

MEMORANDUM OF AGREEMENT

between the

**MANASTASH CREEK IRRIGATORS,
BONNEVILLE POWER ADMINISTRATION,
WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE,
KITTTAS COUNTY CONSERVATION DISTRICT, and
WASHINGTON ENVIRONMENTAL COUNCIL,**

regarding

THE MANASTASH RESTORATION PROJECT

The Manastash Creek Irrigators (Irrigators), Bonneville Power Administration (Bonneville), the Washington State Department of Fish and Wildlife (WDFW), Kittitas County Conservation District (KCCD), and Washington Environmental Council (Council) have agreed to: 1.) implement up- and down-stream fish passage improvements at existing water diversion facilities on Manastash Creek used by the Irrigators to divert water under rights they own and that the Washington State Superior Court confirmed in *Ecology v. Acquavella*, Yakima County Cause No. 77-2-01484-5 (*Acquavella*) and 2.) develop and implement a consensus flow enhancement plan for Manastash Creek. These two elements together are hereafter referred to as the "Manastash Project".

RECITALS

1. Parties.

- A. Manastash Creek Irrigators are farmers, ranchers and landowners who are individuals and entities that divert water from Manastash Creek at six (6) different locations on Manastash Creek, a tributary of the Yakima River in Kittitas County, Washington. They are a subset of the Manastash Creek Water Right Holders, a group constituting all water right holders on Manastash Creek. The six diversion locations are referred to herein as follows:
1. The Manastash Water Ditch Association (MWDA), identified in Appendix A, uses the diversion identified in Appendix A.
 2. The Keach/Jensen water right holders identified in Appendix B use the diversion identified in Appendix B.

3. The Hatfield Diversion (Hatfield) water right holders identified in Appendix C use the diversion identified in Appendix C.
 4. The Reed Diversion (Reed) water right holders identified in Appendix D use the diversion identified in Appendix D.
 5. The Anderson Diversion (Anderson) water right holders identified in Appendix E use the diversion identified in Appendix E.
 6. The Barnes Diversion (Barnes) water right holders identified in Appendix F use the diversion identified in Appendix F.
 7. All of the above water right holders are collectively referred to herein as Manastash Creek Water Right Holders. The Manastash Creek Irrigators are a subset of this group including representatives of MWDA and individual irrigators from Keach Ditch, Jensen Ditch, Hatfield Ditch, Reed Ditch, Anderson Diversion and Barnes Road Diversion, are signatories to this agreement and are referred to as the Irrigators. The signatories of the respective irrigators to this agreement represent only their own respective interests and do not represent any water right holders that are not signatories to this Agreement.
- B. Bonneville is a federal power marketing agency within the United States Department of Energy. In entering into this Agreement it is exercising its authorities under Section 4(h)(10) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839b(h)(10)(A), and other laws to help protect, mitigate, and enhance fish and wildlife affected by the federal hydroelectric projects in the Columbia River Basin.
 - C. The WDFW is an agency of the State of Washington whose statutory mandate is to preserve, protect, perpetuate, and manage the fish and wildlife of the state.
 - D. The KCCD formed under state law to provide private landowners in Kittitas county with technical and financial assistance to protect and improve the natural resources.
 - E. The Washington Environmental Council is a non-profit group working to protect Washington's environment and natural heritage for current and future generations by advocating for improved state protections and better enforcement of existing laws.
 - F. The individuals and entities described in Recitals (1)A-E are referred to herein as the "Parties."

2. Background.

- A. Manastash Creek is a tributary of the Yakima River which flows into the Yakima River west of Ellensburg. Manastash Creek provides irrigation water to about 4,000 acres; some acres have dual water rights with Kittitas Reclamation District or West Side Irrigating Company. In 2000, steelhead were listed under the Endangered Species Act and the Irrigators approached the KCCD about technical and financial assistance to assist with improvements to Manastash Creek fish passage.
- B. In February 2001, WEC sent a draft notice of intent to sue under the Endangered Species Act to the operators of the diversions, the WDFW, Kittitas Reclamation District and West Side Irrigating Company. Although WEC threatened litigation, it offered to sit down with the affected parties to develop a mutually agreeable plan which would enhance fish passage and instream flows in Manastash Creek while ensuring the viability of local agriculture. The Irrigators deny that they have violated the Endangered Species Act in any manner. Nothing in this agreement or any statement by a party made in the negotiation of this Agreement may be used as an admission in any manner that there has been any non-compliance with the Endangered Species Act or any other laws or regulations.
- C. Initial negotiations involved the Irrigators, WDFW, the Washington Department of Ecology (Ecology), Yakama Nation, Kittitas Reclamation District and the Washington Environmental Council. This group formed the Manastash Steering Committee, which focused on finding a way to eliminate the barriers to fish passage and unscreened irrigation water diversions on Manastash Creek by consolidating some of the irrigation diversions and redesigning the fish passage facilities along Manastash Creek. It was decided to consider flow enhancement as a later, second phase of the project. Through this collaborative effort, the Manastash Steering Committee secured commitments for funding from the State of Washington (\$2.24 million) and Bonneville (\$1.937 million). The funding appropriated by the Washington State Legislature is made available to the project through a grant from Ecology to the KCCD. The Bonneville funds were originally requested by WDFW, but all funds have been contracted to HDR Fishpro for engineering, permitting, design, and construction of fish passage facilities.
- D. In 2006, at the direction of the Manastash Steering Committee, KCCD submitted proposal number 2007-020-00 Manastash Creek Flow Enhancement as part of the FY 07-09 F&W Program Solicitation. In 2007, Bonneville approved funding for project flow enhancement measures in the amount of \$892,998 through FY 09. All parties have subsequently agreed to integrate both passage and flow components into a single project (2003-001-00) and that construction on the fish passage components of the project will proceed when the plan for enhancing flows in Manastash Creek has been developed and adopted by resolution of the Manastash Steering Committee.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. Manastash Fish Passage Improvements

A. Description. As a result of the collaborative process described above, the Parties have developed a plan for improving fish passage that involves implementing the following Manastash Project elements or improvements:

1. At the existing Manastash Diversion, currently used by the MWDA and henceforth referred to as the "Consolidated Diversion":
 - a) The Hatfield, Reed, and Anderson diversions will be relocated and consolidated.
 - b) A fish screen and appurtenant structures will be designed and constructed to screen juvenile fish from the canal/ditch while allowing water diversion by the users to exercise their full adjudicated water rights.
 - c) The check dam and/or stream channel at the diversion facility will be modified, and/or fish passage structures will be installed, to achieve compliance with WDFW fish passage criteria.
 - d) The relocation and consolidation of the diversions are contingent on receiving the necessary approvals to change the point of diversion on applications filed with Ecology. If Ecology doesn't approve one or more of the applications for change in point of diversion, the consolidation will not occur, and Bonneville agrees to then work with the other parties to amend this Agreement to allow construction of individual fish passage improvements at the Hatfield, Reed, Anderson, and Manastash diversions
 - e) The facility design is depicted in Appendix G.
2. At the existing Hatfield, Reed and Anderson diversions, if consolidation is approved,
 - a) The existing diversion facilities will be removed by Bonneville and abandoned by the owners.
 - b) The stream channel will be restored by Bonneville to achieve compliance with WDFW fish passage criteria.
3. At the existing Keach/Jensen diversion,
 - a) A fish screen and appurtenant structures will be designed and constructed to screen juvenile fish from the canal/ditch while

allowing water diversion by the users to exercise their full adjudicated water rights.

- b) The check dam and/or stream channel at the diversion facility will be modified, and/or fish passage structures will be installed, to achieve compliance with WDFW fish passage criteria
 - c) The facility design is depicted in Appendix H.
4. At the Anderson Abandoned Dam, the full span concrete diversion structure will be removed by the KCCD to accommodate fish passage. The stream channel will be allowed to regrade naturally.
5. At the existing Barnes Road diversion,
- a) A fish screen and appurtenant structures will be designed and constructed to screen juvenile fish from the canal/ditch while allowing water diversion by the users to exercise their full adjudicated water rights.
 - b) A roughened channel within concrete walls (henceforth “fish ladder”) will be constructed adjacent to the screen and part of the overall new facility, to improve fish passage.
 - c) The facility design is depicted in Appendix I.

B. Effect on Water Rights of Parties to this Agreement. Except for the changes in points of diversion contemplated herein, nothing in this Agreement, nor in any of the references made in this Agreement or its recitals (including specific references to federal legislation, any programs adopted by the Northwest Power and Conservation Council, or pursuant to the Northwest Power Act), shall in any way limit, impair, define, diminish or prejudice any parties water right adjudicated in *Ecology vs. Acquavella* to divert, transmit, and use water for agricultural, irrigation, stock water, fish and aquatic life or domestic purposes, nor authorize any party to hinder, interfere with, or limit any such rights; provided that, nothing is intended to limit the application of Treaty nor federal or state law.