

**MEMORANDUM OF UNDERSTANDING  
between  
Yakama Nation  
and  
State of Washington Department of Ecology  
and  
State of Washington Department of Fish and Wildlife  
And  
United States Department of Agriculture  
Forest Service  
Okanogan-Wenatchee National Forest  
and  
United States Department of Interior  
Fish and Wildlife Service  
and  
United States Department of the Interior  
Bureau of Reclamation  
Pacific Northwest Region  
Columbia-Cascades Area Office**

This Memorandum of Understanding (MOU) is entered into by the Bureau of Reclamation, Pacific Northwest Region, Columbia-Cascades Area Office, (Reclamation), Washington State Department of Fish and Wildlife (WDFW), Washington State Department of Ecology (Ecology), United States Fish and Wildlife Service (USFWS), United States Forest Service Okanogan-Wenatchee National Forest (USFS-OWNF) and the Yakama Nation (YN), (collectively, “the parties”) to define their respective roles in the development and the implementation of bull trout restoration and enhancement actions as part of the Yakima River Basin Integrated Water Resource Management Plan (Integrated Plan). The goal of these bull trout restoration and enhancement actions is to achieve self-sustainable, healthy, harvestable populations of native bull trout (*Salvelinus confluentus*) in the Yakima River Basin. Bull trout are currently listed as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act) (64 FR 58910; November 1, 1998).

## **1. Background**

Reclamation and Ecology have authority for developing the Integrated Plan. Federal authority is through the Yakima River Basin Water Enhancement Project<sup>1</sup> and State authority is through the 2013 Yakima Policy Bill and State Capital budget.<sup>2</sup> The Integrated Plan identifies a comprehensive

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<sup>1</sup> Yakima River Basin Water Enhancement Project (YRBWEP) was authorized on December 28, 1979 (93 Stat. 1241, Public Law 96-162, Feasibility Study—Yakima River Basin Water Enhancement Project and Title XII, Yakima River YRBWEP, of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994 (Public Law 103-434)

<sup>2</sup> Chapter 90.38 RCW, the Yakima River Basin Water Resource Management legislation approved by the Washington State Legislature in 2013.

approach to water resources and ecosystem restoration improvements in the Yakima River Basin. The Integrated Plan includes seven elements: (1) reservoir fish passage; (2) structural and operational changes to existing facilities; (3) surface water storage; (4) groundwater storage; (5) habitat/watershed protection and enhancement; (6) enhanced water conservation; and (7) market reallocation. The Integrated Plan was developed to address a variety of water resource and ecosystem problems affecting fish passage, fish habitat, and water supplies for agriculture, municipalities, and domestic use. It is the intent of Reclamation and Ecology to ensure Integrated Plan projects are implemented in such a way to provide a balanced approach to meeting out-of stream and fisheries protection and restoration demands. In addition – climate change.

The Integrated Plan Workgroup is primarily made up of representatives of statutorily created organizations. The Workgroup includes State and Federal agencies, the Yakama Nation, local governments, irrigation districts, and environmental groups. The Integrated Plan does not supersede or impair any organizations’ responsibilities, contracts, rights or authorities.

The USFWS listed bull trout as a threatened species in 1998. The historic abundance and distribution of bull trout in the basin was greater and broader than currently exists with many distinct and interconnected populations. In 2010, much of the basin was designated as critical bull trout habitat, and there is a need to restore connectivity of bull trout habitat between lakes, their tributaries, and downstream mainstem rivers, including the Yakima and Naches Rivers.

As a stated long-term goal within the *Integrated Water Resource Management Plan Final Programmatic Environmental Impact Statement (PEIS)* (March 2012), the parties acknowledge that bull trout restoration and enhancement efforts should be developed and implemented to achieve self-sustainable, healthy, harvestable populations of bull trout within the Yakima Basin. The parties recognize that water is a valuable resource in Washington State and as demand increases, ensuring that bull trout have “cold, clean, complex, and connected habitat”<sup>3</sup> is vital to attain and surpass the ESA recovery threshold in the basin.

## **2. Purpose**

The purpose of this MOU is to provide a framework in which to coordinate and facilitate cooperation among the parties to support (through planning, funding, etc.), develop, and implement bull trout restoration and enhancement actions within the Yakima River Basin. Bull trout restoration and enhancement actions are intended to support fish passage, habitat restoration, and habitat/watershed protection elements within the Final PEIS, as well as subsequent project-level EISs. Objectives of this MOU include using Integrated Plan processes and committees to ensure proposed bull trout restoration actions are effective at achieving bull trout restoration and enhancement in the Yakima Basin. The USFWS Bull Trout Recovery Plan, Yakima Basin Bull Trout Action Plan (BTAP), and the knowledge and experience of local biologists will be used to guide the process.

Pursuant to this MOU, the parties agree that:

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<sup>3</sup> Draft Bull Trout Recovery Plan, USFWS (2014).

- a. Development and implementation of Integrated Plan actions will continue to move forward through a collaborative process, in conjunction with ongoing bull trout recovery planning and implementation within the Yakima River Basin;
- b. This MOU will be referenced in the Environmental Commitments section and included as an appendix to the project-level EIS for the Kachess Drought Relief Pumping Plant/Keechelus Reservoir-to-Kachess Reservoir Conveyance, which includes the Bull Trout Enhancement (BTE)<sup>4</sup> and other future actions with similar goals;
- c. WDFW, USFWS, and Yakama Nation each have legal authority and responsibility for protection and restoration of the fish and aquatic habitat resources of the Yakima basin;
- d. Ecology has legal authority for water rights management in the Yakima Basin except for the Yakama Reservation where there Yakama Nation maintains regulatory authority for a variety of instream and out-of-stream uses including fisheries protection, restoration, and recovery;
- e. Reclamation has authority to construct, operate, and maintain facilities in the Yakima Project for multiple purposes, including fish, wildlife, and recreation;
- f. USFS-OWNF manages land, including aquatic habitats important in supporting bull trout spawning, rearing, and other aspects of resident and migratory life history traits;
- g. Working together will ensure bull trout protection and recovery efforts are accomplished concurrently with out-of-stream needs within the Yakima Basin;
- h. Restoration and enhancement, for the purposes of this MOU and the Integrated Plan, is achieved when self-sustainable, healthy, harvestable populations of salmonids, including bull trout, occur throughout their natural range in the Yakima Basin;
- i. Bull trout populations are critically depressed or functionally extirpated in parts of the basin and are susceptible to direct and indirect impacts from new water supply projects, reservoir operations and maintenance activities including drawdown timing, short-term and long-term habitat response, predator-prey interactions, passage barriers ,changes in flow regimes, recreation activities, and exacerbating effects of climate change; and
- j. Implementation of Integrated Plan projects should result in a net gain to bull trout and other native fish populations and their habitats.

### **3. Implementing Actions**

The parties will work cooperatively through the Integrated Plan Workgroup and its subcommittees to provide oversight and direction for bull trout restoration and enhancement actions related to the Integrated Plan and will coordinate with ongoing bull trout recovery efforts. The parties, working through the Integrated Plan processes and committees, will continue to develop bull trout restoration and enhancement actions concurrent with development, construction, and operation of the Cle Elum

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<sup>4</sup> Appendix C - Bull Trout Enhancement in *Kachess Drought Relief Pumping Plant and Keechelus Reservoir-to-Kachess Reservoir Conveyance Draft EIS*, Reclamation and Ecology (2015)

Dam Fish Passage Facilities, Cle Elum Pool Raise, the Kachess Drought Relief Pumping Plant, the Keechelus-to-Kachess Pipeline, and other future projects.

The 2013 MOU between the Department of the Interior (DOI), Bureau of Reclamation, and Department of Agriculture (USDA), USFS, recognized the USFS's role in providing healthy watersheds that produce clean drinking water and managing the land to improve natural resources, including contributing to recovery of federally threatened and endangered fish, wildlife and rare plant species. Pursuant to the 2013 DOI-USDA MOU, development of any specific bull trout enhancement plans of action resulting from the parties implementing this MOU will be coordinated with the USFS-OWNF. All resulting plans of action will be consistent with the National Forest Management Act, and in compliance with the National Environmental Policy Act, Endangered Species Act, Clean Water Act, and other pertinent laws applicable to managing National Forest System lands.

The parties agree to work together, contingent on available funding, both in the Integrated Plan process and other related bull trout recovery planning and project action efforts to:

- a. Implement Phase 1 BTE projects and evaluations identified in the project-level EIS for the Kachess Drought Relief Pumping Plant/Keechelus-to-Kachess Conveyance in the first 5 years; implement Phase 2 actions identified and designed based on Phase 1 assessments and evaluations in years 5 through 10; project implementation will be accomplished concurrently with the construction of Kachess Drought Relief Pumping Plan/Keechelus-to-Kachess Conveyance; implement additional bull trout restoration and enhancement actions as Integrated Plan water enhancement projects are developed and implemented contingent on funding;
- b. Evaluate/conduct: a) bull trout population assessments; b) habitat assessments and/or limiting factor analyses, c) fish passage for juvenile and adult fishes; d) interaction with nonnative species; e) primary and secondary productivity assessment(s) (prey base and limiting factors); f) climate change resiliency planning; and g) monitoring, evaluation, and adaptive management as projects are implemented;
- c. Support Reclamation and Ecology through subsequent project-level environmental compliance development, permitting processes, and project-level scientific and technical review and assistance (e.g. finding solutions to address negative impacts to bull trout populations and habitat caused by Integrated Plan projects);
- d. Provide scientific review and recommendations, as necessary, regarding future Integrated Plan actions and potential impacts and/or benefits to bull trout and bull trout critical habitat;
- e. Select bull trout recovery and enhancement actions and/or projects recommended through the Integrated Plan that support Reclamation and Ecology's Integrated Plan obligations;
- f. Ensure water supply projects are accompanied with a set of fish/habitat enhancement projects that improve conditions for bull trout or other native fish species of the Yakima Basin, specifically, projects that measurably benefit bull trout and bull trout critical habitat; and

- g. Develop and implement a long-term monitoring and evaluation plan to assess bull trout populations at all life stages and bull trout critical habitat changes, associated with implementing actions pursuant to this MOU.

The parties agree that, working cooperatively, the following activities shall be accomplished by Reclamation, Ecology, WDFW, USFS, USFWS, and the Yakama Nation:

- a. BTE projects shall be incorporated in all relevant State and Federal permits;
- b. Assist with securing short-term and long-term funding from local, State, and Federal entities to execute bull trout restoration and enhancement actions and/or projects and activities necessary to accomplish the purposes of this MOU;
- c. Actively participate in the Integrated Plan habitat subcommittee to support bull trout recovery actions and/or projects within the Yakima River basin;
- d. Utilize previous and ongoing bull trout planning and enhancement work including the USFWS Bull Trout Recovery Plan and the BTAP;
- e. Enlist local fishery experts to assist in Integrated Plan fish restoration and enhancement project planning, development, implementation, and monitoring to ensure effective and cost efficient actions; and
- f. Continue to explore opportunities to implement priority bull trout restoration and enhancement actions and/or projects that maximize State and Federal investment dollars by partnering with other entities and leveraging other fisheries recovery funds to fulfill an array of bull trout recovery and enhancement goals and objectives.

#### **4. Period of Performance**

This MOU shall become effective on the date of the last signature hereto and through the initial phase of the Integrated Plan. The initial phase of the Integrated Plan is estimated to be 10 years. Phase 1 and 2 of the BTE can occur before or during the development and the construction of the Kachess Drought Relief Pumping Plant Project, and the Keechelus-to-Kachess Conveyance Project. The MOU shall terminate 10 years from when it was signed by the parties to align with the initial phases of the Integrated Plan.

#### **5. Modifications**

All parties to this MOU may formally request modifications to this MOU in writing to all parties. Modifications shall be made by mutual consent by the issuance of a written modification to this MOU, signed and dated by all parties prior to any changes being performed.

#### **6. Principal Contacts**

The principal contacts for this MOU are:

**Reclamation**

Dawn Wiedmeier  
1917 Marsh Road  
Yakima WA 98902

**Ecology**

G. Thomas Tebb  
1250 West Alder St  
Union Gap WA 98903

**WDFW**

Mike Livingston  
1701 S. 24<sup>th</sup> Ave  
Yakima WA 98902

**USFWS**

Jeff Thomas  
U.S. Fish & Wildlife Service  
1917 Marsh Road  
Yakima WA 98902

**Yakama Nation**

Phil Rigdon  
PO Box 151  
Toppenish WA 98948

**USFS**

Jason Kuiken  
215 Melody Lane  
Wenatchee, WA 98801

**7. General Provisions**

- a. **This MOU is neither a fiscal nor a funds obligating document.** Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties of this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to the parties of any contract, other agreement or commitment of funds.
- b. **No Binding Rights or Obligations.** Nothing in this MOU is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies its officers, or any other person. Nothing in this MOU shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act (28 U.S.C. 2671 et seq.).
- c. **No Sharing of Benefits.** No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of the MOU or to any benefit that may arise out of it.
- d. **Freedom of Information Act.** Any information furnished to Reclamation, under this MOU, is subject to the Freedom of Information Act (5 U.S.C. 552).
- e. **Compliance with Federal Laws.** All parties to this MOU agree to comply with all Federal statutes relating to nondiscrimination, including but not limited to: Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, religion, sex, or national origin; Title IX of the Education amendments of 1972, as amended, which prohibits discrimination of the basis of sex; the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, which prohibit discrimination on the basis of disability; the Age Discrimination in Employment Act of 1967, as amended, which prohibits discrimination based on age against those who are at least 40 years of age; and the Equal Pay Act of 1963.
- f. **Text Messaging While Driving.** In accordance with Executive Order (EO) 13513, “Federal Leadership on Reducing Text Messaging While Driving,” any and all text messaging by

Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Cooperatives, their Employees, Volunteers, and Contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.

- g. **Notices.** Any communications affecting the operations covered by this agreement given by the Forest Service or the Cooperator is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To all Parties, at each Parties' address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- h. **Participation In Similar Activities.** This MOU in no way restricts any of the Parties from participating in similar activities with other public or private agencies, organizations, and individuals.
- i. **Termination.** Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.

## 8. Signatures

This MOU is executed by authorized representatives of the respective parties in multiple original, with one original executed copy for each of the parties. The parties hereto have executed this MOU as of the last date written below and agree actions related to this MOU shall result in a net gain for bull trout, and bull trout critical habitat, and pursuant to this MOU and the intent of the Integrated Plan to consistently support the recovery of bull trout throughout the Yakima River Basin.



Phil Rigdon, Director of Natural Resources  
Confederated Tribes and Bands of the Yakama Nation

9-9-15

Date



G. Thomas Tebb, Director, Office of Columbia River  
State of Washington Department of Ecology

9-9-15

Date



Mike Livingston, Director, Region 3  
State of Washington Department of Fish and Wildlife

9-9-15

Date



Michael R. Williams, Forest Supervisor  
Okanogan-Wenatchee National Forest

9/23/2015

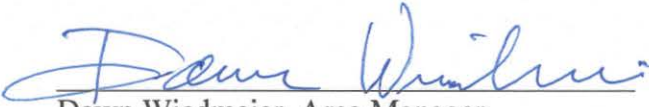
Date



Roy Elicker, Assistant Regional Director, Fishery Resources  
United States Fish and Wildlife Service

10/23/15

Date



Dawn Wiedmeier, Area Manager  
Bureau of Reclamation  
Pacific Northwest Region  
Columbia-Cascades Area Office

7/9/15

Date

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