

MEMORANDUM OF AGREEMENT

Between

Lummi Nation, Whatcom County, City of Bellingham, and
Whatcom County Public Utility District No. 1

PURPOSE: The purpose of this agreement is to establish the local decision making group to develop and implement a watershed management plan that fulfills all of the requirements (water quantity assessment) and options (water quality, instream flow, and habitat assessments) authorized by ESHB 2514. The goal of the watershed plan is to ensure that the water resources in Water Resources Inventory Area (WRIA) 1 are managed to balance the competing resource demands for the WRIA in a manner that combines and coordinates data collection efforts, is consistent with Endangered Species Act (ESA) recovery actions, ensures that the water quality standards for the designated uses of each water body are achieved, and does not conflict with existing state statutes, federal laws, tribal laws, and tribal treaty rights.

INITIATING GOVERNMENTS: The initiating governments are the Lummi Nation, the Nooksack Tribe, Whatcom County, City of Bellingham, and the Whatcom County Public Utility District No. 1. The Nooksack Tribe was invited to be a signatory to this agreement, but has elected at this time to participate in the planning process without signing this agreement.

PLANNING UNIT: Whatcom County will be the Lead Agency in the planning effort. The first task of the initiating governments will be to fully define the Planning Unit. The Planning Unit will include, but is not limited to: Whatcom County, City of Bellingham, Whatcom County Public Utility District No. 1, Lummi Nation, and the Nooksack Tribe. The following governmental entities will be invited to participate: Washington State departments of Ecology, Fish and Wildlife, Natural Resources, Health, and Transportation; United States Bureau of Indian Affairs, Geological Survey, Bureau of Reclamation, Environmental Protection Agency, Fish and Wildlife Service, Natural Resources Conservation Service, Forest Service, and the National Marine Fisheries Service; and the other local governments within Whatcom County.

OBJECTIVES:

- Use the best available science to make reliable estimates of the total amount of available water in the WRIA (undepleted condition).
- Use the best available science to make reliable estimates of the tribal water rights for both instream and out-of-stream uses.
- Use the best available science to make reliable estimates of the amount of water available for allocation to junior users and for further appropriation.
- Use the best available science to make reliable estimates of the total maximum daily loading (TMDL) of contaminants throughout the WRIA to ensure that the water quality standards for the designated uses of each water body are achieved.
- Coordinate water resource management efforts with salmon recovery actions.

TASKS:

- Identify funding sources and contract with the U.S. Geological Survey to collect streamflow data throughout the WRIA for a 10-year period.
- Identify funding sources and collect climate data at representative locations within the WRIA to allow the precipitation and evapotranspiration components of the water budget to be accurately estimated for each month.
- Evaluate the accuracy of existing land use/land cover data; collect additional land use/land cover data if necessary.
- Identify funding sources and conduct a depletion analysis to accurately estimate the spatial and temporal uses of water in the WRIA throughout the year.
- Estimate undepleted streamflow based on collected streamflow data and the depletion analysis results.
- Identify funding sources and conduct an analysis to estimate optimal instream flows for the fisheries resources in the WRIA throughout the year.
- Estimate the most senior instream and out-of-stream water rights in the WRIA.
- Estimate the next most senior water rights in turn based on the priority date of existing water right holders.
- Estimate the amount of water remaining and thus available for allocation to new appropriators.
- Conduct necessary data collection and analysis to estimate TMDLs for fecal coliform (in progress), temperature, biochemical oxygen demand (BOD), sediment, and other water quality attributes of concern.
- Coordinate work with fish habitat team created under ESHB 2496.

DECISION MAKING:

- Decisions will be based on the best available science. For the purposes of this agreement, the best available science is defined as objective and repeatable analyses based on adequate empirical data collected with appropriate quality assurance/quality control procedures in place.
- Decisions will be made by unanimous vote with each member of the initiating governments having one vote. The parties agree that the term "consensus" as used in ESHB 2514 and this agreement means "unanimous agreement", and further agree to use this definition throughout their planning effort notwithstanding any contrary interpretation or definition of the term which may be placed on it by any other person or entity, including the courts or the legislature.

TERMINATION AND PRESERVATION OF RIGHTS:

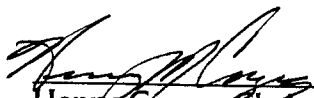
- Any parties to this agreement may terminate their participation with written notice of intent to terminate followed by a formal termination letter.
- The parties recognize that ESHB 2514 provides that the planning process shall not contain provisions which conflict with tribal treaty rights or which impose an obligation on any participating government. They therefore agree that tribal participation in this process shall not constitute an admission or agreement by the participating tribe that any estimate of tribal treaty rights are binding on it, unless the affected tribe expressly so agrees in writing at the conclusion of the process, and such tribal agreement is approved in writing by the United States.
- The parties agree that any estimate of tribal treaty rights are not binding on the initiating governments unless the affected parties expressly so agree in writing at the conclusion of the process.
- The parties recognize that final agreement is more likely if the parties can freely discuss alternatives and hypotheticals without prejudice to positions they may take in legal proceedings. Therefore, no discussion, proposal, plan, agreement, (other than a formally adopted plan or agreement) offer of compromise, proposed agreement, concession, statement, material, or documents whether oral, written, or in electronic or other format (herein the "protected material"), made or prepared by the parties or their authorized agents in furtherance of the planning process envisioned by this agreement shall be offered into evidence against the party providing the "protected material" in any legal or administrative proceeding. Protected material originating from the Lummi

Nation shall not be offered into evidence in any legal or administrative proceeding, regardless of whether the Lummi Nation is a party to that proceeding. Reports and data from original studies conducted by or on behalf of the planning unit are public information.

- No amendment or alteration of this agreement shall arise by implication, course of conduct, or change in state law. This agreement may be altered only by a subsequent written document, signed by the parties, expressly stating the parties' intention to amend their agreement.

Lummi Nation

Whatcom County


Henry Cagey, Chairman
Lummi Indian Business Council

Date:

10/29/98

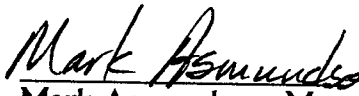

Pete Kremen, Executive
Whatcom County

Date:

10-29-98

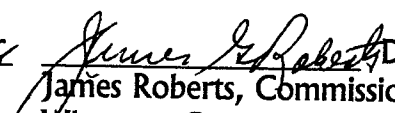
City of Bellingham

Whatcom County Public Utility District No. 1


Mark Asmundson, Mayor
City of Bellingham

Date:

10/29/98


James Roberts, Commissioner
Whatcom County PUD No. 1

Date:

10/29/98