INTERAGENCY AGREEMENT

between

PUBLIC UTILITY DISTRICT No. 1 of CHelan COUNTY

AND

WASHINGTON DEPARTMENT of FISH and WILDLIFE

(CCUPD SA# 14-001/WDFW # 14-1170)

This Agreement is made and entered into by and between Public Utility District No. 1 of Chelan County (District) and the Washington Department of Fish and Wildlife (WDFW), together referred to as the Parties.

Both Parties acknowledge that the District is responsible, per its Federal Energy Regulatory Commission (FERC) licenses for the hydroelectric projects of Rock Island (FERC License No.: 943) and Rocky Reach (FERC License No.: 2145) to fund hatchery monitoring and evaluation. The activities under this Agreement support the implementation of such licenses and shall not conflict with the licenses.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK
WDFW shall, on a reimbursable basis conduct monitoring and evaluation activities consisting of adult collection and monitoring in the Wenatchee and Columbia River basins; in-hatchery aquaculture activities at District-owned hatchery facilities including Eastbank Hatchery, Chelan Hatchery, Chelan Falls Acclimation Facility, Carlton Acclimation Facility, Dryden Acclimation Facility, and Chiwawa Acclimation Facility; spawning and carcass surveys and juvenile monitoring in the Wenatchee Basin; and monthly and annual reporting and analysis, subject to the provisions and details specified in Attachment “A” (General Specifications) and “B” (Task Authorizations) attached hereto and incorporated herein, and as may be executed in the future; and as otherwise directed by the Task Authorization Coordinator.

PERIOD OF PERFORMANCE
The period of performance of this Agreement shall commence on March 3, 2014, and be completed on December 31, 2019, unless terminated sooner as provided herein.

PAYMENT
Compensation for the work provided in accordance with this Agreement will be paid by the District to WDFW monthly, based on the work undertaken pursuant to the Task Authorizations. The Parties, during development of Task Authorizations, will determine each task authorization budget allocation. Payment for satisfactory performance of such work shall not exceed this amount authorized in the task authorization, unless the Parties mutually agree in writing by amendment to a higher amount prior to the commencement of any work which will cause the maximum payment to be exceeded. Compensation for
services shall be based on the rates and terms set forth in Attachments “A” and "B" and individual task authorizations.

ACCOUNTING AND PAYMENT DETAILS.

i. Billing Procedure. WDFW shall, on a monthly basis, submit written invoices and an expenditure detail report. Each invoice and expenditure report shall be labeled with the identifier “Agreement No 14-001” and Task Authorization number. WDFW shall submit an original invoice and report to the District at the following address: Public Utility District No. 1 of Chelan County; Attn: Becky Gallahe; 327 N. Wenatchee Ave.; P.O. Box 1231; Wenatchee, WA 98807 or by e-mail to becky.gallahe@chelanpud.org.

ii. Expenditure Detail Report. WDFW will provide the District a monthly expenditure detail report as a supplement to written invoices. The report shall include documentation regarding the name of each individual who performed work under the Task Authorization, a mileage report for WDFW vehicles used to perform the Services, and a credit card report detailing any allowable purchases made by WDFW in the month for which the invoice is prepared.

iii. Payment Procedure. The District shall remit payment by warrant or account transfer to WDFW within thirty (30) days of receipt of each properly completed invoice.

iv. Payment Dispute Resolution. The District and WDFW agree to attempt to resolve any invoice disputes through informal means including emails or telephone calls. If informal discussions do not remedy the District’s concern, the District will notify WDFW, in writing, if it has determined that an invoice is incorrect or unsatisfactory and the District, subsequently, intends to withhold payment. After receiving written notification from the District, WDFW will provide written clarification to the District within ten (10) days of receipt of notification. Written notification concerning incorrect invoices shall be sent to the Task Authorization Coordinator for WDFW staff identified in individual task authorizations.

v. Annual Close out. WDFW shall deliver to the District final invoices for each calendar year (January through December) no later than March 31 of the following year. WDFW shall make every reasonable effort to comply with this schedule and the District may dispute any previous expenses not reasonably invoiced by March 31. WDFW shall provide annual accrual amounts for each Task Authorization to the Program Coordinator by December 1 of the year in which work occurs.

RECORDS MAINTENANCE

WDFW shall maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by the District, other personnel duly authorized by the District, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained in accordance with Washington State law, and the Office of the State Auditor, federal auditors, and any persons duly
authorized by the parties shall have full access to and the right to examine any of these materials during this period. The District in requesting access to records shall provide reasonable notice.

**RIGHTS IN DATA**
All rights in the various data which originates from this Agreement, including but not limited to reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound production, shall belong jointly to the District and WDFW. Either party may use, analyze, publish, or distribute the data freely without a need to consult the other party.

WDFW shall provide acknowledgement of the District’s funding of this work in any publication or presentation generated by WDFW which cites or contains any/all data generated under this Agreement.

**INDEPENDENT CAPACITY**
The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party. The conduct and control of the work and safety measures required of either Party shall be the responsibility of that Party.

**PUBLIC RECORDS REQUEST**
Both parties are public entities subject to the public disclosure laws of the State of Washington. Neither Party shall release any studies, reports, and other information marked “proprietary” and/or “confidential” on each and every page the Party deems proprietary and/or confidential and not otherwise available to the public, resulting from the work to be performed by the Parties and its contractors, consultants and other third-Party entities to any person who requests public records without first consulting with the other Party. If a Party receives a public disclosure request for a third Party for such information, that Party will notify the other Party within five (5) business days of such request. The Parties will discuss the appropriate action to be taken, including release of the requested information, seeking a protective order, or other action prior to any release of information. If the Parties are unable to agree upon the appropriate action, the dispute resolution provisions of this Agreement shall apply or the Party wishing to protect the requested information may seek a protective order at its sole expense. The other Party agrees to cooperate in such action. This provision shall not be interpreted to require a Party to delay in providing requested information to the person requesting public records.

**AGREEMENT ALTERATIONS AND AMENDMENTS**
This agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.
TERMINATION
The Parties may terminate this Agreement by mutual agreement. The Parties or a Party may terminate this Agreement in whole or in part. A Party may terminate this Agreement as follows:

- Regarding WDFW’s commitments for monitoring and evaluation activities, a Party shall give not less than one year written notice of termination.

- Task authorizations to this Agreement may be individually terminated by written notice, but task authorization termination shall not terminate this Agreement only the specific referenced task authorization.

- If this Agreement or any Task Authorizations are so terminated, the Parties shall be liable only for performance rendered, or costs incurred prior to the effective date of termination.

DISPUTES
If a dispute arises out of or relates to this Agreement, the Parties agree to first use their reasonable best efforts to cooperatively resolve such dispute. The District and the WDFW shall use their reasonable best efforts to resolve disputes arising in the normal course of business at the lowest organizational level between each Party’s staff with appropriate authority to resolve such disputes. When a dispute arises between the District and the WDFW, which cannot be resolved in the normal course of business, each Party shall notify the other of the dispute, with a written notice to the Task Authorization Coordinator specifying the disputed issues.

The District and WDFW coordinators shall use their reasonable best efforts to resolve the dispute within five (5) business days of submission by either Party to the other of such dispute notice. If the District and WDFW coordinators are unable to resolve the dispute within such five (5) business day period, they shall immediately escalate the matter to the WDFW’s senior official(s) with appropriate authority to resolve the dispute and the District’s appropriate Director, or designee who shall have ten business days to resolve the dispute. If these representatives are unable to resolve the dispute within such period, either Party may pursue its available legal and equitable remedies.

WDFW and the District agree that the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by the District hereunder, WDFW shall continue providing the work pending resolution of the dispute provided the District pays WDFW the amount the District, in good faith, believes is due and payable.

INDEMNIFICATION
Each Party to this Agreement shall be responsible for its own acts and/or omissions and those of its officers, employees, subcontractors and agents. Except as provided in the
preceding sentence, no Party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this Agreement.

This indemnity obligation specifically includes liability or alleged liability that may arise from injury or loss suffered by any employee of either Party 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 LAWS AND POLICIES
Both Parties are forms of government under the laws of the State of Washington, and as such, except as provided in this Agreement, each Party shall be subject to its applicable laws, authorities, and policies. In the event authorities or policies conflict, the Parties agree to meet to discuss how to resolve the differences.

GOVERNANCE/CONFLICT AND PRECEDENCE
This contract is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable state and federal law and the District’s federal licenses;
2. The Hatchery Facilities Guidelines and the other work prescribed by the Committees created under the District’s federal licenses;
3. Interagency Agreement and Task Authorizations.

ASSIGNMENT
The work to be provided under this Agreement is not assignable or delegable by either Party in whole or in part, without the express prior written consent of the other Party, which consent shall not be reasonably withheld.

FORCE MAJEURE
No Party shall be liable to the other Party for breach of this Agreement as a result of a failure to perform or for delay in performance of any provision of this Agreement if such performance is delayed or prevented by Force Majeure. Force Majeure shall be defined as an event not foreseeable by or within control of the Party. The Party whose performance is affected by Force Majeure shall notify the other Party in writing within 24 hours, or as soon thereafter as practicable, after becoming aware of any event that such affected Party contends constitutes Force Majeure. Such notice will identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for
implementation of the measures. The affected Party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, to resume performance of its obligations and give the other Party written notice to that effect. Upon receipt of notice of a Force Majeure event, any Party may request that the Parties engage in discussion in an effort to modify this Agreement in a mutually satisfactory manner.

**WAIVER**
A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party and attached to the original Agreement.

**SEVERABILITY**
If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

**ALL WRITINGS CONTAINED HEREIN**
This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

**CONTRACT MANAGEMENT**
The Program Coordinator for each of the Parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Program Coordinator for WDFW is: Andrew Murdoch, Washington Department of Fish and Wildlife, 3515 Chelan Highway 97A, Wenatchee, WA 98801.

The Program Coordinator for the District is Alene Underwood; Chelan County PUD No. 1, Post Office Box 1231, Wenatchee, Washington, 98807

**IN WITNESS WHEREOF,** the parties have executed this Agreement.

State of Washington                Public Utility District No. 1
Department of Fish and Wildlife    of Chelan County

By:  

Jeffrey R. Hurdahl
Contracts and Purchasing Manager

Title: General Manager -acting GM.

Date: 3/1/14

Date: 3/7/14
ATTACHMENT “A”
GENERAL SPECIFICATIONS AND TERMS

WORKPLACE POLICIES
i. Drug Free Workplace. The Parties agree to comply with the Drug Free Workplace Act of 1988 and their respective policies regarding a drug free workplace. Each Party shall immediately remove its employee from the workplace when that Party determines that the employee is not fit for duty.

ii. Firearms and Other Weapons. Except as provided herein, carrying or possession of firearms or other weapons is prohibited at all times in District buildings or on District property, including District parking lots and in vehicles. Except as provided herein, the carrying or possession of firearms or other weapons is prohibited on any other District location while performing duties for the District under this Agreement.

Notwithstanding the above, the policy shall not apply to WDFW’s officially commissioned law enforcement officers, while they are in the scope of their duties.

Unless otherwise provided, any other exception to the District’s firearm policy requires the Parties’ Agreement and designation in the individual Task Authorization or other Agreement.

Each party shall immediately remove its employee from the workplace when that Party determines that the employee has violated this provision.

BUDGET AND TASK AUTHORIZATIONS.
i. Task Authorizations. For the purposes of this Agreement, “Task Authorizations” are an extension of this Agreement, authorizing and funding specific work elements described therein. Each Task Authorization shall include a budget. Payment for performance of the Task Authorization shall not exceed the Task Authorization budget, unless the Parties mutually agree in advance and in writing to a higher or different amount prior to the commencement of any work which will cause the maximum payment to be exceeded. The Parties shall make every reasonable effort to sign Task Authorizations for the upcoming calendar year by December 15 of the preceding year.

ii. Task Authorization Budget Amendments. Both Parties recognize that the quoted fees and scope of services described in the individual Task Authorizations constitute the best estimate of the fees and tasks required to perform the services as defined. For those projects involving conceptual activities, the tasks may not be fully defined. As the project progresses, facts uncovered may reveal a change in direction that may alter the scope or represent unforeseen costs. Each Party will promptly inform the other Party in writing of such situations so that changes in this Agreement can be discussed to reach agreement and amend as required under the terms of this Agreement.
iii. Task Authorizations Comprehensive. The Parties intend that through the Task Authorization development process, agreed Task Authorizations budgets are intended to cover all reasonably foreseeable costs. Except as otherwise agreed, WDFW shall charge the same rates/fees/costs/reimbursements as required by State of Washington agency requirements (i.e., WDFW charge same as OFM travel/per diem rates). The Parties shall attempt to identify all likely charges or expected costs, including WDFW’s use of equipment, computers, etc.

iv. Special Charges/Issues.
Overhead. Except as provided in this section or as otherwise agreed, WDFW may charge overhead at the rate annually approved by the U.S. Department of Interior (USDOI) and may adjust the rate accordingly upon thirty (30) days notice to the District. WDFW shall not charge an overhead rate for the purchase of capital item purchases greater than $5,000. The Parties agree that the District has not relinquished any ability to request a waiver of or reduction of overhead, which may be applicable to Task Authorizations stemming from this Agreement. Nothing in this paragraph precludes a Party from requesting a discussion about changes to or a waiver of the overhead rate.

v. Purchase of Material/Equipment.
Materials or equipment purchased under this Agreement and billed to the District are the property of the District and that upon completion of work, all such materials or equipment shall be returned to the District prior to the final payment. WDFW will notify the District in advance when it is necessary to purchase any equipment or singular material that exceeds $500 in value. The District retains the right to purchase any equipment in excess of $500. In an emergency situation, WDFW may purchase equipment that exceeds $500 in value so long as immediately afterwards, WDFW notifies the District in writing of the purchase and describes the emergency situation. WDFW is not required to request duplicate authority to purchase items already negotiated in individual task authorizations.

During the development of Task Authorizations, WDFW shall provide the District a request for new vehicles, boats and/or equipment that it believes necessary to complete the project. Included in such list shall be an estimated cost on a per item basis. Such list will be reviewed by the District and then, if necessary, negotiated with WDFW and a determination will be made as to which Party will purchase the agreed to items. After the list of new vehicles, boats and or equipment has been agreed upon by both Parties, the District shall provide the items to WDFW for WDFW’s use during the work to be completed.

Vehicles and equipment provided to WDFW shall not be of a lesser quality than that used by District employees. The District will not provide vehicles and equipment to WDFW if such has evidence of reliability and/or safety problems.

DAY TO DAY OPERATIONS.

i. Non-interference with Project Operations. The Parties agree that some of the hatchery production anticipated by this Agreement is to be produced at facilities near, or in close
proximity to the District’s hydroelectric projects or related facilities, and therefore each Party shall conduct its operations cognizant of the operations of all facilities operated by the Parties.

ii. **Management of Employees.** Each Party shall be responsible to supervise their respective employees. Neither party is authorized to discipline, reprimand or otherwise critique the job performance of the employees of the other party. Any concerns about a party’s employee performance shall be directed, in writing, to the Task Authorization Coordinator as outlined below or the Task Authorization Coordinator designated in the task authorization.

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<thead>
<tr>
<th>District</th>
<th>WDFW</th>
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<tbody>
<tr>
<td>Attn.: Alene Underwood</td>
<td>Attn.: Jeff Korth</td>
</tr>
<tr>
<td>Hatchery Program Manager</td>
<td>Region 2 Fish Program Manager</td>
</tr>
<tr>
<td>P. O. Box 1231</td>
<td></td>
</tr>
<tr>
<td>327 N. Wenatchee Avenue 98801</td>
<td>1550 Alder St.</td>
</tr>
<tr>
<td>Wenatchee, WA 98807</td>
<td>Ephrata, WA 98823</td>
</tr>
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iii. **Security.** WDFW agrees to comply with the District’s Security and Badging Program as may be amended. The District has provided the current Program and will provide updates to WDFW as they are available. The District will issue badges to WDFW employees who are authorized to enter District facilities.

iv. **Operations.** Each Party shall identify and keep current the name and contact information for its representative listed above or in individual Task Authorizations for the discussion of day to day operations and resolution of issues.

v. **WDFW Key Personnel.** WDFW will notify the District when key project managers change (e.g. Hatchery Complex Manager, Senior Fish and Wildlife Biologist, etc). The District may provide, and WDFW shall consider, comments about the hiring process, job duties, or other suggestions. WDFW retains the final decision making authority on hiring of its employees.

vi. **Confidentiality.** Each Party shall enforce their respective conflict of interest policies. Facilities, vehicles, boats, and all other WDFW or District equipment shall not be used for personal gain by either Party. If a Party believes the other Party is not aware of a potential conflict of interest situation, or is not complying with the appropriate conflict policy, the first Party shall bring the issue to the attention of the appropriate Party.

vii. **Maintenance Requests.** WDFW shall notify the District’s Hatchery Operations and Maintenance Coordinator (Ian Adams: (509) 661-4409 or (509) 669-0996) when maintenance is required at a facility or to District-owned equipment and indicate if such maintenance is not performed it would significantly inhibit WDFW from performing its responsibilities. WDFW shall only contact Central Maintenance directly for maintenance
requests when it is required to prevent the loss of fish life. In such instances, WDFW shall notify the District’s Hatchery Operations and Maintenance Coordinator as soon as practicable after the instance, but no longer than 24 hours from such instance.

**VEHICLE, BOAT, AND EQUIPMENT.**

i. General. The District may provide WDFW with vehicle(s), boat(s) and/or equipment for use to complete a specific task authorization. District owned vehicle(s), boat(s) and/or equipment shall be specifically listed in the appropriate task authorization, including the District’s vehicle, boat or equipment number. All District owned vehicles, boats and equipment shall be returned to the District in good working order (subject to normal wear and tear) upon completion or termination of this Agreement.

ii. District and WDFW Vehicle and Boat Insurance. The District and WDFW are self insured.

iii. Damage to District-owned property. The District will be responsible for costs associated with the repairs to damaged District owned vehicles, boats and equipment, regardless of the cause of such damage. The District reserves the opportunity to investigate the incident and recover costs of repair and/or replacement (e.g., parts, labor, etc.) of the damaged item(s) if negligence is found to have occurred on behalf of WDFW.

iv. Fueling at District facilities. Whenever reasonable, WDFW shall refuel District owned vehicles, boats, and other applicable equipment at District facilities. The District shall provide and keep current, all information necessary for WDFW’s use of the District’s refueling facilities.

v. District Maintenance of District Vehicles, and Boats. The District or its authorized representative(s) shall, in a timely fashion, perform all maintenance on the District owned vehicles that WDFW utilizes. WDFW shall notify the District’s Fleet Services when routine maintenance is required on the District owned vehicle. As much as practicable, the District shall perform all maintenance on the District owned boats that WDFW utilizes. WDFW shall be responsible for notifying the District’s Hatchery Operations and Maintenance Coordinator of needed unscheduled maintenance or repairs.

vi. Non-District Owned Vehicles. Whenever WDFW uses WDFW owned vehicles, boats, or other applicable equipment for tasks under this Agreement, WDFW shall charge the District the state-approved mileage rates for the vehicles classification, or bill the District at the same rates that WDFW accounts for those charges for its purposes. If charged the mileage rate for use of a non-District owned vehicle, repairs, alterations, or fuel charges shall not also be charged to the District. In the case that WDFW rents or leases non-District owned vehicles, boats, or applicable equipment, it shall bill the District the rental or lease rate paid by WDFW.

vii. Incident Notification. WDFW shall provide notice to the District, within 24 hours, that an incident has occurred in which injury or damage occurs to third parties or to District owned vehicles, boats, equipment, or hatchery infrastructure (e.g., buildings,
pulleys, etc.) by WDFW staff. Notice shall be in the form of an e-mail or phone call to the Task Authorization Coordinator.

**EQUIPMENT INVENTORY**
Within 14 days of purchase of a non-capitalized item less than $500, possessing the attributes of a small and desirable item that could be easily transportable, readily marketable, and/or easily diverted for personal use, WDFW shall provide to the District’s Hatchery Operations and Maintenance Coordinator the make, model, serial number, and any other defining characteristics of that item. E-mail is an acceptable form of notification for the purchase.

**NOTICES**
Any notices shall be effective as personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the following addresses:

<table>
<thead>
<tr>
<th>District</th>
<th>WDFW</th>
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<tbody>
<tr>
<td>Attn.: Keith Truscott</td>
<td>Attn.: Phil Anderson</td>
</tr>
<tr>
<td>Director – Natural Resources</td>
<td>Fish and Wildlife Director</td>
</tr>
<tr>
<td>P. O. Box 1231</td>
<td>600 Capital Way North</td>
</tr>
<tr>
<td>327 N. Wenatchee Avenue 98801</td>
<td>98807</td>
</tr>
<tr>
<td>Wenatchee, WA 98807</td>
<td>Olympia, WA 98201-1091</td>
</tr>
</tbody>
</table>

**QUALIFIED PERSONNEL**
All services required by WDFW hereunder will be performed by WDFW or under WDFW’s supervision and all personnel engaged in the work shall be qualified and shall be authorized or permitted under federal or state law to perform such services.

**SAFETY PROGRAMS**
WDFW shall implement and maintain a Safety Program for its own employees that complies with all applicable laws. WDFW employee performance and compliance with safety programs will be evaluated by appropriate WDFW personnel. WDFW will not inhibit District efforts to conduct safety inspections or audits of the District's facilities or equipment. If a District safety audit will affect hatchery operations, the District shall provide WDFW with reasonable notice prior to conducting such an audit. Safety concerns identified by either party will be transmitted to the other party to affect a remedy through the most expedient means.

**COLLABORATIVE APPROACH**
Under this Agreement the Parties agree to promote and work under a collaborative approach related to implementation of the District’s FERC licenses. The Parties will continue to build upon the Hatchery Program Continuous Quality Improvement (CQI) Process commenced by the Parties in February 2009. Its purpose is to improve
communication and strengthen relationships in support of the mission and vision statements developed by the Parties during the process.

Further, the District and WDFW will work to identify and implement process and program efficiencies in carrying out the District’s hatchery programs.