

AGREEMENT

THIS AGREEMENT, made and entered into this 23rd day of April, 1986, by and between DRAINAGE DISTRICT NO. 6, OF ISLAND COUNTY, WASHINGTON, hereinafter referred to as the "DISTRICT," acting by and through its Board of Drainage Commissioners, and the STATE OF WASHINGTON DEPARTMENT OF GAME, hereinafter referred to as the "DEPARTMENT."

W-I T-N-E-S-S-E-T-H: -----

WHEREAS, the DISTRICT owns and operates tide gates situated at the west end of Crockett Lake, in Island County, Washington, and the operation of those tide gates affects the water level of Crockett Lake and its associated wetlands;

WHEREAS, the DISTRICT caused said tide gates to be repaired in March of 1983;

WHEREAS, on June 13, 1983, SEATTLE PACIFIC UNIVERSITY, as Plaintiff, filed a civil action against the DISTRICT (Jefferson County Cause No. 83-2-0008-3), seeking a court order requiring the DISTRICT to restore and maintain Crockett Lake at the level which existed when the DISTRICT completed the tide gate repairs;

WHEREAS, the parties in said litigation subsequently entered into a Stipulation and Order of Dismissal, which was entered by the Court on December 8, 1983;

WHEREAS, said Stipulation and Order of Dismissal provided in part that the DISTRICT shall study the effects of various alternative courses of action for managing the drainage system, and shall issue a written report thereon;

WHEREAS, the primary emphasis in the study required by said Stipulation and Order of Dismissal was flood control;

WHEREAS, the DEPARTMENT has a direct interest in the capacity of the Crockett Lake drainage basin to function as a viable aquatic wetland habitat;

WHEREAS, the DISTRICT and the DEPARTMENT desire to broaden the scope of the proposed Crockett Lake drainage basin study to include consideration of the optimal lake level necessary to achieve the basin's optimal functional capacity as an aquatic wetland habitat, and to identify and evaluate management, mitigation or enhancement measures;

WHEREAS, the DISTRICT is in need of additional funds to complete this additional study of the Crockett Lake drainage basin; and

WHEREAS, the DEPARTMENT wishes to contribute the sum of \$5,000.00 towards the cost of completion of such expanded study;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and mutual benefits, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Scope of Work. The DISTRICT shall be the lead agent and shall retain a consultant to complete the proposed study of the Crockett Lake drainage basin. The general scope of the study shall be as outlined in the document entitled "Island County Drainage District No. 6--Crockett Lake Planning Study Outline," a true and correct copy of which is attached hereto, marked "EXHIBIT A," and incorporated herein by reference.

2. Estimate of Cost. The estimated cost for the work to be performed by the consultant in preparing the study is \$15,000.00.

3. Contribution by DEPARTMENT to Cost of Study. The DEPARTMENT, in consideration of the performance by the DISTRICT'S consultant of additional study of the biological conditions and issues beyond that required by said Stipulation and Order of Dismissal, as more particularly described in EXHIBIT A attached hereto, agrees to pay the DISTRICT the sum of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00), to be applied to the cost of the study. Partial payments may be made upon request by the DISTRICT to cover costs incurred, and are not to be more frequent than one per month. It is agreed that the total of the partial payments shall not exceed the amount of \$5,000.00. It is further agreed that the study shall be completed in its entirety when request is made for the final partial payment.

4. Schedules and Reports. Following execution of this Agreement by the parties hereto, the DISTRICT shall promptly negotiate and enter into a contract with a qualified firm to perform the study. Upon completion of the study, the DISTRICT shall furnish the DEPARTMENT with three copies of the finished report.

5. DISTRICT to be Contracting Party. All contracts awarded in connection with the study shall be in the name of the DISTRICT only, and the DEPARTMENT shall not be a party to any such contract. The DISTRICT shall be responsible for supervision of the work and acceptance of the study, and the DEPARTMENT shall have no responsibilities in connection therewith. The parties agree that no separate legal or administrative entity is necessary for the performance of this Agreement, and none is intended to be created hereby.

6. DEPARTMENT Not Bound by Results of Study. The execution of this Agreement by the DEPARTMENT, and participation by the DEPARTMENT in the funding of the proposed Crockett Lake drainage basin study as provided herein, do not constitute an endorsement by the DEPARTMENT of the position of any party in any litigation regarding Crockett Lake, or any conclusion or recommendation contained in the completed study. The DEPARTMENT hereby reserves the right to review the completed study and to exercise its independent authority, pursuant to RCW Title 77, to protect and preserve wildlife resources of the State of Washington.

7. Discrimination. The DISTRICT agrees that in all matters pertaining to the performance of this Agreement, including, without limitation, its choice of consultants for the proposed study,

the DISTRICT shall at all times conduct its business in a manner which assures fair, equal, and non-discriminatory treatment of all persons without respect to race, sex, age, residence, color, creed, or national origin, and, in particular:

(a) In negotiating and awarding a contract or contracts for performance of the Crockett Lake drainage basin study, the DISTRICT shall maintain open hiring and employment practices, and welcome applications from qualified individuals who are members of racial or other minorities; and

(b) The DISTRICT shall comply strictly with all requirements of applicable federal, state, and local laws or regulations issued pursuant thereto relating to the establishment of non-discrimination requirements in hiring and employment practices, without regard to any person's race, sex, age, residence, color, creed, or national origin.

8. Assignment and Transfer. This Agreement is not transferable or assignable, in whole or in part, without the prior approval of the parties hereto.

9. Interpretation. This Agreement shall be interpreted according to the laws of the State of Washington.

10. Waiver. No waiver of any breach of this Agreement by either party shall be held to be a waiver of any other or subsequent breach by either party.

11. Notices. All notices and payments hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

Island County Drainage District No. 6
c/o Mr. Hibbard R. Moore, Secretary
10240 Waters Avenue South
Seattle, Washington 98178

State of Washington
Department of Game
c/o Jerry L. Neal, Regional Administrator
16018 Mill Creek Boulevard
Bothell, Washington 98012

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices and payments sent by certified or registered mail and subsequently received by either party shall be deemed to have been given when and if properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

12. Savings. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

13. Effective Instrument. This Agreement contains the entire agreement between the parties, and no statement, promises, or inducements made by the parties or their agents that are not contained in this Agreement shall be valid or binding. This Agreement may not be enlarged, modified, or altered except in writing by the parties.

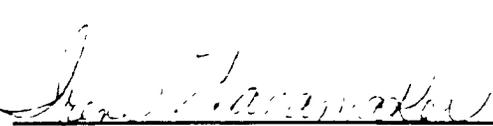
14. Effective Date. The effective date of this Agreement shall be the day and year first written above.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in duplicate by the duly authorized officers of the parties.

STATE OF WASHINGTON
DEPARTMENT OF GAME

ISLAND COUNTY DRAINAGE
DISTRICT NO. 6

By: 

By: 
Chairman

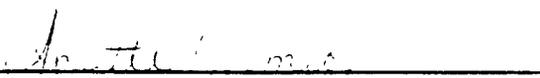
Attest:

NOTARY _____


Secretary

APPROVED AS TO FORM:

NOTARY _____

BY: 

TITLE: Assistant Attorney General

DATE: Apr 9 1956

ISLAND COUNTY DRAINAGE DISTRICT NO. 6
CROCKETT LAKE PLANNING STUDY OUTLINE

Prepared by: Thomas J. Roehl
District Planning Manager, and
S.E.P.A. Responsible Official

SECTION I: INTRODUCTION AND HISTORY

In this section the study seeks to summarize a history of the drainage basin in general, the Drainage District role in that history, and past planning, research, and scientific evaluations relevant to the purposes of the study now being conducted.

A recent history of the events leading to the undertaking of the present study will conclude the section.

SECTION II: STUDY OBJECTIVES

The objectives of the study shall be two-fold. The first objective will be to determine the optimal depth of the lake level necessary to:

- (a) Prevent both surface and sub-surface inundation of the uplands in the Crockett Lake area (including parcels situated on the south side of the lake which may be developed and agricultural lands);
- (b) Prevent flooding of roads;
- (c) Protect existing and potential septic system drain-field sites; and
- (d) Protect public domestic water supplies and systems in the area.

The second primary objective of the study will be to determine the optimal lake level to achieve the basin's optimal functional capacity as an aquatic wetland habitat, and to identify and evaluate management, mitigation or enhancement measures, giving consideration to such interests as:

- (a) Plants and wildlife;
- (b) Beneficial uses of the lake (e.g., education and recreation); and
- (c) Aesthetic qualities.

A Stipulation and Order of Dismissal was entered in connection with the case of Seattle Pacific University v. Island County Drainage District No. 6, et al. (Jefferson County Cause No. 83-2-0008-3), which provides in part that the Drainage District shall study the effects of various alternative courses of action for managing the Crockett Lake drainage system. The Stipulation and Order of Dismissal further provides that:

"3. The alternatives to be examined in this study shall include the following:

- a. Allow tidegates to operate as designed, and clean the drainage ditches.
- b. Construct a wier to control the lake level. The study shall examine the effects of at least three alternative lake levels which could be maintained by the wier, ranging between 2.0 and 5.0 feet above mean lower low water at the tidegates.
- c. Dredge portions of Crockett Lake to achieve greater depth.
- d. Install an area-wide sewer system.
- e. Install an area-wide domestic water system."

Due to funding limitations, primary emphasis in the study will be placed upon alternatives a, b and c, as set forth in the Stipulation and Order of Dismissal.

Each management alternative set forth in the Stipulation and Order, as well as any other alternative which may evolve from the study, will then be evaluated with respect to:

- (a) Relative efficiency and cost feasibility; and
- (b) Potential to achieve an optimum balance between the two primary study objectives.

SECTION III: EXISTING CONDITIONS

This section seeks to identify existing "baseline" conditions of the basin and to evaluate the natural dynamics contributing to said conditions. To be included are the following elements:

- (a) Existing water quality.
- (b) Quality of existing bottom sediment (potential dredge spoils);
- (c) Analysis of existing storm water and other hydraulic forces contributing to the basin's existing conditions; and
- (d) Biological analysis of existing flora and fauna, and general wetland habitat values.

SECTION IV: MANAGEMENT ALTERNATIVES

This section will involve a detailed discussion and evaluation of various alternatives available to the District in managing the drain system. Alternatives presented will be conceptual only in nature, and will be discussed with reference to relative merit, cost feasibility, potential environmental impacts, and general implementation recommendations. Suggestions regarding potential funding sources for any and all alternatives should be included wherever applicable.

SECTION V: CONCLUSIONS AND RECOMMENDATIONS

As indicated in the title heading, this section will contain action recommendations to the District in a logical, sequential order, reflecting the dual purposes identified in Section II above, and considering the District's capability to perform.

SECTION VI: APPENDICES AND EXHIBITS

This section will include all relevant research data, technical reports, maps, documents, etc. which may be referenced in the body of the study text.

It must be noted that the above outline is prepared at the request of the various attorneys involved in pending litigation affecting the District and its constituents. The outline should not be taken as a fixed commitment until such time as the District completes its current consultant selection process and a firmer understanding of the study's costs is available.

I estimate that the consultant selection process should be completed no later than October 1, 1985, subject to the completion of specific contract negotiations.

While it is possible to agree at this time to a particular organizational format for the study, for which the above is only one alternative, I must stress that it is somewhat premature to "set a fix" on the above section contents until a study team is retained, and the input of its members is available.

Respectfully submitted,

Thomas J. Roehl