Memorandum of Agreement
among the

Yakama Nation
and
United States Bureau of Reclamation
and
Washington State Department of Ecology

related to
Ground Water Management in the Yakima River Basin

I. INTRODUCTION

This Memorandum of Agreement (MOA) is entered into by the Yakama Nation (Yakama), United States Bureau of Reclamation (Reclamation) and Washington State Department of Ecology (Ecology) for the purposes stated below.

II. PURPOSE AND SCOPE

A. Purpose

The Parties agree that there is a need to compile and synthesize existing information and to develop a common technical platform for making sound, efficient, and consistent water resource management decisions in the Yakima River Basin including future government management, allocation and mitigation decisions.

B. Goals

This MOA identifies two goals for future ground water management in the Yakima River Basin and commits the parties to a plan to achieve these goals. The two goals are:

(1) to obtain additional information for making ground water management decisions;

(2) to conservatively manage the ground water resource on an interim basis until sufficient additional information is available to make better management and allocation water right decisions.

To achieve these goals, the parties agree to the following.

III. JOINT STUDY

A. Purpose

Purpose: To develop a conceptual framework report and appropriate numerical ground water model (including surface water/ground water interactions) to be used in future ground water management, water allocation and mitigation decisions in the Basin.

A study team from Reclamation, Ecology and the Yakama Nation will work with the model developers throughout data collection and model development and peer review. The reports and model will be used as a technical basis to make permit decisions on the 1000-plus pending state water right applications basin-wide, and to make decisions on some transfers and exchanges. The model will provide Yakama, Reclamation and Ecology a tool for water planning and management.

B. Participation

The parties to this agreement shall establish a Study Team for the purpose of developing a detailed study plan to achieve the work described in III.D below.

The design, implementation, and monitoring of the study shall be undertaken by the Study Team. The Study Team shall consist of one representative with appropriate technical expertise from each of the following agencies:

(1) Yakama

(2) Ecology

(3) Reclamation

Each party may replace its designated representative on the Study Team with a new technical representative. Notice of the assignment of a new representative to the Study Team shall be provided in writing to the other parties. No other parties, entities or individuals may assign representatives to the Study Team without the express written consent of all parties to this MOA. The model developers will also appoint a representative to the Study Team.

C. Study Area

The area to be studied is the entire Yakima River Basin including those portions of Water Resources Inventory Area (WRIA) 37, WRIA 38, and WRIA 39 within the Basin.

D. Scope of Work

Groundwater Study and Model Development Scope of Work (Tasks):

1) Compile existing data, including all available well logs and water level data.
2) Assess adequacy and suitability of existing data compiled in task 1 for modeling.
3) Collect new data where assessment (task 2) determines a need.
4) Identify structural compartments, geologic controls, and groundwater subbasins.
5) Define aquifers and aquitards.
6) Define hydraulic parameters.
7) Define quantity, locations, and source of recharge and discharge.
8) Update groundwater pumpage estimates.
9) Calibrate model, conduct sensitivity analysis with particular attention to vertical hydraulic conductivity, and verify model through comparison with surface flow data.

10) Conduct study via a series of tiered reports.

a) Conceptual model of the hydrogeologic system
b) Detailed water budget report(s)
c) Steady state numerical model (including appropriate surface water module)
d) Transient numerical model (including appropriate surface water module)
e) Management Scenarios - assess effects upon streamflow and water levels of:

i) Developed wells
ii) Developed wells plus permitted wells
iii) Developed wells plus permitted wells plus pending applications
iv) An enhancement scenario (yet to be described)

11) Deliver plan for periodic updating of model.
12) Deliver working copies of the computer models and summaries to the three governmental participants for their use.

The parties agree that the proposed study will be subject to scientific peer review. The Study Team will review and agree on the review process. In the event that the study is done by USGS, peer review shall be completed according to USGS' standard protocols. The Study Team working with the model developers may also jointly recommend one to three experts for peer review.

E. Cooperation

The parties agree to cooperate with the model developers by making available all non-privileged relevant materials and data in their possession for purposes of the study described in Section III.D. Parties may assist the model developers in collection and processing of data as their resources allow.

F. Implementation

Once the Study Team has drafted the detailed study plan, the Study Team shall obtain time and cost estimates from the USGS or other potential model developers for the study. The Study Team shall seek to have the study done for a reasonable cost and in a reasonable time. Upon receipt of this information, the parties will revise the scope of work as needed to fit the projected budget and/or time frame and enter into a contract to complete the study.

The parties shall not contract with the model developers until the detailed study plan, budget and schedule proposed by the Study Team have been approved by all three parties in writing.

G. Funding

Ecology and Reclamation each agree to jointly and diligently seek funding adequate to pay for the cost of this study. Yakama will support efforts by Ecology and Reclamation to obtain such funding. Once funding is obtained, the parties will execute a funding agreement prior to commencement of the study. If USGS agrees to join in this study, there will be a separate agreement with it.

H. Use of Study

The study and its results are a tool available for all three parties to manage ground water within their areas of jurisdiction.

I. Mitigation

The parties agree to establish a work group and to develop an appropriate work plan to develop mitigation guidelines for water rights applications.

IV. INTERIM WATER MANAGEMENT

A. Purpose

The purpose of this section is to protect existing water rights and preserve available water resources in the Yakima River Basin until the completion of the study described in Section III.D above, or acquisition of additional information for water allocation and management decision making. The determination or acquisition of additional information beyond the study may be done upon a separate written agreement among the three parties.

B. Implementation

Ecology will propose and support an administrative rule withdrawing all ground water in the Yakima River Basin from further appropriation pursuant to RCW 90.54.050. A draft of this rule is attached as Appendix A.

Ecology will, not later than 120 days following the signing of this MOA by all three parties, publish a proposed interim withdrawal of ground water in the Basin pursuant to RCW 90.54.050(2). The proposed withdrawal will be effective until completion of the study described in Section III above. The estimated period of withdrawal is five years. Yakama and Reclamation agree to participate and support the draft rule in the legislative review and public hearing process for the proposed rulemaking.

Ecology will consider fully all written and oral comments submitted on the proposed rule as provided in the Administrative Procedures Act (APA). Ecology agrees to consult with Yakama and Reclamation in preparing its responses to public comments received in the rulemaking process and in developing the final rule. Any disagreements will be addressed pursuant to Section V below. If the final rule is substantially different from the rule originally proposed, additional public comment will be obtained.

During the interim management period while the study is in progress, Ecology agrees to consult with Yakama and Reclamation prior to making allocation and management decisions in the Yakima River Basin including any permitting decisions. This consultation shall occur through establishment of a consultation team in which each agency designates an equal number of delegates to meet regularly, share information, and consult on areas of mutual interest related to water allocation and management decisions. The results of the consultation process are not binding but will be considered by Ecology in making its decisions.

V. DISPUTE RESOLUTION

If any dispute arises, the parties will consult with each other regarding the dispute. If such consultations fail to resolve disputes, then, upon request of any of the three governments, the parties will enter into a non-binding facilitated negotiation process to resolve differences arising from this agreement. The cost of a facilitator will be borne equally by the parties. The negotiation process will originate as follows:

(1) Each party shall appoint between one and three representatives to negotiate;

(2) Representatives agree on the facilitator and the length of time allocated to negotiation; and,

(3) If agreement is not reached within a reasonable time, the parties agree that each will bring a member of its senior management to subsequent negotiations.

VI. FUTURE WORK

The parties are committed to continuing discussions to address water management issues in the Yakima River Basin. These discussions may be memorialized in subsequent agreements.

VII. PROVISOS

1. Nothing in this MOA is intended to create any rights in any entity not a party to this MOA nor shall any entity be considered a third party beneficiary to this MOA.

2. Nothing in this MOA is intended to be an admission by any party. All parties agree that this MOA shall not be admissible in any other legal action or proceeding.

3. No party shall be liable for, or considered to be in breach of or default under this MOA on account of any delay or failure to perform as required under this MOA as a result of any cause or condition beyond the party's control.

4. This MOA constitutes the entire MOA between and among the parties with respect to the subject matter of this MOA. Any modification of this MOA must be made in writing and agreed to by all of the parties.

5. This MOA has been drafted jointly by the parties following negotiations between them. It shall be construed according to its terms and not for or against any party. If any provision of this MOA shall be held invalid or unenforceable for any reason, all other provisions shall remain in full force and effect.

6. Independent Capacity. The employees or agents of each party who are engaged in the performance of this MOA shall continue to be the employees or agents of the party and shall not be considered for any purpose to be employees or agents of the other parties.

7. This MOA shall come into effect upon execution by all of the parties.

8. Reopener. The parties agree to implement this MOA within their budgetary limitations. If budgetary limitations preclude performance, the parties agree to renegotiate this MOA to address those budgetary constraints. The obligations of Reclamation and Ecology under this MOA are contingent on appropriation, allocation, and allotment of funds.

9. Termination. Each party reserves the right to terminate this MOA upon the giving of written notice of the same within ninety (90) days if the party, in its opinion, believes any other party is failing or refusing to comply with any of the terms, conditions or covenants of this MOA after reasonable written notice.

10. Nothing in this agreement shall act to waive the sovereign immunity of any party to this agreement.

11. Nothing in this agreement expands, alters or limits the property or other rights, authority, responsibilities, or jurisdiction of any party. Nothing herein shall act to waive, abrogate, or diminish the Treaty rights of the Yakama Nation nor the sovereign rights of the State of Washington or the United States.

DATED this 12th day of August, 1999.

YAKAMA NATION

Carroll Palmer
Deputy Director of Natural Resources

William Yallup, Sr.
Tribal Chairman

UNITED STATES BUREAU OF RECLAMATION

Walt Fite
Upper Columbia Area Manager

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