



CAPS Cover Sheet

TITLE: Ebey Island Feasibility Study NRDA PERIOD: 01/01/2010 to 06/30/2011 CONTRACTOR: WA Dept of Ecology CONTRACTOR CONTACT: Katherine Scott (360) 407-7213 CONTRACT TYPE: Receivable, Grant STAFF TYPE: WDFW	WDFW NUMBER: 10-1154 STATUS: Active NUMBER OF AMENDMENTS: 0 WDFW MANAGER: Richard Tveten (360) 902-2367 PROGRAM: Wildlife DIVISION: Lands CFDA NUMBER: AWARD NUMBER: RFQQ/RFQ/RFP/IFB NUMBER:
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SUMMARY PROJECT DESCRIPTION:
 Ebey Island Chinook Habitat Restoration Feasibility Study

INTERNAL CONTACTS:

<u>Name</u>	<u>Role</u>	<u>Work Phone</u>
Richard Tveten	Project Manager	(360) 902-2367
Ted Nelson	Contract Staff	(360) 902-2401
Jennifer Evans	Budget Approver	(360) 902-2196

PROJECT BUDGET: OBJECT DETAIL

Rate Rule: Allow Indirect **Indirect Rate:** 21.78% Indirect amount calculated by CAPS

<u>Object</u>	<u>Sub Object</u>	<u>Direct</u>	<u>Indirect</u>	<u>Total Cost</u>
C-Personal Service Contracts		\$82,115	\$17,885	\$100,000
Object Detail Total:				\$100,000
Total:				\$100,000

CURRENT FUNDING:

<u>Funding</u>	<u>Fund/Appropriation</u>	<u>\$ Type</u>	<u>Amount</u>	<u>%</u>
	001-Z10 GF-S GF-S Fiscal Services Only	State	\$100,000	100.0%
Funding Total:			\$100,000	100.0%
Project Total:			\$100,000	
Contract Required Split:			100.0 / 0.0	
Split, includes all Match:			100.0 / 0.0	
Split, includes cash match only:			100.0 / 0.0	

From Ted - Distributed on **04/29/10** To:
 Fiscal Needham, Lynn
 Budget Evans, Jenny
 W/P Tveten, Richard
 Vendor none required this time

TITLE: Ebey Island Feasibility Study NRDA

WDFW NUMBER:

10-1154

LINES OF CODING:

MI	Bien	Fund	Appn	%	PI	OI	AFRS Proj	Sub Proj	Start Date	End Date	Amount	AFRS Status
47881	09-11	001	Z10	100.0	47880	4000	4618	01	01/01/10	06/30/11	\$100,000	Active

LOC Total: \$100,000

Total: \$100,000

RECEIVED

MAR 31 2010

Dept Of Ecology
Toxics Cleanup Program

10-1154

Agreement Number C1000246

**INTERAGENCY AGREEMENT
Between
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
And the
STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE**

THIS AGREEMENT is made and entered into by and between the DEPARTMENT OF ECOLOGY, hereinafter, referred to as **ECOLOGY** and the DEPARTMENT OF FISH AND WILDLIFE, hereinafter, referred to as **WDFW**.

IT IS THE PURPOSE OF THIS AGREEMENT for **ECOLOGY** to provide **WDFW** funding to implement Section XVIII. E. Natural Resource Damages of Consent Decree No. 07-2-33672-9 SEA entered into between **ECOLOGY** and the BNSF Railway Company. This Consent Decree was entered into King County Superior Court on October 19, 2007.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

WDFW will furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for, or incidental to, the performance of the work set forth in Attachment "A" attached hereto and incorporated herein.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on or after January 1, 2010, and be completed on June 30, 2011, unless extended or terminated sooner as provided herein.

PAYMENT

Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34.130. The estimated cost of accomplishing the work herein shall not exceed \$100,000. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work, which will cause the maximum payment to be exceeded.

Compensation for services shall be based on the budget in Attachment "B" which is attached hereto and incorporated.

PAYMENT AND TRANSFER OF FUNDS

ECOLOGY shall transmit \$100,000 to **WDFW** by electronic funds transfer for use in Project 1, Ebey Island Restoration Feasibility Study, as specified in Attachment A, Statement of Work.

WDFW shall submit quarterly fund balance statements which shall include expenses incurred to date and available balance to Katherine Scott, Agreement Manager, with a copy to the Project Lead, the Section Manager of the Land and Aquatics Land Cleanup Section, until all funds are expended. See Attachment A, Scope of Work, Deliverables.

RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RIGHTS IN DATA

Unless otherwise provided, data originating from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by **ECOLOGY**. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

TERMINATION

Either party may terminate this Agreement upon 30 days prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

DISPUTES

In the event that a dispute arises under this Agreement, resolution shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute

Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. applicable state and federal statutes and rules;
- b. statement of work; and,
- c. any other provisions of the agreement, including materials incorporated by reference.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

WAIVER

A failure by either party to exercise its rights under this agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

ATTACHMENT A STATEMENT OF WORK

Background

The Washington State Department of Ecology (**ECOLOGY**) is providing oversight of the Burlington Northern Railway Company regarding clean up of petroleum hydrocarbons (oil) contaminating the soil and groundwater of the Town of Skykomish, and seeping into the Skykomish River. Lead and arsenic contamination is present in soil as well.

ECOLOGY and BNSF entered into a Consent Decree in King County Superior Court for the cleanup and restoration of this site. Among other things, the Consent Decree required BNSF to compensate the state \$5,500,000 for damages to natural resources as a result of contamination at the site. Payment has been received by the State Treasurer and placed in an interest-bearing account created specifically for this purpose.

Section XVIII. C., Natural Resource Damages, provides for \$2,500,000.00 to be used exclusively for funding projects that restore, enhance, or protect fish and aquatic habitat in the Skykomish or Snohomish River Watersheds. After consultation with the federal Oil Pollution Act Trustees: the Tulalip Tribes of Washington, the United States Department of Interior (Fish and Wildlife Service), the United States Department of Agriculture (Forest Service), and the United States Department of Commerce (National Oceanic and Atmospheric Administration), Ecology has determined that it is appropriate to transfer \$100,000.00 of these monies to **WDFW** for implementation and oversight of the Ebey Island Restoration Feasibility Study project described below.

Responsibilities:

Project lead: **WDFW**

Amount of Task: Not-to-exceed \$100,000.00

Task Period: 1/01/10 – 6/30/11

Projects:

Project #1: Ebey Island Restoration Feasibility Study

WDFW will use these monies as a non-federal match on this project.

Deliverables:

- Prepare quarterly reports of accomplishments and fund balance statements for Ecology until all funding is expended.
- Provide timely notice of changes to the Project.

ATTACHMENT B
AGREEMENT BUDGET

Budget	TOTAL TASK BUDGET
Funds may be used to implement Section XVIII. E. Natural Resource Damages of Consent Decree No. 07-2-33672-9 SEA entered into between ECOLOGY and the BNSF Railway Company	
Project 1 Ebey Island Restoration Feasibility Study	\$100,000
TOTAL BUDGET	\$ 100,000