

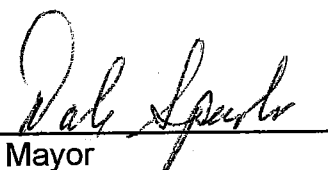
RESOLUTION NO. 19-2004

**A RESOLUTION APPROVING THE INTERLOCAL
AGREEMENT BETWEEN OKANOGAN COUNTY, CITY OF OMAK,
OROVILLE-TONASKET IRRIGATION DISTRICT AND THE OKANOGAN
CONSERVATION DISTRICT FOR ADMINISTRATION OF THE
DEVELOPMENT OF A LOCAL WATERSHED PLAN**

THE CITY COUNCIL OF THE CITY OF OMAK, Washington do hereby resolve that the agreement attached hereto between the **CITY OF OMAK, OKANOGAN COUNTY, OROVILLE-TONASKET IRRIGATION DISTRICT AND OKANOGAN CONSERVATION DISTRICT** under the laws of the State of Washington, is hereby approved. The Mayor is hereby authorized and directed to execute the same for and on behalf of the CITY and the City Clerk/Treasurer is authorized and directed to attest his signature.

INTRODUCED and passed this 7th day of June 2004.

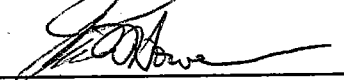
APPROVED:


Dale Sparber, Mayor

ATTEST:


Trish Butler, City Clerk/Treasurer

APPROVED AS TO FORM:


Michael D. Howe, City Attorney



Okanogan Conservation District

1251 South 2nd Ave., Room 101 - Okanogan, WA 98840 - Phone: (509) 422-0855 - FAX: (509) 422-0532

MAYOR	
C/TREAS.	
F. CHIEF	
P. CHIEF	
P/W	
BLD. INS.	

RECEIVED

MAY 21 2004

CITY OF OMAK

May 20, 2004

Dale Sparber, Mayor
City of Omak
P.O. Box 72
Omak, WA 98841

SUBJECT: Intergovernmental Agreement – Final Review and Approval Signatures

Dear Dale:

Enclosed, please find a final draft copy of the Intergovernmental Agreement for the 90.82 Watershed Planning Process. As you will recall, the Initiating Governments combed over this agreement in detail at our last meeting. Okanogan Conservation District staff has made all the changes agreed to at that meeting. It is now ready for legal review and approval by governing authority.

Please review this document with your council, your staff, and your attorney. If there are any changes, please let the Okanogan Conservation District know so that we can schedule another meeting for the Initiating Governments to decide upon these changes. If, on the other hand, the agreement is acceptable in its existing form, please let us know so we can provide you with the copy which all Initiating Governments will sign.

Sincerely,

Robert I. Clark
Natural Resource Technician

ENCL: Final Draft of Intergovernmental Agreement

Return Document to: Okanogan Conservation District
1251 South Second Avenue, Okanogan, WA 98840
Document Title: Intergovernmental Agreement for Watershed Planning in WRIA 49
Grantors: Okanogan Conservation District, Okanogan County, City of Omak, and the
Oroville-Tonasket Irrigation District

INTERGOVERNMENTAL AGREEMENT FOR OKANOGAN COUNTY WATERSHED PLANNING AND DESIGNATION OF LEAD AGENCY

This INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into by and among the County of Okanogan, City of Omak, Oroville-Tonasket Irrigation District, and the Okanogan Conservation District for the purposes of administering the development of a local Watershed Plan under authority of RCW 90.82 for the Okanogan River basin, Water Resource Inventory Area (WRIA) 49 and defining the duties and responsibilities of the parties to this Agreement for the local watershed planning process.

RECITALS AND FINDINGS

WHEREAS, water resource planning has been and continues to be a responsibility of Washington State, counties, cities, water utilities, and tribes.

WHEREAS, the Initiating Governments for the Okanogan Basin are the County of Okanogan (affected county), the City of Omak (the largest city in the WRIA), and the Oroville Tonasket Irrigation District (the largest purveyor of water).

WHEREAS, the Confederated Tribes of the Colville Reservation have chosen not to participate in any watershed planning process enabled by RCW 90.82 including that in the Okanogan basin;

WHEREAS, the State of Washington has declared, and the parties of this Agreement recognize, that proper utilization of the water resources of this State is necessary for the promotion of public health and economic well-being of the State and preservation of its natural resources and aesthetic values.

WHEREAS, the parties of this Agreement recognize that it is in the best interests of the State and the Okanogan River basin that comprehensive watershed planning be given a high priority so that water resources and associated values can be utilized and enjoyed today and protected for tomorrow.

WHEREAS, the Okanogan Basin Planning Unit was initiated pursuant to RCW 90.82.060 by the Initiating Governments in a grant application submitted by Okanogan Conservation District and approved by the Washington State Department of Ecology for Phase One funding of watershed planning in the Okanogan Basin.

WHEREAS, comprehensive water resource planning must provide interested parties adequate opportunity to participate, and water resources issues are best addressed through cooperation and coordination among the State, Indian tribes, Local Governments, and all interested parties.

WHEREAS, utilization and management of the waters of this State are guided by certain general principles, including that uses of water for domestic, stock-watering, industrial, commercial, agricultural irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, thermal power production, preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the State are beneficial.

WHEREAS, to develop a watershed planning process under RCW 90.82, the parties of this Agreement shall work in cooperation with (including but not limited to) representatives of local governments and representatives for agricultural, fisheries, recreational and environmental interests.

WHEREAS, the parties of this Agreement must provide for the participation of a wide range of water resource interests in the composition of the Planning Unit for the Okanogan basin, and it is critical to the success of the planning process that the parties of this Agreement provide for broad public participation and education regarding the development and implementation of the local Watershed Plan.

WHEREAS, all Initiating Governments should be members of the Okanogan Basin Planning Unit and have designated the Okanogan Conservation District as "Lead Agency" for the local watershed Planning Process.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and promises contained herein, the parties of this Agreement agree to the following terms:

1. DEFINITIONS

- 1.1. "Okanogan Basin Planning Unit" is the encompassing title of the entire watershed planning effort enabled by RCW 90.82 underway in the Okanogan Basin, WRIA 49.
- 1.2. "Initiating Governments" means those local governments designated by RCW 90.82.060 for the purposes of initiating watershed planning, determining a Scope of Planning, and designating a Lead Agency for such planning. For the purposes of this Agreement, the Initiating Governments include Okanogan County, City of Omak, and the Oroville-Tonasket Irrigation District. The Confederated Tribes of the Colville Reservation have specifically chosen not to participate in the watershed planning process enabled by RCW 90.82 in any WRIA, including WRIA 49. See the Colville Tribes' Resolution in Attachment A. There are no other affected tribes in WRIA 49.
- 1.3. "Lead Agency" means the organization designated by the Initiating Governments pursuant to RCW 90.82.060 to serve as the Lead Agency for the planning process, including the receipt and administration of grant funds and providing staff support related to watershed planning.

For the purposes of this Agreement the Lead Agency is the Okanogan Conservation District.

- 1.4. "Local Governments" means cities, towns, irrigation districts and any other taxing authority.
- 1.5. "Organizing Board" means that board which provides ongoing coordination as needed during the watershed planning project after initiation of Phase Two of the watershed planning effort enabled by RCW 90.82. The membership of the Organizing Board shall consist of the Initiating Governments for WRIA 49.
- 1.6. "Planning Costs" means, as allowable by the grant(s): (1) the cost of preparing the studies and plans relating to the planning process; (2) the amounts paid to contractors for work performed under approved contracts; (3) the costs of legal, engineering, and other professional service relating to the watershed planning effort, the planning process and resolution of any disputes related thereto; and (4) other costs reasonably related to the planning process initiation, administration, auditing and general project management.
- 1.7. "Planning Process" means the watershed plan preparation under authority of RCW 90.82, the associated public involvement and education process, and activities provided for herein.
- 1.8. "Planning Unit" means the collective representatives of affected water resource interests who, as an autonomous body under authority of Chapter 90.82 RCW have the responsibility to prepare a detailed work plan and subsequent watershed plan.
- 1.9. "Scope of Planning" means determining which of the three (3) optional elements (instream flow, quality, and habitat) will be included in the watershed plan in addition to the required element (water quantity).
- 1.10. "State" means the State of Washington and any of its agencies.
- 1.11. "Watershed Plan" means the local watershed plan prepared by the Planning Unit under authority of RCW 90.82.

2. SUPPORT AND FINANCING FOR THE PROJECT

- 2.1. When authorized by the Initiating Governments or the Organizing Board in consultation with the planning unit, the Lead Agency may apply for and accept grants on behalf of the Okanogan Basin Planning Unit from federal, State, local and private sources. If allowable by the grant, the Lead Agency may utilize existing grant funds and appropriations in the Lead Agency's RCW 90.82 watershed planning accounts for the purposes specified herein.

- 2.2. The Initiating Governments or the Organizing Board shall not be obligated to pay any debts of the Lead Agency or the Planning Unit. If allowable by the grant, these costs shall be funded solely through grants and voluntary contributions. All costs associated with the Okanogan Basin Planning Unit shall be funded solely through grant and voluntary contributions.
- 2.3. The Lead Agency shall present to the Initiating Governments or the Organizing Board this project's annual budget for its operations under the Okanogan Basin Planning Unit project. The Lead Agency's fiscal year shall be July 1 through June 30.
- 2.4. The Lead Agency shall not acquire real property as part of the Watershed Planning Process enabled by RCW 90.82. Any personal property acquired for use by the Lead Agency shall be acquired in the name of the Okanogan Basin Planning Unit. In the event the Lead Agency changes, all equipment and technical data shall be transferred to the new Lead Agency. At the termination of the Watershed Planning Process, all such equipment and data shall be administered as required in the grant agreement that purchased all such equipment and data.

3. REPORTING REQUIREMENTS

A Lead Agency representative shall report to the Initiating Governments at least on a quarterly basis regarding its activities during the prior period. Reports may be written, given in person to each Initiating Government or Organizing Board Member, or at a meeting of the Initiating Governments or Organizing Board.

4. GRANT ADMINISTRATION

- 4.1. The Lead Agency shall be responsible for compliance with reporting requirements of the agencies or jurisdictions providing financial support to the watershed planning project.
- 4.2. The Lead Agency shall keep accurate and complete books of all accounts for this project showing the planning costs incurred in connection with the planning process as required by the granting agency and/or organization. If allowable by the grant, the expenses of keeping those books shall be considered to be a planning cost of the Lead Agency. Audits of the books shall be performed as required by the granting agency and/or organization. If allowable by the grant, the cost of such audit shall be considered a planning cost. If requested by any Initiating Government or member of the Organizing Board, in-house audits shall be charged to that party making the request.

5. INITIATING GOVERNMENTS/ORGANIZING BOARD

5.1. The Initiating Governments shall be represented by one (1) Commissioner of Okanogan County and one (1) elected official from the City of Omak, and one (1) authorized representative from the Oroville-Tonasket Irrigation District. The governing body of each Initiating Government may appoint alternate representatives, who may or may not be elected officials. In the absence of the primary representative, said alternate will have the same responsibilities and authorities as the primary representative. Initiating Governments shall provide the Lead Agency with a letter designating the primary and alternate representatives.

5.2. When the planning process moves into Phase Two of the watershed planning process, the Organizing Board is hereby established as defined in section 1.5 of this Agreement. Attachment B is a list of potential Planning Unit entities, organizations, and interests.

5.3. A quorum of the Organizing Board shall be the majority of active members. "Active members" as defined herein shall be all members who have not formally withdrawn as provided for in section 6.4. The Organizing Board shall take action by a majority vote of those present at the meeting, except that proceeding to Phase II and Phase III of the planning process shall require unanimity in accordance with RCW 90.82.060(4).

5.4. In the event that an Initiating Government or a member of the Organizing Board desires to withdraw from the watershed planning process, written notice shall be provided to the parties of this agreement or by announcing the withdrawal at a public meeting of the Initiating Governments or Organizing Board thirty (30) days prior to withdrawal. This Agreement shall remain valid and in full force and effect and the Lead Agency shall continue to serve as the Lead Agency for the watershed Planning Process despite any such withdrawal. The withdrawal of any member from the Initiating Governments or the Organizing Board shall not affect the Planning Unit's authority to prepare the Watershed Plan or the approval process set forth in RCW 90.82.

6. ROLES AND RESPONSIBILITIES

6.1. Initiating Governments

6.1.1. Initiating Governments are responsible for the organization of the Planning Unit and establishing the planning process. These duties include: determining the composition of and designating membership in the initial Planning Unit.

6.2. Organizing Board

- 6.2.1.** As requested by the Planning Unit, or Lead Agency, or as deemed appropriate by the Organizing Board, the Organizing Board shall assist in resolving Planning Unit disputes regarding plan development.
- 6.2.2.** The Organizing Board shall have full authority to approve the addition of organizations to or removal of organizations from the Planning Unit.

6.3. Lead Agency

- 6.3.1.** Provide professional, technical, administrative and clerical support to the Initiating Governments, Organizing Board and the Planning Unit for the purpose of conducting watershed planning for WRIA 49 under RCW 90.82. General support and assistance includes: arranging for meetings as well as preparation and distribution of agendas and minutes of meetings; facilitate meetings; preparation of draft documents; and budgets for approval.
- 6.3.2.** Facilitate, coordinate, and/or contract for necessary research, data collection and analysis to support the planning process, as funding is available.
- 6.3.3.** Develop and implement public education and information programs including periodic updates of the progress on watershed planning, using methods that facilitate early and continuous public involvement.
- 6.3.4.** Integrate the planning process into and comply with State Environmental Policy Act requirements as funding allows.
- 6.3.5.** Receive and administer grants.
- 6.3.6.** Assist in the development of a general Scope of Planning to be conducted.
- 6.3.7.** Organize, upon request of the Planning Unit, public hearings and/or public meetings regarding the Watershed Plan.
- 6.3.8.** Administer staff and contracts with consultants and other professional services to facilitate the planning process and fund the activities of the Planning Unit.
- 6.3.9.** Organize public hearings on the Watershed Plan prepared by the Planning Unit and provide a report on the public hearings and its recommendation to the County legislative authorities for the approval process provided in RCW 90.82.130.

6.3.10. In the event that the Lead Agency desires to withdraw from the watershed Planning Process, written notice shall be provided to the Organizing Board a minimum of sixty (60) days prior to withdrawal. The Lead Agency agrees to assist in the transition to a new Lead Agency.

6.4. Planning Unit

6.4.1. During Phase One, the planning unit shall have the following responsibilities:

6.4.1.1. Decide and notify the Initiating Governments of the optional elements to be included in the scope of planning for the watershed plan within ninety (90) days of the planning unit's first meeting.

6.4.1.2. Develop ground rules, voting policy and operating procedure and finalize membership within ninety (90) days of the planning unit's first meeting.

6.4.1.3. Assist the Lead Agency in the development of the general scope for Phase Two.

6.4.2. If Phase Two is implemented, the planning unit shall have the following responsibilities:

6.4.2.1. Assist the Lead Agency in the application for state grants under the Watershed Planning Act (RCW 90.82).

6.4.2.2. Refine the work plan to develop a watershed management plan for the Okanogan Basin. Existing plans and related planning activities shall be considered.

6.4.2.3. Hold meetings throughout the watershed to insure a wide range of interests have the opportunity to participate in the planning process.

6.4.2.4. Review and recommend activities pertaining to staffing and funding of the Planning Unit.

6.4.2.5. Request the assistance of the Organizing Board in resolving disputes regarding interim decisions on plan development activities, if necessary.

6.4.3. If Phase III is implemented, the Planning Unit shall have the following responsibilities:

6.4.3.1. Develop and submit a watershed plan to Okanogan County for review and adoption process.

6.4.3.2. The watershed plan shall be submitted to Okanogan County within four (4) years of the date that funds beyond the initial funding are first drawn upon by the planning unit as per RCW 90.82.130 (1)(b).

6.5. Okanogan County

6.5.1. Okanogan County is the local legislative body within Okanogan County and has specific responsibilities under Chapter 90.82 RCW.

7. PROPOSED SCOPE OF PLANNING

For the purposes of organizing, the planning unit will consider the following elements of watershed planning. The planning unit will make a decision within ninety (90) days of its first meeting on which optional elements will be addressed after analysis and discussion of potential impacts and implications. If the planning unit can not decide which optional elements will be addressed during the given timeframe, the Initiating Governments may choose to intervene and decide which optional elements will be addressed. The Organizing Board has the authority to add or remove any optional element at their discretion.

- A. Water Quantity: Assessing of water supply and use in the management area and developing strategies for future use. *(Mandatory)*
- B. Instream Flow: The Planning Unit may request that Ecology either modify existing minimum instream flows, or adopt new minimum instream flows for streams that do not have them. *(Optional)*
- C. Water Quality: The degree to which existing water quality standards are being met, the causes of water quality violations, consideration of Total Maximum Daily Loads (TMDL's) and recommendations for monitoring. *(Optional)*
- D. Habitat: Coordination and development of the Watershed Plan to protect or enhance fish and wildlife habitat in the management area. *(Optional)*

8. PUBLIC PARTICIPATION

As agreed upon by the Initiating Governments, Organizing Board or planning unit, the Lead Agency may request assistance and/or cooperation with State and Federal agencies. The Lead Agency, as part of its management of the planning process, shall provide the opportunity for public participation through public hearings or written comments. The Lead Agency shall prepare a framework plan for public participation for approval by the Planning Unit pursuant to section 2.3.

9. PROTECTION OF EXISTING RIGHTS

The watershed plan authorized by RCW 90.82 and this Agreement shall not contain any provisions that: (a) are in conflict with existing State statutes, federal laws, or tribal treaty rights, or other federally recognized tribal rights; (b) impair or diminish in any manner any existing water right evidenced by a claim filed in the water rights claim registry established under RCW 90.14 or a water right certificate or permit; (c) violate any other provisions or limitations established in RCW 90.82.120; (d) violate any other private property rights as protected by law.

10. REMEDIES/DISPUTE RESOLUTION

In the event of a dispute between members of the Initiating Governments/Organizing Board regarding rights and/or duties under this intergovernmental agreement, the disputing parties agree to attempt resolution through mediation utilizing the services of a mediator agreed upon by said parties. The cost of the mediation shall be borne equally by the disputing parties. The mediation will be held in Okanogan County.

11. INTERGOVERNMENTAL AGREEMENT

This Agreement constitutes an exercise of the parties of this Agreement authority under RCW 39.34, the Interlocal Cooperation Act or as applicable. The original of this Agreement and any amendments shall be filed with the Okanogan County Auditor. The recorded instrument shall be sent to the legislative authority of each Initiating Government and the Lead Agency.

12. EFFECTIVE DATE/TERM OF AGREEMENT

12.1. This Agreement shall become effective upon its recording by the Okanogan County Auditor.

12.2. This Agreement automatically terminates effective at any time the Lead Agency does not have sufficient funds necessary to meet current Planning Costs, unless the Initiating Governments or Organizing Board each agree, in writing, to contribute sufficient funding necessary to meet Planning Costs until other funding is obtained.

12.3. This Agreement shall terminate at the completion of Phase Three of the watershed plan unless otherwise mutually agreed upon by the parties of this agreement, in writing, prior to such date.

13. ADOPTION/AMENDMENT

This Agreement may be amended at any regular or special meeting of the Initiating Governments or the Organizing Board with the unanimous approval of the designated representatives. All amendments shall be in writing, be numbered, and filed with the Okanogan County Auditor.

PASSED BY THE BOARD OF COUNTY COMMISSIONERS FOR OKANOGAN
COUNTY, WASHINGTON, this _____ day of _____, 2004.

BOARD OF COUNTY COMMISSIONERS
Okanogan County, Washington

Approved as to form:
Heidi Appel
Chief Civil Deputy Attorney

Chairman

Commissioner

Commissioner

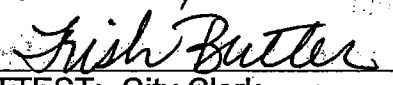
ATTEST: Clerk of the Board

PASSED BY THE CITY COUNCIL OF THE CITY OF OMAK, WASHINGTON, this
_____7____ day of June, 2004.

CITY COUNCIL
City of Omak, Washington

Approved as to form:
Michael D. Howe
City Attorney


Mayor


ATTEST: City Clerk

PASSED BY THE BOARD OF THE OROVILLE-TONASKET IRRIGATION DISTRICT, OKANOGAN COUNTY, WASHINGTON, this _____ day of _____, 2004.

BOARD
Oroville-Tonasket Irrigation District

Approved as to form:
Richard Price
Irrigation District Attorney

President

ATTEST: District Secretary

PASSED BY THE BOARD OF SUPERVISORS OF THE OKANOGAN CONSERVATION DISTRICT, this _____ day of _____, 2004.

BOARD
Okanogan Conservation District

Approved as to form:
Roger Castelda
OCD Attorney

Chair

ATTEST: District Manager

ATTACHMENT A
"Opt-Out" Resolution of the Colville Tribes

07/30/03 WED 11:24 FAX 5096342126

CCT FISH WILDLIFF

002

RECEIVED JUL 30 2003

2002-532 CTN 1/30/03

RESOLUTION

WHEREAS, it is the recommendation of the Natural Resources Committee that Tribal Staff be prohibited from participating in so-called 2514 planning which purports to give the state and county governments planning authority for tribal waters. This prohibition would apply to state designated Water Resource Inventory Areas 49, 50, 51, 52, 53, 58, 60, and 61. This action is being taken to prevent the future use of 2514 plans by the courts as justification to restrict, curtail or otherwise restrict the Tribe from exercising its prior and paramount rights to the use of water.

THEREFORE, BE IT RESOLVED, that we, the Colville Business Council, meeting in **SPECIAL SESSION** this 5th day of September, 2002 acting for and in behalf of the Colville Confederated Tribes, Nespelem, Washington, do hereby approve the above recommendation of the Natural Resources Committee.

The foregoing was duly enacted by the Colville Business Council by a vote of **9 FOR 0 AGAINST 0 ABSTAINED**, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:



Joseph A. Pakootas, Chairperson
Colville Business Council

cc: Natural Resources Committee Chair
CBC Recording Secretary
Executive Director
Dept. or Program: Gary Passmore, Environmental Trust
BIA Superintendent

ATTACHMENT B

90.82 Watershed Planning Unit Members

Following is a list of potential Planning Unit representative entities, organizations, and interest groups that may wish to participate in the RCW 90.82 Watershed Planning Process for the Okanogan River Basin. The Lead Agency (Okanogan Conservation District) will send an invitation letter directly to those entities listed in bold lettering below asking them to appoint a representative and an alternate. A general recruitment advertisement will solicit participation from the other entities, organizations, and interest groups from which the Initiating Governments will choose.

Okanogan County	Oroville	Grange
Oroville-Tonasket Irrigation District *	Conconully	P.U.D.
City of Omak	Brewster	Landowners at-large from the north, central, and south parts of WRIA 49*
		NORTH
Horticultural Association	Riverside	
		CENTRAL
Cattlemen's Association	Non-Irrigation District Irrigators	
		SOUTH
Private Timber Management	Other Irrigation Districts	
		Okanogan County Citizens Coalition
Well Drillers	Environmental Organizations	
		Businesses and Economic Development
Okanogan County Health District	Recreational Users	
		Industrial Users
Mining	Sportsmen's Council	
City of Okanogan	Lake Osoyoos Water Quality Society - British Columbia	
Tonasket	Farm Bureau	

* NORTH - Canadian border to Tonasket, incl. Bonaparte Creek;
CENTRAL - South Tonasket to Shellrock Point
SOUTH - Shellrock Point to Columbia River