

**YAKIMA BASIN FISH AND WILDLIFE
RECOVERY BOARD**

INTERLOCAL AGREEMENT

1. AGREEMENT.

The Yakima Basin Fish and Wildlife Recovery Board Interlocal Agreement (“Agreement”) is entered under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW by the parties identified in Section 3.

2. RECITALS AND FINDINGS.

2.1 Local Recovery Efforts. In RCW 77.85.005, the legislature found that the State of Washington may best accomplish salmon recovery efforts by integrating local and regional salmon recovery activities into a statewide strategy; a coordinated state funding process should be established through a salmon recovery funding board; the appropriate local or tribal government should provide local leadership in identifying and sequencing habitat projects to be funded by state agencies; habitat projects should be implemented without delay; and, a strong locally based effort to restore salmon habitat should be established by providing a framework to allow citizen volunteers to work effectively.

2.2 Prior Programs Recognized. There have been prior efforts among governmental jurisdictions in the Yakima River basin to address water quality and salmon recovery. Such efforts include the preparation of the Yakima Subbasin Plan and the Draft Yakima Subbasin Recovery Plan of the Yakima Sub-Basin Fish & Wildlife Planning Board and the Memorandum of Agreement regarding lead entity status under Chapter 77.85 RCW.

2.3 Regional Recovery Organization. It is now appropriate for governments in the region to form as a regional recovery organization under RCW 77.85.090. In addition to serving as a regional recovery organization, the Yakima Basin Fish and Wildlife Recovery Board formed hereby shall be available to serve as lead entity under Chapter 77.85 RCW, and to perform such other activities to address recovery of fish and wildlife in the Yakima River basin and the region.

3. PARTIES.

3.1 Parties. Parties to this Agreement are those general purpose governments within the Yakima River basin that have agreed to be a party to this Agreement.

3.2 Initiating Parties. The initial parties to this Agreement are the Yakama Nation; At least two of Benton County, Kittitas County and Yakima County; and, at least two cities, from each of Benton, Kittitas and Yakima counties. The initial parties to the Agreement are collectively referred to as the “Initiating Parties.” This Agreement shall be effective upon execution by the Initiating Parties, and satisfaction of Section 13.2.

3.3 Other Parties. Each of Benton, Kittitas and Yakima counties, and each city that is not otherwise an Initiating Party, may subsequently become a party by delivering written notice and an executed Agreement to the Organization. Expansion or contraction of the parties to this

Agreement may occur as the Organization undertakes more or fewer responsibilities consistent with Section 6.4.9.

4. DEFINITIONS.

4.1 General. The definitions in this Section 4 apply to this Agreement, unless the context clearly requires otherwise.

4.2 Incorporation. The definitions set forth in RCW 77.85.010 are incorporated into this Agreement by this reference.

4.3 “Agreement” means this Yakima Basin Fish and Wildlife Recovery Board Interlocal Agreement.

4.4 “Board of Directors” means the administrative body responsible for oversight and governance of the Organization, as provided by this Agreement. At such time as the Organization establishes a public nonprofit corporation, the Board of Directors shall serve as the corporate board.

4.5 “City” or “cities” mean each and any city that is both within a County and is located in whole or in part in WRIA 37, 38 or 39.

4.6 “County” or “counties” mean each and all of Benton County, Kittitas County and Yakima County.

4.7 “Lead entity” or “lead entity board” means the Organization’s status under Chapter 77.85 RCW and responsibility, in part, for submission of habitat project list(s) for salmon and wildlife species recovery, prioritization for projects (including habitat projects), and such other authority and functions as are now or in the future available to a lead entity under law.

4.8 “Officer” means any of the following positions:

4.8.1 Chair (President);

4.8.2 Vice Chair (Vice President) / Treasurer;

4.8.3 Secretary; and

4.8.4 Such other officers that may be created from time-to-time by the Board of Directors.

4.9 “Party” means a signator to this Agreement.

4.10 “RCW” means the Revised Code of Washington.

4.11 “Regional recovery” includes but is not limited to planning, projects and other actions for salmon recovery and recovery of other wildlife species.

4.12 “Yakama Nation” means the Confederated Tribes and Bands of the Yakama Nation.

4.13 “Yakima Regional Recovery Organization” or “Organization” means the Yakima Basin Fish and Wildlife Recovery Board created by and operating under this Agreement.

5. MISSION.

The mission of the Organization is to restore sustainable and harvestable populations of salmon, steelhead, bull trout and other at-risk fish and wildlife species through the collaborative, economically sensitive efforts, combined resources, and wise resource management of the Yakima River Basin.

6. FORMATION, PURPOSE AND POWERS.

6.1 Formation. The Parties hereby create the Yakima Basin Fish and Wildlife Recovery Board.

6.2 Organization; Form.

6.2.1 The Organization shall, with due deliberation, proceed to incorporate as a public nonprofit corporation pursuant to Chapter 24.06 RCW and as a tax-exempt organization pursuant to Section 501(c)(3) of the Interlocal Revenue Code of 1986, as amended. Provided, however, until incorporation under state law pursuant to this Section, the Organization may continue to act consistent with this Agreement and RCW 39.34.030.

6.2.2 The Organization may reorganize in such manner as may be permitted by law by amendment to this Agreement in accordance with Section 12.10.

6.3 Purpose. The Organization is to be a regional recovery organization under Chapter 77.85 RCW and to provide such other fish and wildlife recovery efforts as the Organization may otherwise authorize.

6.4 Powers. In furtherance of its purposes, the Organization shall have the power to:

6.4.1 acquire, construct, receive, own, manage, lease and sell real property, personal property and intangible property;

6.4.2 enter into contracts with public and private entities;

6.4.3 employ and terminate personnel, with or without cause, and contract for personnel and services with public and private entities;

6.4.4 sue and be sued;

6.4.5 establish plans, policies, guidelines and regulations to carry out its powers and responsibilities; provided the adoption or modification of an annual work plan shall be submitted to each Party consistent with procedures

(including advance notice of adoption or modification) adopted by the Board of Directors;

- 6.4.6 adopt an organizational structure and bylaws including committees;
- 6.4.7 maintain practices and other fiscal and fiduciary authorities needed to conduct Organization business;
- 6.4.8 seek and acquire the funding necessary to accomplish the Mission;
- 6.4.9 undertake roles and responsibilities of regional salmon recovery efforts as authorized in RCW 77.85.050, .060 and .090;
- 6.4.10 update, review and implement the Yakima Basin Salmon Recovery Plan in accordance with RCW 77.85.090; and update and review as necessary the Yakima Sub-basin Plan and other plans necessary to accomplish the Mission;
- 6.4.11 be recognized as and perform the tasks of a Yakima Basin Lead Entity Board as established under Chapter 77.85 RCW; including proactive identification and submission, using technical merit and the cost effectiveness and overall benefit to anadromous fish species, such Yakima Basin Lead Entity projects for funding the Washington State Salmon Recovery Funding Board, as approved by the Organization;
- 6.4.12 serve as a clearinghouse for research, studies, reports and other information pertinent to the Mission and of interest to the public;
- 6.4.13 use best available science and assessment data for planning and implementation activities;
- 6.4.14 proactively identify, prioritize and promote funding for fish and wildlife recovery projects, including serving as a central point for government and non-government groups to provide input and seek assistance regarding salmon recovery actions;
- 6.4.15 emphasize economic and cultural needs of the region by including tasks, methods and funding to engage effective public participation, outreach and coordination at the local level; and
- 6.4.16 exercise all other powers that are within the authority of and may be exercised by the Parties with respect to fish and wildlife recovery.

6.5 Organization Assets.

- 6.5.1 Assets shall be held in the name of the Organization. The Organization may acquire, construct, receive, own, manage, lease or sell assets. A Party may transfer to Organization its title to, or operational control of, assets.

The Organization may control and manage both the assets it owns and the assets that are owned by a Party that have transferred control of those assets to Organization. This Agreement does not vest in Organization any authority with respect to a Party's other facilities or assets.

6.5.2 The fact that title to an asset has been transferred to Organization by a Party shall create no special rights in that Party with respect to that asset; provided, a Party may retain ownership of an asset transferred to the Organization for operational control or for other purposes consistent with a separate agreement between the Organization and a Party.

7. TERM AND TERMINATION OF AGREEMENT

7.1 Term. This Agreement shall be effective when executed by the Initiating Parties, and satisfaction of Section 13.1. This Agreement shall continue in effect for five (5) years subject to renewal in accordance with the provisions of this Agreement.

7.2 Renewal.

7.2.1 This Agreement shall be automatically renewed for successive terms of five (5) years unless earlier terminated in accordance with the provisions of this Agreement.

7.2.2 This Agreement shall not renew if any of the counties or the Yakama Nation give notice of nonrenewal to the Board of Directors no less than twelve (12) months prior to the expiration of the initial or any succeeding five (5) year term.

7.3 Termination – Vote. This Agreement shall terminate effective upon any date specified for termination by vote of the Board in accordance with Section 9.2.

7.4 Assets – Distribution. Prior to any termination of this Agreement, the Board of Directors shall establish a procedure for realizing the fair market value of assets, which may include offering assets for sale to Parties. The proceeds of assets shall be distributed upon termination to Parties according to procedures established by resolution of the Board of Directors.

8. WITHDRAWAL OF MEMBERS.

Any Party may voluntarily withdraw from the Organization by providing at least ninety (90) days' written notice to the Organization containing evidence of approval of such action by the Party's legislative authority.

9. BOARD OF DIRECTORS.

9.1 Members. This Agreement shall be administered by a Board of Directors. The initial Board of Directors shall consist of a maximum of ten (10) Directors. The Board of

Directors may, by resolution, change the number of Directors; provided, that such change is consistent with this Agreement.

9.1.1 The initial Board of Directors shall be appointed as follows: one Director shall be appointed by and from each participating board of county commissioners; one Director shall be appointed by the Yakama Nation; and a maximum of two Directors from each of Benton, Yakima and Kittitas counties shall be appointed collectively by those cities that are Parties at the time of appointment, in a manner in which they agree upon.

9.1.2 The Organization may modify the manner of selection and composition of the Board of Directors upon changes in size of the Board of Directors; upon addition of other jurisdictions; or, upon modification of the scope of the Organization's activities under Section 6.4.9.

9.1.3 All Directors shall be elected officials; provided, an Alternate Director is not required to be an elected official.

9.2 Consensus Decision-making.

9.2.1 A quorum of the Board of Directors is defined as a majority of the Directors (or their alternates). The Board of Directors shall not take action at any meeting unless a quorum is present at the time the action is taken.

9.2.2 All decisions of the Board of Directors shall be made by consensus of the Directors (or their alternates) present at a meeting. Consensus is defined as a unanimous vote, or the absence of any dissenting vote, or the absence of any objection. A member abstaining on a decision is neither a dissent nor an objection.

9.3 Meetings. The Board of Directors shall meet as necessary, but at a minimum on a quarterly basis.

9.4 Insurance. The Board of Directors shall procure at least the following insurance: general liability, officers and public officials errors and omissions, property, casualty and fire. The Board of Directors may authorize contracts with insurance and/or risk pools, or other agencies to provide the insurance coverages deemed by the Board of Directors to be reasonable and appropriate for its activities.

9.5 Officers. The initial officers of the Organization shall be a Chair (President), a Vice-Chair (Vice President)/Treasurer, and a Secretary. The President shall serve as chair of the Organization and shall perform such other duties as may be determined by the Board of Directors. The Vice President/Treasurer shall perform the duties of the President in the President's absence and shall perform such other duties as may be determined by the Board of Directors. The Secretary shall be responsible for the books and records of the Organization and shall perform such other duties as may be determined by the Board of Directors. Additional officers may be approved by the Board of Directors. Two or more offices may be held by the same person, except for the offices of President and Secretary.

9.6 Executive Director. The Board of Directors may appoint an Executive Director, and establish such other positions as it may deem advisable. The Board of Directors may also provide that administrative, technical or professional services be performed by contract.

9.7 Budget; Finance. The Organization may accept or contract for grants; receive gifts and bequests; and, receive revenues from its operations and activities. The Board of Directors shall approve an annual budget forecasting the revenues and expenditures for the fiscal year in which that budget will be in effect. The Board of Directors may amend the budget. All books and records shall be open to inspection by any Party and the Washington State Auditor.

10. FINANCIAL OBLIGATIONS.

No financial obligations to governments that are signatories to this Agreement are implied. No signatory to this Agreement shall be liable for costs or expenditures not authorized by its own legislative body.

11. INDEMNIFICATION.

11.1 In no event shall the Parties, through participation in this Agreement, be liable to the Organization for any act for failure to act under the provisions of this Agreement. In addition, the parties assume their own liability as to third parties for acts performed under this Agreement and each party shall save harmless the other parties, their officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages for injuries to persons and/or damage to tangible property arising out of or in any way resulting from the parties' participation in this Agreement. The parties shall have no duties except those that are expressly set forth herein and in the bylaws.

11.2 The Parties shall in no event be required to save harmless, defend or indemnify the Organization for any act or failure to act under the provisions of this Agreement, except as otherwise provided by separate agreement. The Organization shall indemnify and hold harmless each and every party to this Agreement, including but not limited to each Parties' officers, directors, employees, agents, and representatives, from any and all claims, including reasonable attorney's fees, which arise out of the Organization's actions in furtherance of this Agreement. Nothing in this Section 11 precludes the Organization from contracting for indemnification; provided, a failure to provide indemnification by such a contractor does not excuse the Organization's obligation under this Section.

12. GENERAL.

12.1 Sovereign Immunity. Nothing in this Agreement should be interpreted as a waiver of sovereign immunity by any party.

12.2 Retained Authority. There is no ceding of any jurisdictional and/or regulatory authority of any participating government. Actions taken by any participating government are done on a voluntary basis only.

12.3 No Third-Party Beneficiary. Nothing in this Agreement is intended to create any rights in any entity not a party to this Agreement nor shall any entity be considered a third party beneficiary to this Agreement.

12.4 Treaty Rights Preserved. Nothing in this Agreement shall grant any jurisdiction to the State or to State court over any issue involving the Treaty rights of the Yakama Nation nor over any issue involving the Yakama Reservation. Nothing in this Agreement is a recognition or acknowledgment that the Endangered Species Act applies to Yakama Treaty rights.

12.5 No Public Official Liability. No provision of this Agreement nor any authority granted by this Agreement is intended to create or result in any personal liability for any public official or employee or agent of a Party, nor shall any provision or provisions of this Agreement be construed to create any such liability.

12.6 Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. Further, the Parties shall negotiate in good faith regarding amendments to this Agreement that would, to the maximum extent possible, effectuate the intent of any provision determined to be invalid or unenforceable.

12.7 Construction. This Agreement has been freely and fairly negotiated by the Parties hereto and has been reviewed and discussed by legal counsel for each of the Parties, each of whom has had the full opportunity to modify the draftsmanship hereof and, therefore, the terms of this Agreement shall be construed and interpreted without any presumption or other rule requiring constructional interpretation against the Party causing the drafting of the Agreement.

12.8 Successors. This Agreement shall be binding on any and all successors or assignees of the Parties.

12.9 Complete Agreement. This Agreement contains the complete statement of the understanding of the Parties with respect to the subject matter of this Agreement. There are no other representations, agreements, or understandings, oral or written, by the Parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. Each Party acknowledges and represents to the other Party that it is executing this Agreement solely in reliance upon its own judgment and knowledge and that it is not executing this Agreement based upon the representation or covenant of the other Party, or anyone acting on such Party's behalf, except as expressly stated herein.

12.10 Amendment. This Agreement may be modified or amended at any time with the written consent of all Parties to the Agreement at the time of the modification or amendment.

12.11 Filing. This Agreement shall be filed with the county auditor of each participating county and with any jurisdictional state officer, consistent with Chapter 39.34 RCW.

13. EFFECTIVE DATE AND IMPLEMENTATION.

13.1 Effective Date. This Agreement shall take effect and be in force upon execution pursuant to Section 3; and compliance with Section 13.2.

13.2 Implementation. The Organization may exercise authority under this Agreement as a regional recovery organization and lead entity under chapter 77.85 RCW when the following have occurred.

13.2.1 the Yakima Sub-basin Fish and Wildlife Planning Board and the Yakima Basin Salmon Recovery Board each adopt a resolution acknowledging that such entities have been or will be effectively dissolved upon a specified date which shall be no later than December 31, 2006, in accordance with their respective enabling authority and rules; and

13.2.2 the Yakima Sub-basin Fish and Wildlife Planning Board and the Yakima Basin Salmon Recovery Board each provide documentation that they have notified appropriate federal, state and local agencies that the respective entity is being dissolved and that their mission and functions will be undertaken by the Organization as of a specific date; and

13.2.3 the State of Washington, acting through authorized representative, recognizes the Organization as a regional recovery organization and a lead entity under Chapter 77.85 RCW.

13.3 Multiple Counterparts. This Agreement may be executed in multiple counterparts. The later execution by a county or a city pursuant to Section 3.3 shall not constitute an amendment or require re-execution by other parties. Upon execution of the Agreement by such a county or a city, a duplicate signature page shall be provided to each other Party previously a signator to the Agreement, without need for further execution or ratification by any such Party.

14. EXECUTION.

The undersigned represents that the governing body of the Party has authorized the execution of this Agreement and the participation of the Party in the Board consistent with this Agreement.

