

**Appendix 1-D:
Intergovernmental Agreement**

COPY

INTERGOVERNMENTAL AGREEMENT
REGARDING LOCAL WATERSHED PLANNING
FOR THE ELWHA-DUNGENESS BASINS
(WRIA 18)

THIS AGREEMENT is entered into by and between **Clallam County**, hereinafter called the "County", the **Lower Elwha Klallam Tribe**, hereinafter called the "Elwha Tribe", the **Jamestown S'Klallam Tribe**, hereinafter called the "Jamestown Tribe", the **Agnew Irrigation District**, hereinafter called the "District", and the **City of Port Angeles**, hereinafter called the "City".

WHEREAS, HB 2514 (Chapter 90.82 RCW) provides authority for local watershed planning for waters and water rights under state jurisdiction and directions for the initiation of planning and eligibility for grant funds, and Chapter 39.34 RCW provides authority for governmental entities to exercise their respective powers jointly by intergovernmental agreements; and

WHEREAS, watershed planning under HB 2514 includes representation by a wide range of water resource interests in the investigation and planning of actions relating to water quantity, water quality, habitat restoration, and instream flows, and the identification of projects and activities to protect water resources and improve natural resource management; and

WHEREAS, HB 2514 provides that watershed planning may only be initiated with the concurrence of:

1. all counties in the Water Resource Inventory Area ("WRIA"); and
2. the largest city or town within the WRIA; and
3. the water supply utility obtaining the largest quantity of water from the WRIA; and

WHEREAS, under HB 2514, Tribes with reservation lands within the management area are required to be invited to participate as an initiating government; and

WHEREAS, the Elwha-to-Dungeness Basins have been designated by the State as WRIA 18; and

WHEREAS, Jefferson County occupies a small portion of WRIA 18 within the Olympic National Park and is assigning its responsibilities for watershed planning within WRIA 18 to Clallam County; and

WHEREAS, the initiating governments designated by Section 2 of HB 2514 for WRIA 18 are the County, the City, the Elwha Tribe, the Jamestown Tribe, and the District, (collectively, the “Initiating Governments”); and

WHEREAS, other interested parties who are anticipated to take an active role in watershed planning for WRIA 18 include, but are not limited to, the Dungeness River Management Team, the Clallam County Public Utility District, the City of Sequim, Olympic National Park and other water districts and irrigation districts which use waters of the major streams in the basin; and

WHEREAS, under HB 2514, after the County, City and District initiate watershed planning and invite the Tribes to participate, they must designate a lead agency and indicate how the planning unit will be staffed.

NOW, THEREFORE, the initiating governments agree as follows:

1. Formation of Elwha-Dungeness Coordinating Council. The initiating governments hereby establish a new body, hereafter called the Elwha-Dungeness Coordinating Council or “the Council”, to serve as lead agency for the watershed planning process. The Council shall provide for staffing of the watershed planning effort, management of grant funds, resolution of disputes regarding interim decisions, and a public hearing process. The Council shall consist of one elected official and one staff representative from each of the five initiating governments. The five elected officials shall be the voting members of the Council, provided that a staff representative may vote in the absence of the respective elected official.

2. Funding and Accounting.

a. The Council is authorized to apply for and accept grants in the name of the Council and to utilize existing grant funds and appropriations for the purposes specified herein.

b. The Council’s funds shall be retained in a special account established by the County Treasurer to be known as the WRIA 18 Watershed Planning Account. All sums received by the Council shall be placed in and disbursed from that account, The County Treasurer shall be the custodian of the account, and the County Auditor shall keep record of the receipts and disbursements. The County Auditor shall draw and the County Treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the Council.

c. The County Department of Community Development shall keep full and complete accounts of the costs incurred in connection with the planning process and shall report to the Council monthly regarding the accounting of revenues and expenditures.

- d. The Council shall not acquire real property. Any personal property acquired for use by the Council shall be acquired jointly in the name of the Council and shall be sold or equitably divided among the initiating governments upon the termination of this agreement.
3. Staffing of Planning Process. Staffing of the planning process shall be as follows:
 - a. For the area from the eastern boundary of WRIA 18 to and including Bagley Creek, including the Dungeness River basin, by the Clallam County Department of Community Development and the Jamestown Tribe;
 - b. For the area including Morse Creek to the western boundary of WRIA 18, including the Elwha River basin, by the City of Port Angeles Planning Department and the Elwha Tribe.
 - c. The Council may utilize the staff and resources of the Initiating Governments to organize and administer the planning processes for the Dungeness and Elwha Rivers and streams in between and may hire consultants or additional staff to perform various functions related to the watershed planning process.
 4. Scope of Planning.
 - a. The initiating governments agree that effective watershed planning cannot take place without sufficient scientific data to support informed decision making. To achieve this the initiating governments with technical assistance from state and federal natural resource agencies will scope, design and include in the scope of work for each planning team scientific studies which provide an acceptable level of certainty concerning all the surface and ground water quality and quantity requirements of the ecosystems and water users in the affected watershed.
 - b. WRIA 18 shall be divided into two geographic planning areas; the areas from the eastern boundary of WRIA 18 to and including the Bagley Creek watershed including the Dungeness River basin, hereafter called the "Dungeness Planning Area" and the area from and including the Morse Creek watershed to the western boundary of WRIA 18, including the Elwha River basin, hereafter called the "Elwha Planning Area". The initiating governments located in each area will determine the scope of planning for that area.
 - c. The Dungeness River was included in the previous watershed planning process and many of the elements of planning under HB 2514 have been addressed for this portion of WRIA 18 in the Dungeness Quilcene Water Resources Management Plan

(1994). It is not the intent of the initiating governments to repeat, overturn, or delay implementation of technical studies, management recommendations and water use agreements which were included in the Dungeness-Quilcene Water Resources Management Plan. The planning process for the Dungeness area shall include, at a minimum, a supplemental groundwater assessment for the Dungeness River basin.

- d. The Elwha River was included in a previous watershed planning process leading to the Elwha River Ecosystem and Fisheries Restoration Act (Public Law No. 102-495) and implemented by the Department of the Interior in a Secretarial Report to Congress two environmental impact statements and a Record of Decision. Planning carried out under this agreement shall compliment, not reopen or otherwise prejudice, that preexisting and ongoing process. The planning process for the Elwha Area shall include, at a minimum, water supply assessment under Section 3 of HB2514 for the Morse Creek to Elwha River portion of WRIA 18, provided that no estimate of the surface and ground water available for further appropriation may be completed without determining and preventing the adverse effects of further withdrawals on stream temperatures and other ecological values and provided further that no assessment shall operate to set interim flows without following the procedures set out in Section 4 of HB 2514.
- e. It is expected that water quality and habitat studies will be completed for WRIA 18 to the extent funds are made available at a later time for this purpose, with the goal of planning for the restoration of native Chinook salmon runs in WRIA 18.

5. Organization of Planning Unit and Planning Teams. The Council shall cause to be organized a comprehensive public outreach program for the purpose of soliciting all parties of interest to participate in the watershed planning process as members of the planning unit. Once the planning unit is formed, the Council shall provide for the planning unit to be divided into two planning teams. One planning team shall be responsible for the watershed planning process for the area from the eastern boundary of WRIA 18 to and including Bagley Creek, including the Dungeness River basin, and shall be called the "Dungeness Team". Unless otherwise agreed, the Dungeness River Management Team established by Clallam County Commissioners Resolution No. 104, 1995, and Jamestown S'Klallam Tribe Resolution No. 44-95, and modified by joint agreement of designated County and Tribal officials shall serve as the Dungeness Team. The other team shall be responsible for watershed planning for the area including Morse Creek to the western boundary of WRIA 18, including the Elwha River basin, and shall be called the "Elwha Team".

6. Plan Preparation. The process adopted by the Council for plan preparation shall:
 - a. Provide that interim decisions during the planning process on plan development activities be reached by a consensus process. The parties agree that the term "consensus" as used in HB 2514 and this agreement means "unanimous agreement".

- b. Provide that the planning teams will develop and/or revise their respective watershed plans upon availability of appropriate funding, which plans will then be referred to the planning unit for its approval.
- c. Provide that the proposed watershed plan approved by the planning unit shall be referred to the Council for public hearings and that the Council shall provide a report on the public hearings and its recommendation to the Initiating Governments' legislative authorities for the approval process provided in Section 9 of HB 2514.

7. Water Rights Disclaimer. Nothing in this Intergovernmental Agreement nor any report, study, or other product resulting from the watershed planning process or any other activity under this agreement shall impair any treaty, water, or other right of an Indian tribe or its members under any applicable law or any water or other rights of any other entity or person under any applicable law. Any "estimate" or other plan element which affects such rights shall be created as an "obligation" for the purposes of Section 9 of HB 2514. Effective watershed planning cannot include negotiation or non-judicial determination of water rights. To avoid determining ecosystem needs in a non-scientific adversarial setting, and to avoid exposing the watershed planning process to the uncertainty and delay involved in legal challenges, the initiating governments agree to address water supply and use in each affected watershed in such a way that water rights and the due process rights of their holders are in no way compromised. At a minimum, this requires that "estimates" of water claims and rights not be included in the administrative record, that water rights not be determined or compromised in the course of watershed planning, and that any "assessment" under Section 3 of HB2514 not foreclose instream flow setting under Section 4.

8. Evidence Clause. No discussions, drafts, proposed agreements or offers of compromise made solely for the purpose of this watershed planning process will be admissible as evidence in any court or administrative proceeding.

9. Effective Date/Term of Agreement.

- a. This Agreement shall be effective immediately upon its execution by all initiating governments.
- b. This Agreement shall terminate four (4) years from the date of execution unless extended by written agreement of the initiating governments prior to such date. The Agreement may be terminated earlier upon mutual agreement of the initiating governments. Upon termination, all unexpended funds shall be disbursed as decided in writing by the initiating governments, provided that the County shall first certify to the initiating governments that such disbursement complies with the terms of all applicable grants, laws and accounting principles relating to the expenditure of public funds.

The parties shown below have executed this Intergovernment Agreement this ____ day of _____, 1998, on one or more originals.

LOWER ELWHA KLALLAM TRIBE

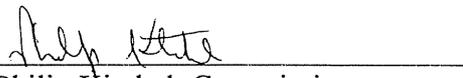
By: 
Russell N. Hepfer, Chair, Tribal Council

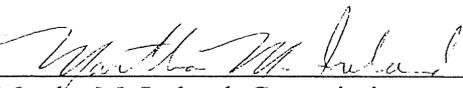
JAMESTOWN S'KLALLAM TRIBE

By: 
Ron Allen, Chair, Tribal Council

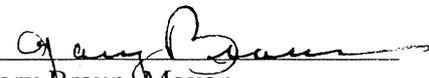
BOARD OF CLALLAM COUNTY
COMMISSIONERS

By: NOT PRESENT 10/20/98
Carole Y. Boardman, Chairperson

By: 
Philip Kitchel, Commissioner

By: 
Martha M. Ireland, Commissioner

CITY OF PORT ANGELES

By: 
Gary Braun, Mayor

AGNEW IRRIGATION DISTRICT

By: 
Mike Jeldness, Manager



JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382

360/683-1109

FAX 360/681-4643

RESOLUTION # 52-98

WHEREAS, the Jamestown S'Klallam Indian Tribe has been Federally acknowledged by the Secretary of the Interior of the United States of America on February 10, 1981; and

WHEREAS, the Jamestown S'Klallam Tribal Council is the governing body of the Jamestown S'Klallam Tribe in accordance with its Constitution adopted on November 19, 1983, and conducted by the Bureau of Indian Affairs following Part 81 of the Code of Federal Regulations; and

WHEREAS, the health, safety, welfare, education, and regulation of treaty fishing, hunting, and gathering practices of the Indian people of the Jamestown S'Klallam Tribe is the responsibility of the Jamestown S'Klallam Tribal Council; and

WHEREAS, the Jamestown S'Klallam Tribal Council previously adopted Resolution #21-90 on May 4, 1990, supporting cooperative planning of water resources with the State of Washington on a government-to-government basis, and Resolution #32-94 on June 2, 1994 supporting the Dungeness-Quilcene Water Resources Management Plan and committed to work toward plan implementation; and

WHEREAS, the 1998 Washington State Legislature has adopted ESHB2514 which provides for watershed planning at the level of a Water Resource Inventory Area (WRIA); and

WHEREAS, Clallam County has received funds under the auspices of ESHB2514 to conduct organizational and assessment phases in WRIA 18 (Elwha-Dungeness) and has invited the Jamestown S'Klallam Tribe to participate in WRIA 18 watershed planning as an initiating government; and

WHEREAS, representatives from the initiating governments in WRIA 18 (Jamestown S'Klallam Tribe, Lower Elwha Klallam Tribe, Clallam County, City of Port Angeles, and Agnew Irrigation District) have prepared an interlocal agreement to specify the organization and scope for the WRIA 18 watershed planning process;

NOW THEREFORE BE IT RESOLVED, that the Jamestown S'Klallam Tribe will accept the invitation to participate in watershed planning and approve the, "Intergovernmental Agreement Regarding Local Watershed Planning for the Elwha-Dungeness Basins (WRIA 18)" with the other initiating governments under the following conditions:

1. There will be no planning involving on-reservation water rights unless otherwise determined by the Tribe.
2. The Tribe shall have the right to withdraw from the planning process at any time. All parties agree that, if the Tribe withdraws, it shall not be deemed to be a party to any plan or agreement produced pursuant to ESHB2514 and shall not be bound thereby.
3. The purpose of establishing instream flows for the Tribe is to sustain our historical ceremonial, subsistence and commercial needs to carry out our treaty-reserved fishing

rights. The planning unit shall not set instream flows under state law if such flows are inconsistent with recommended flows under the Dungeness-Quilcene Water Resources Management Plan unless agreed by the affected tribes and appropriate state agencies.

4. This process shall not preclude the Washington Department of Ecology from proceeding immediately with rule-making for the implementation of the Dungeness-Quilcene Water Resources Management Plan, including the establishment of a minimum instream flow for the Dungeness River consistent with the Dungeness-Quilcene plan.

BE IT FURTHER RESOLVED that the Jamestown S'Klallam Tribe will not define or identify a specific quantity of water that constitutes the Tribe's treaty or legal water rights. The Tribe reserves their treaty right to any and all waters required to produce a harvestable number of fish sufficient to meet ceremonial, subsistence, and commercial needs in order to carry out its treaty fishing right reserved under the Treaty of Point No Point. Further the Tribe reserves their judicial, statutory, and equitable rights to any and all waters sufficient to meet the changing needs of our tribal members in fulfilling the purposes of the Jamestown S'Klallam Reservation

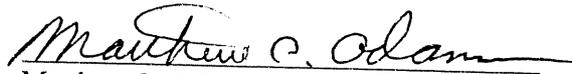
BE IT FURTHER RESOLVED that the Jamestown S'Klallam Tribal Council authorizes elected officials W. Ron Allen, Tribal Chairman, or Sandra Ehrhorn, Vice-Chairwoman; and staff representatives Ann Seiter, Natural Resources Director, or Linda Newberry, Water Resources Coordinator, to enter into watershed planning discussions on behalf of the Tribe within the parameters outlined in this Resolution and Resolution No. 21-90.



W. Ron Allen, Tribal Chairman

CERTIFICATION

I, Matthew C. Adams, Treasurer of the Jamestown S'Klallam Tribal Council of the Jamestown S'Klallam Tribe, do hereby certify that the foregoing resolution was formally adopted at a meeting of the Jamestown S'Klallam Tribal Council held on October 9, 1998, at the Jamestown S'Klallam Tribal Office in Blyn, Washington, and where a quorum was present and approving the resolution by a vote of 5 FOR and 0 AGAINST with 0 ABSTAINING.



Matthew C. Adams, Tribal Council Treasurer