs of implementation, including any non-monetary costs, such as impacts to other environmental resources, recreational impacts, and impacts on historical and cultural resources.

III. REPRESENTATIVES OF THE PARTIES

1. For Chelan:
   Joe Miller – Fisheries Program Manager
   Public Utility No. 1 of Chelan County
   27 N Wenatchee Ave
   Wenatchee, WA 98807
   Phone: (509) 661-4473
   Email: joseph.miller@chelanpud.org
Notices shall be sent to:
Keith Truscott – Director of Natural Resources
Public Utility District No. 1 of Chelan County
327 N Wenatchee Ave
Wenatchee, WA 98807
Phone: (509) 669-7259
Email: keith.truscott@chelanpud.org

2. For Grant:
Tom Dresser – Fish, Wildlife and Water Quality Manager
Public Utility District No. 2 of Grant County, WA
PO Box 878
Ephrata, WA 98837
Phone: 509-764-0500 ext 2312
Email: Tdresse@gcpud.org

Notices shall be sent to:
Jeff Grizzel - Director of Natural Resources
Public Utility District No. 2 of Grant County, WA
PO Box 878
Ephrata, WA 98837
Phone: (509) 398-7715
Email: jgrizzel@gcpud.org

IV. FUNDING STRANDING AND ENTRAPMENT EVALUATIONS

Section 6(c) of the HRFCPP requires follow-up monitoring during the rearing periods of 2011, 2012 and 2013. The monitoring program is to be designed according to protocols developed from 1999 to 2003 or alternatively with different methods developed by the parties. Additionally, Grant was required to submit a study plan to FERC by June 1, 2011 (Article 401(a)(5)).

Currently, the Fall Chinook Working Group (FCWG) has agreed that the objective of the follow-up monitoring plan is to develop a robust estimate of fry mortalities from stranding and entrapment. A subset of representatives from the FCWG recently finalized the protocol for stranding and entrapment sampling. To ensure mortality estimates are considered in the proper context (i.e. population productivity) in the Hanford Reach, production estimates are currently being developed under Phase 1 of the 401 Certification studies. These protocols are being incorporated into the overall study plan for the years 2011 through 2013, which were distributed to HRFCPP signatories by March 15, 2011. A thirty (30) day comment period was provided to signatories and the final plan was submitted to FERC by May 15, 2011. Upon completion of the 2011 through 2013 evaluation, it is expected that the data can be used to develop robust index areas to facilitate future monitoring (post 2014).

Grant has completed and fully funded the first and second year (2011 and 2012) of the stranding and entrapment evaluation. This includes costs associated with field sampling conducted by Washington Department of Fish and Wildlife, and modeling, data analysis, and reporting conducted by Battelle. The development of the web-based model is to identify daily sampling sites, which will increase efficiency and maximize sampling effort. Maintaining the model for future studies will require minimal funding and will
ensure sampling is efficient and cost effective. Other participants of the study include the Columbia River Intertribal Fish Commission (CRITFC), which will develop entrapment histories for the analysis and the USFWS may assist with statistical analysis. It is estimated that $1.8 million will be required to fully fund stranding and entrapment evaluations to estimate fry losses in the Hanford Reach during the years 2011 through 2013.

V. FUNDING COMMITMENTS

1. Grant shall be the central financial administrative agent for the Interlocal Agreement. As such, Grant will provide Chelan with an accounting of cost share monies received and expended and other information reasonably necessary to document Grant’s management of cost share funds.

2. Grant shall consult with Chelan prior to finalizing documents associated with the stranding and entrapment evaluation including but not limited to annual budgets, evaluation plans, monitoring and evaluation reports, presentations, public relations, and schedules.

3. Chelan recognizes the value of collecting empirical biological data related to flows in the Hanford Reach for the purpose of protecting and enhancing fall Chinook salmon. At the date of this Agreement, Chelan is the initial entity committing co-funding dollars and has agreed to pay 20% (not to exceed $360,000) of the total estimated cost associated with the stranding and entrapment evaluation discussed in Section IV above unless modified pursuant to Section V.5.

4. Chelan shall pay Grant $120,000 within 30 days of execution of the agreement and the balance by June 1, 2013.

5. In the event Grant receives additional funding commitments from other parties to assist in meeting the cost of the stranding and entrapment evaluation, then Chelan’s funding commitment shall be reduced to reflect 20% of the unfunded amount. Any refund due to Chelan as a result of this recalculation shall be refunded within 30 days of receipt of the additional funding.

VI. EFFECT ON OTHER AGREEMENTS

This Agreement shall not change or affect the responsibilities and obligations of Grant or Chelan under the HRFCPP, Priest Rapids Salmon and Settlement Agreement, Rocky Reach and Rock Island Habitat Conservation Plans or 401 Clean Water Certifications for the Priest Rapids and Rocky Reach Projects.

VII. TERM

This Agreement shall be effective from the date of execution and shall remain in full force and effect until December 31, 2013. This Agreement may be terminated earlier by written notice issued to the other party at least thirty (30) days in advance of the date of termination.
VIII. INDEMNITY

Grant and Chelan agree to hold each other harmless and indemnify one another for any acts of negligence 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, loss of fish, 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 Chelan or any subcontractor regardless of any immunity provided by the Washington Industrial Insurance Act, RCW Title 51, or any other applicable law. The terms of this section, specifically including the preceding waiver of immunity, shall be deemed mutually negotiated to the fullest extent allowed by the laws of Washington applicable to Grant.

IX. 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 Grant or Chelan, 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.

X. AMENDMENTS

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 any authorized representative of each party.

XI. ENTIRE AGREEMENT

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.

XII. FILING

Administrators shall, in compliance with RCW 39.34, upon execution of this Agreement, post an electronic copy of the Agreement on the Parties’ websites at the following addresses:
Chelan: www.chelanpud.org; Grant: www.gcpud.org.

XIII. 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 the benefits Chelan provides to 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.
XIV. PUBLIC RECORDS ACT

Both Grant and Chelan are subject to the disclosure obligations of the Washington Public Records Act of RCW 42.56. Each Party expressly acknowledges and agrees that any information the other Party submits is subject to public disclosure pursuant to the Public Records Act or other applicable law and that either Party may disclose information at its sole discretion in accordance with its obligations under applicable law.

XV. AUTHORITY

Each party executing this Agreement represents and warrants that he or she is an authorized signatory of the entity for which they are signing, and have sufficient legal authority to execute this Agreement.

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, WA
By: Jeff Grizzle
Director of Natural Resources
Date: 1-28-13

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY, WA
By: John Janney
General Manager
Date: 1-24-13