

for
MITCHELL
Book

DCD# 6-88-60205

COOPERATIVE AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE STATE OF WASHINGTON

This Cooperative Agreement, entered into this 09th day of Feb, 1988, by and between the UNITED STATES OF AMERICA, (hereinafter referred to as "Government"), represented by the District Engineer, U.S. Army Engineer District, Portland, executing this agreement, and the STATE OF WASHINGTON, (hereinafter referred to as the "State"), represented by its Director, Department of Wildlife and Director, Department of Community Development.

WITNESSETH THAT:

WHEREAS, the Government is constructing a water resources development project, entitled the Mount St. Helens Sediment Retention Structure on the North Fork of the Toutle River, Cowlitz County, Washington, as authorized by Congress in P.L. 99-88; and

WHEREAS, in Article II, Part A.1.b. of the Local Cooperation Agreement dated April 26, 1986, between the Department of the Army, the State of Washington, the Consolidated Diking Improvement District No. 3 of Cowlitz County, and the Drainage Improvement District No. 1 of Cowlitz County, dated April 26,

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1986, the State of Washington is to operate and maintain any justified mitigation project;

WHEREAS, the Government is performing this construction in compliance with Section 906 of the Water Resources Development Act of 1986, P.L. 99-662, which requires that fish and wildlife mitigation occur prior to or concurrent with acquisition of lands for project construction; and

NOW THEREFORE, for and in consideration of the promises and mutual benefits and advantages occurring hereunder to each party hereto, it is agreed by and between the Government and the State that:

A. SCOPE OF WORK. The Government agrees to fund the State for collection, handling and hauling of brood stock winter steelhead, and equipment and facilities to rear juveniles not to exceed \$168,600 as outlined in the following Scope of Work. Payment to be made upon receipt and approval of a proper invoice. Mailing address: U.S. Army Corps of Engineers, Portland District, ATTN: CENPF-EN-PM, P.O. Box 2046, Portland, Oregon 97208-2046.

SCOPE OF WORK

INTRODUCTION

The Mount St. Helens sediment retention structure (SRS) is being built on the North Fork of the Toutle River, Southwest Washington, for the purpose of creating a pool in which volcanic sediment will be trapped, thereby providing flood protection and other benefits for communities downstream. Construction of the project has blocked the passage of salmon and steelhead from spawning areas remaining above the structure. In order to provide passage past the SRS, a permanent fish collection facility is being designed. This facility will not be operational until the spring of 1989. During 1987, attempts to provide

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interim passage facilities were unsuccessful and a decision was made to provide other means of mitigation until the permanent collection facility is functional.

This scope of work establishes the program necessary to provide hatchery mitigation for winter steelhead which are presently blocked by the partially constructed SRS.

PROGRAM

The program will consist of the following elements:

a. Collection, Handling, Holding, and Spawning of 100 Male and Female Wild Winter Adult Steelhead or as many as can be obtained, not to exceed 100 male and female wild winter steelhead.

Collection and Hauling	\$ 29,600
TOTAL	\$ 29,600

b. Construction of Temporary Hatchery Facilities

Land Acquisition or lease	\$ 3,000
Site Preparation	\$ 15,000
Hatchery Building (10 troughs)	\$ 55,000
Generator	\$ 24,000
Pump and Piping	\$ 5,000
Hatchery Truck	\$ 40,000
SUBTOTAL	\$142,000
Tax and Contingency (20%)	\$ 20,400
TOTAL	\$162,400

c. Operation

Fish Food	\$ 1,000
Labor (Includes Benefits)	\$ 35,000
TOTAL	\$ 36,000

d. Cost Subtotals

Collection, Handling, & Hauling	\$ 29,600
Hatchery Facilities	\$162,400
Operation	\$ 36,000
TOTAL	\$228,000

Consistent with the Local Cooperation Agreement, the mitigation items will be provided in the following manner:

a. Items To Be Paid For By The Federal Government

Collection of Steelhead	\$ 29,600
Site Preparation	\$ 15,000
Hatchery Building & Troughs	\$ 55,000
Generator	\$ 24,000
Pump & Piping	\$ 5,000
Hatchery Truck	\$ 40,000
TOTAL	\$168,600

b. Items To Be Paid For By The State of Washington

Land Acquisition (or lease)	\$ 3,000
Fish Food	\$ 1,000
Labor to Operate Facility	\$ 35,000
Tax and Contingency	\$ 20,400

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The State will raise a sufficient number of winter steelhead to mitigate for the absence of spawning above the SRS caused by the lack of satisfactory fish collection facilities until such time as facilities adequate for fish collection and transport are completed.

All equipment and material including the generator, pump hatchery truck, hand tools, nets, seines, and other gear which can be used at the permanent collection facility will be transferred to that facility when they are no longer required for the temporary hatchery. All other material will become the property of the Government as required by Item F (Property Ownership) of the agreement. The government will provide funding for equipment and activities required to construct and equip a temporary hatchery including the collection of brood stock. The State will provide measures for the operation and maintenance of the mitigation facility as specified in Article 11, part A.1.b of the Local Cooperation Agreement.

B. APPROVAL OF PLANS. The Government and the State shall mutually agree upon any construction plans in advance of their execution.

C. ADHERENCE TO SAFETY REGULATIONS. The State shall comply with the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1 for all work. A copy of this manual is provided with this agreement.

D. USE OF EXISTING FACILITIES OWNED OR IN CONTROL OF THE CORPS OF ENGINEERS. The State may use, alter, and/or improve the existing South Fork Toutle River anadromous fish trap constructed by the Corps of Engineers in 1980 for use in carrying out its obligations under this contract.

E. TERMINATION. This agreement may be terminated upon 30 day written notice by the Government or the State should either party fail to fulfill its obligations as stated herein; and may be terminated without cause by either party with 180 day prior written notice to the other party or at any time by mutual agreement. If the agreement is terminated by the Government, final payment shall be made to the State for actual work performed as well as any costs incurred in preparation for work (i.e. materials, engineering) prior to the termination date.

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F. PROPERTY OWNERSHIP. All material, supplies, and equipment purchased by the State with funding provided by the Government shall become the property of the Government to be used at the permanent fish collection facility at the conclusion of this agreement.

G. RELEASE. The Government and its officers and employees shall not be liable in any manner to the State for or on account of damage caused by the development, operation, and maintenance of the general mitigation measures by the State.

H. EXAMINATION OF RECORDS. The State shall maintain books, records, documents, and other evidence pertaining to payment or reimbursement for performance under this Agreement, to the extent and in such detail as will properly reflect all net costs, direct and indirect, for labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature involved therein. The State shall make available at its offices, at reasonable times, the accounting records for inspection and audit by an authorized representative of the Corps during the period this Agreement is in effect.

I. OFFICIALS NOT TO BENEFIT. No member of or delegate to the Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Cooperative Agreement if made with a corporation for its general benefit.

J. APPROVAL OF SUBCONTRACTS. Any subcontracts under this agreement shall be subject to review by the Government.

K. CONVENANT AGAINST CONTINGENT FEES. The State warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide established commercial or selling agencies maintained by the State for

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the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement price of consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

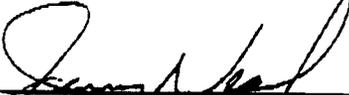
L. RELATIONSHIP OF PARTIES. The parties to this Agreement act in their independent capacities in the performance of their respective functions under it, and neither party is to be considered the officer, agent or employee of the other.

M. INTERLOCAL COOPERATION ACT. The parties to this Agreement shall comply with the Interlocal Cooperation Act, RCW 39.34, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement as of the day and year written.

THE STATE OF WASHINGTON

THE UNITED STATES OF AMERICA



Jerry Neal, Interim Director
Washington Department of Wildlife



Gary R. Lord
Colonel, Corps of Engineers
District Engineer

Date: 2-8-88



Chuck Clarke, Director
Department of Community Development

Date: 02/25/88

Date: 3-16-88