



MASON COUNTY BOARD OF
COMMISSIONERS
411 NORTH 5TH STREET
SHELTON, WA 98584

SQUAXIN ISLAND TRIBAL COUNCIL
10 SE SQUAXIN LANE
SHELTON, WA 98584



Memorandum of Agreement

Mason County and the Squaxin Island Tribe

This Agreement is between Mason County ("County") and the Squaxin Island Tribe ("Tribe") (collectively, "Parties").

Sec. 1 – Recitals

1.1 The County is a general purpose local government and a subdivision of the State of Washington, with all the rights and responsibilities pertaining thereto.

1.2 The Tribe is a federally-recognized Indian tribe and a signatory party to the Treaty of Medicine Creek, with all the rights and responsibilities pertaining thereto.

1.3 Anadromous fish are central to the Tribe's culture and economy, and the Tribe is concerned that instream flows necessary for fish are unmet in numerous streams throughout Mason County.

1.4 The Parties recognize and respect, and seek to foster, the government-to-government relationship that exists between them; to engage in cooperative land use and watershed planning; to provide for a long-term, environmentally sustainable water supply and human population growth; to protect and restore anadromous fish resources; and to pursue mutually beneficial governmental, environmental and economic development interests and opportunities.

1.5 On March 27, 2018, the Parties signed a nonbinding Letter of Intent that memorialized their intention to develop a watershed restoration and enhancement plan for Water Resource Inventory Area 14a (“WRIA 14a”). Among other things, the Letter of Intent stated that the Parties would work towards executing a binding memorandum of agreement. This Agreement represents that effort.

1.6 The Parties previously served as initiating governments under Chapter 90.82 RCW, the Watershed Planning Act, and agreed to form a Watershed Planning Unit as provided in Chapter 90.82 RCW to develop a watershed plan for WRIA 14a. Mason County served as lead agency for purposes of state funding for watershed planning. The Watershed Planning Unit produced a draft watershed plan and valuable supporting studies. The initiating governments did not approve the draft watershed plan.

1.7 The Parties now desire to work collaboratively to assist in the development of a watershed restoration and enhancement plan for WRIA 14a in a manner consistent with Chapter 90.94 RCW and other applicable laws and regulations which, in addition to those identified in Section 3, include but are not limited to Chapter 36.70A RCW, Chapter 90.03 RCW, Chapter 90.42 RCW, Chapter 90.44 RCW, Chapter 90.54 RCW, Chapter 90.58 RCW and Chapter 90.82 RCW.

1.8 The Parties recognize that, pursuant to Chapter 90.94 RCW, the Washington Department of Ecology (“Ecology”) must prepare a watershed restoration and enhancement plan for WRIA 14a by June 30, 2021, in collaboration with a committee whose members include the Parties. By then, the Parties and others expect to have gained an improved understanding of, among other things, the potential impacts of development on streamflows and fisheries, and strategies for ensuring long-term, environmentally sustainable water supply and growth. The Parties’ active participation as lead entities in the planning process under Chapter 90.94 RCW is vital to ensure that their respective interests are adequately represented.

IN CONSIDERATION THEREOF, THE PARTIES hereby agree as follows:

Sec. 2 – Purposes. -- The purposes of this Agreement are –

2.1 To provide a scientific and regulatory framework to mitigate for and offset development, as provided under Chapter 90.94 RCW and other applicable laws and regulations; and

2.2 To provide a scientific and planning framework to protect, restore and enhance impaired instream resources and improve watershed functions that support anadromous fish resources.

Sec. 3 – Authorities

3.1 The Tribe’s authority to enter into this Agreement arises under –

3.1.1 The Laws of the United States;

3.1.2 Treaty of Medicine Creek; and

- 3.1.3 The Squaxin Island Tribal Constitution and laws;
- 3.2 Mason County's authority to enter into this Agreement arises under –
 - 3.2.1 Wash. Constitution Article XI;
 - 3.2.2 Chapter 36.01 RCW (County Government Enabling Act);
 - 3.2.3 Chapter 36.70A RCW (Growth Management Act);
 - 3.2.4 Chapter 90.54 RCW (Water Resources Act);
 - 3.2.5 Chapter 90.82 RCW (Watershed Planning Act); and
 - 3.2.6 Mason County Code.
- 3.3 The Parties' authority to enter into this Agreement also arises under –
 - 3.3.1 Chapter 39.34 RCW (Interlocal Cooperation Act);
 - 3.3.2 Chapter 90.82 RCW (Watershed Planning Act); and
 - 3.3.3 Chapter 90.94 RCW (Streamflow Restoration Act).

Sec. 4 – Planning and Funding

4.1 The Parties agree to work cooperatively to assist in the development and implementation of a watershed restoration and enhancement plan for WRIA 14a that is consistent with Chapter 90.94 RCW, and other applicable laws and regulations. The Parties may seek to contract with Ecology to perform some or all of Ecology's responsibilities under Chapter 90.94 RCW for WRIA 14a.

4.2 The Parties may in the future, and if they deem appropriate, consider establishing a Watershed Management Partnership ("WMP") under RCW 39.34.200 for purposes that include developing and implementing the watershed restoration and enhancement plan.

4.3 The Parties may in the future, and if they deem appropriate, consider establishing a Joint Board to administer the WMP, consisting of a representative of each Party. The WMP will not be a separate legal entity. The Parties each will acquire, hold and dispose of any real or personal property used by the WMP.

4.4 The Parties may, and as appropriate, individually and/or cooperatively seek funding from Ecology or other sources to develop and implement the watershed restoration and enhancement plan envisioned by this Agreement. Nothing precludes the Parties from also, individually or cooperatively, seeking funding from additional sources.

4.5 Subject to the Parties' agreement, the County may serve as fiscal agent and, subject to the Parties' agreement, as lead agency for any grant or other funding agreement to develop the watershed restoration and enhancement plan or to otherwise implement this Agreement. The County will pass through funding to the Tribe under the terms of any grant or

other funding agreement that includes Tribal participation within the authorized scope of activities under the grant or other funding agreement.

Sec. 5 – Technical Projects and Coordination

5.1 The Parties agree to work cooperatively to share information regarding current water uses and future development activities that may adversely affect anadromous fish resources or other attributes of watershed health. To assist in developing and implementing the watershed restoration and enhancement plan described in this Agreement, and as described in this Section, the County will provide public access to information to: (a) inventory current water uses; (b) summarize changes in water use; (c) estimate future water use requirements; and (d) identify opportunities to restore and enhance aquatic resources to the extent adversely affected by current and future water uses.

5.2 No later than June 30, 2020, the County will provide information to the Tribe about current water uses and future development activities, as follows:

5.2.1. For each subbasin, the County will inventory current water uses. The inventory will identify –

5.2.1.1. all residential dwellings and other buildings inside the service area of an approved public water system;

5.2.1.2. all residential dwellings and other buildings using permit-exempt wells outside the service area of an approved public water system;

5.2.1.3. estimated number and location of permit-exempt wells used for domestic supply or other beneficial purposes otherwise authorized under RCW 90.44.050;

5.2.1.4. estimated number of shared well agreements;

5.2.1.5. estimated total water use for each residential dwelling and other buildings using a permit-exempt well; and

5.2.1.6. estimated consumptive water use for each residential dwelling and other buildings using a permit-exempt well.

5.2.2. The County will establish and maintain a web-based community access public portal that will document all County permit activity. The portal will include the following applications and approvals:

5.2.2.1. Department of Community Services Approval/Acknowledgement

- Accessory dwelling unit
- Boundary Line Adjustment
- Building permit
- Large Lot Subdivision
- Parcel Combination

- Short Subdivision

5.2.2.2. Mason County Public Health Approval/Acknowledgement

- Environmental Health Review
- Land Use Evaluation
- Onsite sewage
- Sewer adequacy
- Two-party (shared well) application
- Water Adequacy
- Well Construction

5.2.3. The County will generate annual reports that show the number and location of new permit-exempt wells.

5.2.4. The County will update its application form to require an applicant for well site inspection to provide a copy of the Ecology Well Start Card for each well to be inspected. The County will include a copy of the Well Start Card on its community access public portal for the application for well site inspection.

5.2.5. The County will document the GPS locations for all wells subject to well site inspection, and will include the location with the well site inspection.

5.2.6. The County has established and will maintain a web-based community access public portal to its onsite septic system (“OSS”) maintenance database.

5.2.7. The County will provide the Tribe with access to its OSS maintenance database public portal to generate reports summarizing OSS maintenance data.

5.3 The County will provide long-term localized water use projections for each Stream Management Unit within WRIA 14a, as described in WAC 173-514-030, based on –

5.3.1 Office of Fiscal Management (“OFM”) population allocation for Mason County;

5.3.2 Distribution of OFM population allocation within and outside urban growth areas consistent with applicable laws and regulations and best available science on water availability and anadromous fisheries;

5.3.3 Service expansion capacity of existing public water systems; and

5.3.4 Mason County’s Land Capacity Analysis per RCW 36.70A.115 and WAC 365-196-325.

5.4 No later than January 1, 2021, the County shall: (a) prepare as initial case reports for Johns Creek and Goldsborough Creek watersheds that refine and make more realistic the water use projections in Section 5.3 through scrutinizing potential land subdivisions and limitations imposed by the County’s Resource Ordinance, MCC Ch. 8.52; and (b) cooperatively

develop with the Tribe a timetable for the County's development of such reports for the remaining watersheds with instream flows.

5.5 The Tribe shall share with the County data as within WRIA 14a relating to streamflows and other water measurements, as well as to salmon productivity and abundance, that will assist in the endeavors described in this Agreement.

5.6 The Parties will consult with Ecology and the Washington Department of Fish & Wildlife ("WDFW") regarding implementation of this Agreement and adoption of an amended Water Management Rule for WRIA 14a. The Parties agree to notify and, when appropriate, to invite each other to meetings with Ecology or WDFW to discuss watershed restoration and enhancement plan development and/or seek funding or technical assistance regarding the plan and any potential amendment to the WRIA 14 Rule.

Sec. 6 – State Rulemaking

6.1 The Parties shall make their best efforts to reach mutual agreement on the need to conduct rulemaking to amend Ecology's WRIA 14a water management rule. If Ecology adopts a watershed restoration and enhancement plan that both Parties approve, the Parties shall:

6.1.1 Request and, if necessary, petition Ecology to initiate rulemaking to amend the WRIA 14a Rule in a manner consistent with the watershed restoration and enhancement plan; and

6.1.2 Support a rule amendment consistent with the approved watershed restoration and enhancement plan, including jointly defend a rule amendment that is consistent with the watershed restoration and enhancement plan against a third-party challenge.

Sec. 7 – County Comprehensive Plan and Development Regulations

7.1 The Tribe agrees to dismissal of its Petition for Review in *Squaxin Island Tribe v. Mason County*, WWGMHB No. 18-2-0002, upon execution of this Agreement.

7.2 The County shall, pursuant to RCW 36.70A.130(6)(a):

7.2.1 Take all necessary steps by June 30, 2021, to initiate review of those portions of the Comprehensive Plan and development regulations that relate to water availability and/or fisheries; and

7.2.2 By December 31, 2021, docket and update those portions of the Comprehensive Plan and development regulations described in subparagraph 7.2.1 in a manner that includes best available science, particularly as pertains to water quantity and anadromous fisheries, and is consistent with any watershed restoration and enhancement plan (or components or subcomponents) that is approved by both Parties, as well as applicable laws and regulations.

Sec. 8 – Government-to-Government Cooperation

8.1 The Parties shall meet at least semi-annually, on a government-to-government basis, to discuss issues of mutual concern under this Agreement.

8.2 The Parties will each designate a technical contact person and a policy contact person for purposes of fostering timely and responsive communication regarding implementation of this Agreement.

8.3 The Parties shall consider retaining the services of a mutually-agreeable facilitator to assist them to implement this Agreement.

Sec. 9 – General Provisions

9.1 **Term and Effect.** This Agreement is binding on the Parties and shall remain in effect until December 31, 2022; provided that if any appeal or lawsuit to enforce this Agreement is filed, the Agreement shall remain in effect until resolution of the appeal or lawsuit or any remedies provided through an appeal or lawsuit are performed and completed.

9.2 **Dispute Resolution.** Except as precluded by statutory filing deadlines, the Parties shall provide each other with 30 days written notice of any dispute arising between them under or related to implementation of this Agreement, and shall submit the dispute to non-binding mediation within 90 days of providing notice of a dispute. A mediator will be chosen by mutual agreement of the Parties.

9.3 **Specific Performance in Event of Default.** In the event of default, the Parties acknowledge that it may be difficult to measure the resulting damages and that damages may not provide an appropriate remedy. Accordingly, the remedies for a non-defaulting Party are limited to injunctive relief and specific performance if appropriate.

9.4 **Severability.** If any provision of this Agreement, or the application thereof to a Party or circumstance, is found to be invalid or unenforceable, the remainder of the provisions of this Agreement, or the application of such provision to a Party or circumstances other than those as to which it is found to be invalid or unenforceable, as the case may be, shall not be affected thereby.

9.5 **Waiver.** If any Party fails to exercise any of its rights under this Agreement, it will not be precluded from subsequent exercise of that right. A failure to exercise any right will not constitute a waiver of any other rights under this Agreement.

9.6 **Amendment.** Amendments to this Agreement for any purpose must be in writing and signed by authorized representatives of each of the Parties.

9.7 **Presumption of Good Faith.** The Parties to this Agreement will work cooperatively and in good faith to implement this Agreement, and not unreasonably withhold any approval required of any Party under this Agreement.

9.8 **Governing Law.** This Agreement will be governed and enforced under the laws

of the State of Washington. Venue for any action arising under or related to this Agreement shall be determined as provided under RCW 36.01.050.

9.9 **Applicability.** Nothing in this Agreement will be construed to:

9.9.1. Establish a third-party beneficiary relationship or other right to or responsibility for any person or entity that is not a signatory to this Agreement; or


9.9.2. Affect or modify any treaty or other rights of the Tribe, including its federally-reserved water rights.

9.10 **Sovereign Immunity.** The Tribe hereby agrees to a limited waiver of sovereign immunity for suit in state court exclusively for the limited purpose of allowing the County to enforce this Agreement solely through the equitable remedies of injunctive relief or specific performance. This limited waiver is not for the benefit of any third party or for any other action or any other forum or regarding any other matter, and shall not be enforceable by any third party or by any assignee of the Parties. In any enforcement action, the Parties shall bear their own enforcement costs, including attorneys' fees.

9.11 **Recording.** The County will file this Agreement with the Mason County Auditor as provided under RCW 39.34.040.

THIS AGREEMENT is effective upon signature by the Parties below.

Mason County



Hon. Kevin Shutty
Chair
Mason County Board of Commissioners

DATE: FEB. 22, 2019

Squaxin Island Tribe



Hon. Arnold Cooper
Tribal Chair
Squaxin Island Tribe

DATE: FEB 22 2019