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Attachments:

A, Scope of Work [prov. 3.1]

B, Proposed Planning Unit representation [prov. 5.2]

MEMORANDUM OF AGREEMENT:
LOCAL WATERSHED PLANNING FOR WRIA 54
THE LOWER SPOKANE RIVER

WHEREAS, the Washington Watershed Management Act, Chapter 90.82 RCW, provides a process to plan and manage the uses of water within the Lower Spokane River Water Resources Inventory Area (WRIA) 54; and

WHEREAS, the water resources planning process described in Chapter 90.82 RCW and this Agreement are not intended to formally determine or resolve any legal dispute about water rights under state or federal law. Rather, the process provides an alternative, voluntary process for cooperative planning and managing the use of Washington's water resources; and

WHEREAS, effective watershed planning cannot take place without full participation of government entities and other entities and stakeholders within the WRIA;

NOW, THEREFORE, the parties agree as follows:

1.0 Purpose: It is the purpose of this Memorandum of Agreement (MOA) to set forth a process through which a technically defensible inventory of water resources in WRIA 54 can be gathered and assessed and a plan for future water use developed. This process includes an initial Phase I, described hereafter, which the parties anticipate will lead to further Phases II, III and possibly IV.

This MOA is not a formal Interlocal Agreement between the parties, but simply a memorandum outlining their intent to participate in a watershed planning process, as authorized by ch. 90.82 RCW. As referenced above, the parties recognize that this planning process may lead to an implementation process. The parties also understand that further contemplated joint actions may require a more formal Interlocal Agreement between various participants and/or others, where further joint resource management operations are undertaken. This MOA also intends to establish a process so that water resource user interests and directly involved interest groups at the local level have the opportunity, in a fair and equitable manner, to give input and direction to the planning process (RCW 90.82.030)

2.0 Definitions:

“Consensus” means unanimous agreement.

“Initiating Government” or “Initiator” is that class of government agencies identified in RCW 90.82.060, also signatories to this MOA, to wit: Spokane County, Stevens County, Lincoln County, the City of Spokane, Stevens PUD # 1 and the Spokane Tribe of Indians. They are initiators of an optional statutory local watershed planning process for an area designated by the Washington State Department of Ecology as Watershed Resource Inventory Area (WRIA) 54, the Lower Spokane River Basin.

“Implementing Government” or “Implementer” is any governmental entity operated by a locally elected board or council, including Indian Tribes, having legislative and regulatory authority, and whose jurisdiction lies wholly or partly within the boundary of WRIA 54. An Implementing Government may include Initiators. Implementing Governments have a role in plan implementation.

“Implementation Matrix” is a document showing all recommended elements of an approved WRIA Plan as the final step in plan development and recommendations, as further explained in Section 6.3.

“Implementing rules” has the definition in RCW 90.82.020 (2), which are the rules needed to give force and effect to parts of the Plan that creates rights or obligations for any party, including a state agency, or that establish water management policy.

“Lead Agency” is Spokane County, as designated in provision 4.0. [Cross reference, RCW 90.82.060 (6)]

“Minimum instream flow” has the definition of RCW 90.82.020 (3).

“Planning Unit” is a committee formed pursuant to Chapter 90.82 RCW by the Initiating Governments to recommend water resource management strategies as further provided in that Chapter. The Planning Unit is composed of a defined group of governments, non-governmental organizations and individuals with an interest in developing the Watershed Plan for WRIA 54 for consideration by the initiating Counties. The Planning Unit is the policy recommendation committee for the watershed plan envisioned in Chapter 90.82 RCW.

“WRIA” is a water resource inventory area, as provided for under RCW 90.82.020. This MOA deals with WRIA 54.

“WRIA Plan” or “Plan” has the definition of RCW 90.82.020 (6) with respect to WRIA 54, to wit, the product of a WRIA Planning Unit, including any rules adopted in conjunction with the product of the planning unit.

3.0 Governments Scope: The Watershed Planning grant for WRIA 54 includes funding for Phase I of plan development as provided for in Chapter 90.82 RCW and RCW 90.82.040.

- 3.1 The main focus of Phase I will be determining the information needs for Phase II and developing a work plan for Phase II studies. The general Scope of Work for the program submitted with the grant application and approved by the Department of Ecology is included as Attachment A.
- 3.2 In so far as funding allows, the intended scope of the work plan that will be developed for Phase II will include water quantity, water quality and instream flow, this being supported by Initiating Governments as provided in RCW 90.82.080. Existing data, studies and plans will be fully reviewed and those providing information consistent with the standards of data quality established for this study by the Planning Unit will be used for plan development.

4.0 Lead Agency: Spokane County will be the Lead Agency for the purposes of convening the Initiating Governments, administering the Watershed Planning Grant Funds and contracting services. Spokane County shall likewise be the Lead Agency for application and management of grant funds for this project as provided for under Chapter 90.82 RCW. Implementing Governments may apply for, and manage grant funds for plan implementation.

5.0 Planning Unit:

- 5.1 The Planning Unit is composed of Initiating and Implementing Government designees, and additional stakeholders representing a wide range of water resource interests.
- 5.2 The Lead Agency, after consultation with representatives of the Initiating and Implementing Governments, will develop a proposed list of Planning Unit members that will be submitted to the legislative boards of the Initiating Governments, or their designee, for approval. Attachment B is a listing of proposed Planning Unit representation.
- 5.3 All Initiating and Implementing Governments will be asked to assign a representative, or representatives, to the Planning Unit. Non-governmental representation on the Planning Unit will be developed as outlined in Section 5.4. Each member of the Planning Unit is responsible to appoint one primary representative and as many alternates as the member party chooses to appoint. Alternates may serve in lieu of the primary contact.
- 5.4 Designees of Initiating and Implementing Governments shall be voting members of the Planning Unit. With respect to non-governmental participants, after a person eligible to participate in the Planning Unit has attended three consecutive regular Planning Unit monthly meetings, the Planning Unit may accept such person as a voting member of the Planning Unit by a majority of the Planning Unit members in attendance at a regular meeting. In voting to accept a Planning Unit candidate, the Planning Unit shall be guided by considerations of assuring that water resource user interests and directly involved interest groups at the local level have the opportunity,

in a fair and equitable manner, to give input and direction to the process. [Cross reference, RCW 90.82.030 (1)]

- 5.5.1 An existing representative or designee may be removed from voting status other than designees of Initiating or Implementing Governments, if such person misses three consecutive regular Planning Unit monthly meetings and a majority of the Planning Unit members in attendance at a regular meeting vote to terminate voting membership.
- 5.5.2 A representative or designee of an Initiating &/or Implementing Government can likewise be removed if such person or alternate designee misses three consecutive regular Planning Unit monthly meetings, being duly notified in advance thereof, and a majority of the Planning Unit members in attendance at a regular meeting vote to terminate voting membership. Such a vote does not become effective, however, unless the appointing authority of the local government is thereafter given sixty (60) days written notice of the removal vote and fails to take action to appoint or reappoint its designated representative. In the event its representative is removed as provided herein, the affected local government can appoint a voting representative at any time thereafter and such member will be then recognized as a voting member.
- 5.6 The Planning Unit may adopt rules for operation, decision making, and membership to supplement those presented in this MOA.

6.0 Process:

- 6.1 In so far as possible, all decisions of the Planning Unit will be by consensus, but consensus shall be required with regard to the participating Initiating and Implementing Government members, whether or not in attendance at a meeting (such members as defined in sections 2.0 & 5.0 of this MOA). No decision may bind any Implementing Government to an Obligation without its consent, as explained in provision 6.3. The parties recognize the planning process is a progressive endeavor and agree to work together to preserve decisions made after due consideration and opportunity for full participation, absent just cause for not doing so.
- 6.2 Where consensus has been reached among Initiating and Implementing Government representatives in attendance, but cannot be reached among other Planning Unit members after a reasonable amount of time, approval for purposes of participation of such non-government members shall be by majority vote among those non-government members in attendance at a meeting and shall decide the issue for such members. A 'reasonable amount of time' as used in this paragraph is determined by majority vote of all those Planning Unit members in attendance at the meeting.
- 6.3 Implementation Matrix. The Planning Unit creates an Implementation Matrix which sets forth implementation steps in the Plan and fairly identifies items creating an obligation on the part of any of the Implementing Governments, including their status as lead or cooperating (supporting), as well as level of effort (including cost as available or reasonable estimate). The Matrix will also include the priority for implementing the recommended actions.

An Implementing Government consents to each element of the actions that impose an obligation on such Implementer by written approval of its governing body. "Obligation" means any required action that imposes fiscal impact, a re-deployment of resources or a change of existing policy. For purposes of this Agreement, the parties further state their intent that no Implementing Rule, as defined in RCW 90.82.020, shall create such an obligation on the part of a Implementing Government without its written consent, approved in the manner described above. This may be expressed by resolution approving the matrix or any other appropriate means.

- 6.4 All decisions will be based on best available science. For purposes of Watershed Planning in WRIA 54, the Planning Unit will use the criteria in WAC 365-195-905, as modified to include best available science determinations by tribal natural resource agencies or departments, in determining best available science.
- 6.5 Technical advisory groups(s) and/or work group(s) may be established by the Planning Unit to provide reports and recommendations on specific issues.

7.0 Funding:

- 7.1 This agreement does not obligate the Initiating Governments or Implementing Governments to pay any operating costs for watershed planning in WRIA 54. Any such obligation in the future shall require an Interlocal Agreement in accordance with applicable legal requirements thereto.
- 7.2 Grant funds may be used for staff support and consultant support, including the preparation of technical reports for review by the Planning Unit and/or technical committees and/or focus groups as approved by the Grant Authority. The initial budget for Phase I of planning in WRIA 54 is accepted by the parties with approval of this Agreement. Annual budgets for future phases of planning will be reviewed and approved by the Planning Unit, subject to grant requirements.
- 7.3 Participation in the Planning Unit and/or technical committees and/or focus groups by all participants, including officials and staff shall be contributed time not eligible for reimbursement unless expressly approved by the Initiating Governments and is consistent with the provisions of Chapter 90.82 RCW.
- 7.4 The Initiating Governments recognize the financial burden watershed planning places on smaller units of government and support their effort to secure outside sources of funding to ensure effective participation by these entities.

8.0 Duration:

- 8.1 This Agreement will operate for the duration of the watershed-planning period, which will be no longer than four years from the date on which Phase II funds are accepted and utilized by the Lead Agency, but no later than December 31, 2009.
- 8.2 Subject to provision 8.1, at its discretion the Planning Unit may choose to continue operating under this Agreement if the Planning Unit continues with Phase IV, Implementation. Or, the Planning Unit may adopt new operating procedures.

8.3 Any Planning Unit Member shall have the right to withdraw from the planning process at any time subject to the provision of Chapter 90.82. All parties agree that if any member withdraws, that member shall not be deemed a party to any plan or agreement produced pursuant to Chapter 90.82 RCW and shall not be bound thereby.

9.0 Modification: This Agreement may be modified or amended only by a subsequent written document, signed by representatives of all signatories, expressly stating the intention to amend this Agreement.

10.0 Preservation of Rights:

10.1 The parties to this Agreement recognize that, Chapter 90.82 RCW, the Washington Watershed Management Act, provides that the planning process shall not result in provisions which conflict with federally reserved tribal 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 federally reserved tribal 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.

10.2 The parties to this Agreement agree that any estimate of federally reserved tribal rights are not binding on the Initiating Governments unless the affected parties to this agreement expressly so agree in writing at the conclusion of the process.

10.3 The parties to this Agreement 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.

10.4 Protected material originating from the Spokane Tribe of Indians shall not be offered into evidence in any legal or administrative proceeding, regardless of whether the Spokane Tribe of Indians is a party to that proceeding. Reports and data from original studies conducted by or on behalf of the planning unit are public records pursuant to 40.14.010 RCW.

11.0 Agreement: The water resource planning process described in this Agreement is intended to result in cooperative management of water resources in WRIA 54. The parties agree that participation in the development of watershed plans for WRIA 54 shall not abrogate the legal rights or reserved interests of any member, except where an obligation has been accepted in writing pursuant to section 6.3 and section 10 of this Agreement.

12.0 Effective Date: This agreement shall become effective and commence upon execution of the Agreement by the Initiating Government parties.

IN WITNESS WHEREOF, we the undersigned have executed this Agreement as of the date as indicated.

SPOKANE COUNTY:

By: _____ Date: _____
Phillip D. Harris, Chair

STEVENS COUNTY:

By: _____ Date: _____
Merrill Ott, Chair

LINCOLN COUNTY:

By: _____ Date: _____
Ted Hopkins, Chair

CITY OF SPOKANE:

By: _____ Date: _____
James West, Mayor

STEVENS PUD # 1:

By: _____ Date: _____
K.O. Rosenberg, President

SPOKANE TRIBE OF INDIANS

By: _____ Date: _____
Greg Abrahamson, Chairman

Approved as to form: _____
Barbara Burns, Assistant City Attorney; City of Spokane

Attest: _____
Terri Pfister, City Clerk; City of Spokane

Approved as to form: _____
Martin Rollins, Deputy Prosecuting Attorney; Spokane County

Attest: _____
Daniela Erickson, Deputy Clerk of the Board; Spokane County

ATTACHMENT A

Phase I Scope of Work WRIA 54, Lower Spokane River Watershed Management Plan

Task 1. *Organize the Planning Unit*

Sub-Task 1.1 Prepare and adopt a Memorandum of Agreement (MOA) among the Initiating Governments (IA) that outlines the responsibilities of the Initiating Governments, the Lead Agency and the Planning Unit (PU).

The Lead Agency will convene up to 5 meetings of the Initiating Governments during Phase 1. The primary purpose will be to develop a Memorandum of Understanding covering operating procedures for Watershed Planning in WRIA 54. At these meetings the Initiating Governments may also identify appropriate stakeholder representation for the Planning Unit and develop a draft scope of work for Phase 2.

Sub-Task 1.2 The Lead Agency, with support from the Initiating Governments, will identify potential planning unit representatives and invite representation from those groups. The group will work to ensure a broad range of interests is represented.

Attachment 1 contains a preliminary list of potential organizations to include on the Planning Unit.

In developing the final Planning Unit structure, the Lead Agency will develop a recommendation for state agency representation on the Planning Unit and work with the Governor's Office to firmly establish state agency participation.

In developing the final Planning Unit structure, the Lead Agency will identify needed Federal agency participation and secure their participation and commitment in terms of staff, funding, and priority of effort.

Sub-Task 1.3 The Lead Agency will conduct public meetings to review and expand, as needed, the composition of the planning unit and to help establish the scope of planning effort.

The Initiating Agency will conduct a series of public meetings near the end of Phase 1 to solicit input for the general public regarding Planning Unit representation, overall project goals and the scope of the project,

Task 2. *Report Preparation, Financial Management and Administration*

Sub-Task 2.1 The Lead Agency will identify staffing needs and arrange staff support for planning unit.

Sub-Task 2.2 The Lead Agency prepares annual budgets for review by the Initiating Governments.

Sub-Task 2.3 The Lead Agency sets up administrative procedures to oversee general program operations, to manage grant and local funds according to prescribed guidelines and to prepare the required progress reports.

Task 3. *Collect Existing Data and Evaluate Available Data*

Sub-Task 3.1 The Lead Agency will build a library of available data and literature for the study area.

During Phase 1 library accumulation will concentrate on documents related to water supply, water quality and in stream flow.

Sub-Task 3.2 Based on the materials collected in Sub-task 3.1, an annotated bibliography will be prepared to facilitate project development by the Planning Unit.

Sub-Task 3.3 The Planning Unit will review previous and ongoing planning-related efforts and build on the work already done or already being done. Growth management plans, water supply plans, local technical studies and, salmon habitat recovery work.

Task 4. *Prepare Scope of Work for Watershed Assessment, Phase II Grant*

Sub-Task 4.1 In addition to the required water resources elements, the Planning Unit will delineate the extent to which the work in Phase II will address water quality, in stream flow and fisheries habitat issues.

Sub-Task 4.2 Prepare Phase 2 Scope of Work

The Initiating Governments in cooperation with technical staff from other agencies and / or contractors will prepare a Scope of Work, Budget and Schedule for WRIA 54 Phase II watershed planning.

The Planning Unit will, based on the needs of the committee members and the input from public meetings, review and modify the items developed in Sub-task 4.1.

ATTACHMENT B
WRIA 54
LIST OF POTENTIAL PLANNING UNIT REPRESENTATIVES

Agency Represented	Potential Representative Member	Email Address	Phone Number
Initiating Governments			
City of Spokane	Lloyd Brewer	lbrewer@spokanecity.org	625-6968
Lincoln County	Jim DeGraffenreid	idegraff@co.lincoln.wa.us	725-7041
Spokane County	Bill Gilmour	bgilmour@spokanecounty.org	477-7260
Stevens County	Commissioner Merrill Ott	merrill@ultraplix.com	(509) 684-3751
Stevens PUD #1	Dick Price	pudstct1@ix.netcom.com	(509) 233-2534
Spokane Tribe	Brian Crossley	crossley@spokanetribe.com	(509) 258-9042
Municipal Governments and Municipal Water Suppliers			
City of Airway Heights	Don Skillingstad	planner@city-of-Airway-heights.org	244-2552
City of Medical Lake	Doug Ross	dross@medical-lake.org	299-7712
City of Reardan	Bruce Johnson	reardan@centurytel.net	796-3921
Water Utility Coordinating Committee			924-3800
Fairchild Air Force Base	Rick Rosa	rick.rosa@fairchild.af.mil	247-1212
Eastern Washington State Hospital	Rob Martin	martirq@dshs.wa.gov	299-3121
Agricultural			
Cattlemen's Association	Amy Cziske	wacattle@elltel.net	(509) 925-9877
Washington Association of Wheat Growers	Gretchen Borck	gretchen@wawg.org	659-0610
Dairy Farmers of Washington	Jay Gordan	wsdf@msn.com	(360) 482-3485
Hutterian Brethren	Peter Gross	psgross@gcpower.net	345-2390
Lincoln County Conservation District	David Lungren	david-lundgren@wa.nacdnet.org	725-1345
Spokane County Conservation District	Walt Edelen	walt-edelen@sccd.org	535-7274
Stevens County Conservation District	Mark Curtis	mcurtis@co.stevens.wa.gov	(509) 685-0937
Washington State Farm Bureau	Robyn Meenach	rmeenach@wsfb.com	

Agency Represented	Potential Representative Member	Email Address	Phone Number
Business, Commercial and Industrial			
Central Premix	Janna McDonald	janna.mcdonald@oldcastlematerials.com	533-0238
Avista Utilities	Bob Anderson	banderson@avistacorp.com	495-2941
Spokane Homebuilders Association	Gus Koeddig	gusk@shba.com	532-4990
Association of Realtors	Rob Higgins	rhiggins@spokanerealtor.com	326-9222
Lake Spokane Resort Owner Willow Resort	Lynette Allison		276-2350
Forshees Resort			276-8568
Dawn Mine	Robert Nelson	robertnelson@foxinternet.net	(509) 258-4511
Environmental, Recreation and Public Interest Groups			
Lake Spokane Protection Association	Fran Bessermin	fbessermin@gpacable.com	924-9462
Spokane Fly Fishing Club	Judy Kaufman	dvlll@quest.net	325-8211
Spokane Canoe and Kayak Club	Jim Harless	jharless@schoedel.com	532-0757
The Lands Council	Jane Cunningham	julianjane@icehouse.net	838-5803
Sierra Club	Chase Davis	chase.davis@sierraclub.org	456-8802
Friends of the Centennial Trail	Kaye Turner	friends@spokancecentennialtrail.org	624-7188
Riverside State Park Advisory	Lynn Wells	lynnfwells@juno.com	465-5064
Inland Northwest Wildlife Council	Mark Curtis	inwc@aol.com	487-8552
National Park Service	Jerald Weaver	ierald_weaver@nps.gov	(206) 220-4020
Civic Promotion Groups			
Spokane Area Chamber of Commerce	David Bauermeister	dbauermeister@chamber.spokane.net	459-4108
West Plains Chamber of Commerce CarolBelle Branch		chamberoffice@westplainschamber.org	235-8480
League of Women Voters	Alice Stolz		326-8026
General Citizen Membership	Richard Teal		(509) 725-1882
General Citizen Membership	Bill Herlinger		(509) 535-7733
General Citizen Membership	Doris Dietrick		

Agency Represented	Potential Representative	Email Address	Phone Number
Educational Institutions			
Eastern Washington University Comm. Colleges of Spokane	Alan Scholz Erin Cunningham	ascholz@ewu.edu ecunningham@scc.spokane.edu	359-6397 533-7266
State of Washington			
Washington Department of Ecology Watershed Lead	Keith Holliday	khol461@ecy.wa.gov	329-3400
Washington Department of Fish and Wildlife	Sandy Dotts	lmbcsr1@dfw.wa.gov	
Washington Department of Health Services	Meagan Harding	Meagan.harding.doh.wa.gov	
Other Tribal Interests			
Colville Confederated Tribes Kalispel Tribe	Gary Passemore Dean Osterman	gary.passemore@colvilletribes.com	(509)-634-2415 (509)-445-1147
Technical Support Agencies			
State Agencies Represented by the WA State Watershed Lead			
Department of Health			
Bureau of Natural Resources			
State Parks and Recreation			
Federal Agencies			
U. S. Geological Survey	Tom Frost	tfrost@usgs.gov	368-3103
Army Corps of Engineers	Mary Valentine	marian.j.valentine@nws02.usace.army.mil	(206) 764-3543
Bureau of Reclamation	Dave Lyngholm	dlyngholm@pn.usbr.gov	(509) 633-9501
U.S. Fish and Wildlife	Susan Martin	susan_martin@r1.fws.gov	921-0160
Bureau of Indian Affairs	Bob Fenton		(503)-231-6927