



DEPARTMENT OF ECOLOGY
DEC 21 2017
WATER QUALITY PROGRAM

IAA No. C1800074

WDFW # 17-09143

INTERAGENCY AGREEMENT (IAA)

BETWEEN

THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

AND

THE STATE OF WASHINGTON DEPARTMENT OF FISH & WILDLIFE

THIS INTERAGENCY AGREEMENT is made and entered into by and between the STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, hereinafter referred to as "ECOLOGY," and the DEPARTMENT OF FISH AND WILDLIFE hereinafter referred to as "WDFW" pursuant to the authority granted by Chapter 39.34 RCW.

IT IS THE PURPOSE OF THIS AGREEMENT to coordinate and enhance state participation in the Federal Energy Regulatory Commission (FERC) process to obtain and implement hydroelectric project licenses and to support Ecology's water quality certification process as they both relate to the implementation of RCW 90.16.050 and 090, relating to water power license fees. In addition to their joint efforts, the parties will work with the hydroelectric project owners, stakeholders, and other interested parties to enhance public resources and achieve mutual benefits as they relate to development and implementation of water quality certifications and FERC hydroelectric licenses. Additionally, WDFW and Ecology will work together to produce a report that Ecology will provide to the Legislature at the end of the current biennium and future biennia as necessary.

WHEREAS, Ecology and WDFW experienced delays in executing this agreement. Both parties agree services as outlined in Appndix A for the period of performance commencing July 1, 2017.

THEREFORE, IT IS MUTUALLY AGREED THAT:

1) STATEMENT OF WORK

WDFW shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Appendix A, attached hereto and incorporated herein.

2) PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this IAA shall commence on July 1, 2017 and be completed by **June 30, 2019**, unless terminated sooner as provided herein.

3) PAYMENT

To achieve these purposes Ecology will support costs incurred by WDFW up to the amount of \$259,000 each fiscal year for a total of up to the amount of \$518,000 for the 2017 – 2019 biennium, contingent on Ecology receiving the funds. Ecology and WDFW anticipate continuing activities associated with this agreement in future biennia and may extend this agreement to accomplish those purposes.

Compensation for the work provided in accordance with this IAA has been established under the terms of RCW 39.34.130 and in accordance with Governor's Executive Order 10-07. This is a performance-based contract, in which payment is based on the successful completion of expected deliverables. The parties have determined that the cost of accomplishing the work herein will not exceed Five Hundred Eighteen Thousand dollars (\$518,000). Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount. Compensation for services shall be based on the terms set forth in accordance with the tasks listed in Appendix A, Statement of Work and Budget, which is attached hereto and incorporated herein. ECOLOGY will not make payment until it has reviewed and accepted the completed work.

4) BILLING PROCEDURE

WDFW shall submit invoices to ECOLOGY for payment. A copy of quarterly summaries that identifies work WDFW has done to support work under this IAA will be mailed or emailed to the Ecology Contract Manager at the same time. All invoices are to be delivered to the attention of the Watershed Management Section Administrative Assistant at the following address: Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600.

Invoices shall be submitted on a quarterly basis.

Each invoice shall reference the Agreement (IAA) number and clearly identify the items related to performance under this agreement. All expenses invoiced shall be supported with copies of invoices paid. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier. Payment will be within 30 days of receipt of properly completed invoice.

Payment for approved and completed work will be issued through Washington State's Department of Enterprise Services Statewide Payee Desk. To receive payment you must register as a state-wide vendor by submitting a state-wide vendor registration form and an IRS W-9 form at website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. If you have questions about the vendor registration process you can contact DES at the Payee Help Desk at (360) 407-8180 or email payeehelpdesk@des.wa.gov.

5) 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.

6) SUBCONTRACTORS

WDFW agrees to take complete responsibility for all actions of any Subcontractor used for the performances under this agreement.

Prior to performance, WDFW shall identify subcontractor(s) who will perform services in fulfillment of agreement requirements, including their name, the nature of services to be performed, address, telephone, WA State Department of Revenue Registration Tax number (UBI), federal tax identification number (TIN), and anticipated dollar value of each subcontract:

7) 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.

8) DISPUTES

In the event that a dispute arises under this Agreement, it 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.

9) GOVERNANCE AND PRECEDENCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any 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 Federal and State of Washington statutes, regulations and rules.
- b. Mutually agreed written amendments to this Contract.
- c. This agreement C1800074
- d. Statement of Work and Budget.
- e. Any other provisions of the Agreement, including materials incorporated by reference.

10) 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.

11) RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both 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.

12) RIGHTS IN DATA

Unless otherwise provided, data which originates 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.

13) 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.

14) TERMINATION

Either party may terminate this Agreement upon thirty (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.

15) 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 failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

16) 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.

17) AGREEMENT MANAGEMENT

The representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The ECOLOGY Representative is:	The WDFW Representative is:
Name: Chad Brown Address: P.O. Box 47600 Olympia, WA 98504-7600 Phone: 360-407-6128 Email: chad.brown@ecy.wa.gov	Name: Justin Allegro Address: 600 North Capitol Way Olympia, WA 98501-1091 Phone: 360-902-2405 Email: justin.allegro@dfw.wa.gov

18) 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.

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

State of Washington
Department of Fish and Wildlife

State of Washington
Department of Fish and Wildlife

By: Polly Zehm 4/17/18
Signature Date

By: Jeffrey R. Higdahl 12/20/17
Signature Date
Jeffrey R. Higdahl
Contracts and Purchasing Manager

Polly Zehm

Jim Unsworth

Deputy Director

Director

Approved as to form:
Attorney General's Office

APPENDIX A

STATEMENT OF WORK AND BUDGET

As a result of the passage of SSB 5881, Department of Fish and Wildlife (WDFW) will partner with Department of Ecology (Ecology) to maintain a high level of customer service and ensure resource protection associated with hydroelectric project developments in Washington.

The duties of the WDFW staff funded by this contract will be limited to hydroelectric projects under the authority of the Federal Energy Regulatory Commission (FERC). WDFW staff activities will focus on; 1) assisting Ecology during the development, implementation, and adaptive management of section 401 certifications through participation and the provision of technical fish and aquatic habitat expertise, including assistance with instream flow modeling and evaluation, and, 2) providing technical assistance and collaborating with hydroelectric project owners and involved stakeholders throughout the FERC license timeline. In addition to 401 measures, FERC License activities funded by this contract will include technical assistance and consultation during new license development in addition to active participation in natural resource protection and enhancement measures that are required by the operating licenses issued by the FERC. WDFW staff funded by this contract will also participate in the natural resource technical committees during license implementation and communicate with FERC, Ecology, project owners and other stakeholders.

Due to the number of FERC licensed hydroelectric projects and the wide range of activities that affect fish and wildlife at each project, WDFW anticipates that FERC license and 401 collaboration will require more than the 1.9 FTE provided by this contract. To address this additional workload, WDFW staff that are funded from other sources will also participate in new license issuance, adaptive management, and license implementation activities, including 401 activities, at FERC licensed hydroelectric projects. State general funds and federal contract funds will be used to supplement the number of WDFW staff working with FERC license holders. In addition, duties associated with this contract will also require time from the Director's Office and Program Administrators for policy direction and interagency coordination. The supplemental WDFW policy level activity related to this contract will be in the form of in-kind contributions. The work schedule for this contract will extend from July 1, 2017 to June 30, 2019.

ACTIVITIES & TASKS

1. Participate in 401 Water Quality Certification.

WDFW will perform activities for 401 certifications developed by Ecology for FERC hydroelectric projects in order to achieve the objectives identified in this Interagency Agreement. In general WDFW will monitor the implementation and adaptive management of the protection, mitigation, and enhancement measures for salmonids (including bull trout), sturgeon, lamprey and other resident fish, and consult with Ecology regarding these matters.

WDFW will provide technical support including fish and aquatic habitat expertise to assist Ecology in carrying out Section 401 Water Quality Certification responsibilities as defined by the Clean Water Act. WDFW will also contribute instream flow expertise to stream flow modeling, minimum flow negotiations, adjustments, and appeals associated with stream flow related license recommendations. Ecology and WDFW will work together to ensure consistent application of the settlement agreements, FERC licenses and the section 401 certifications with regard to the protection of water quality, fish and other aquatic species. This assistance is intended to minimize the duplication of efforts and recognizes that WDFW has certain expertise that Ecology does not currently possess. Functionally, this category of

effort can take place during either the new license process or during the license implementation and adaptive management phase.

2. WDFW will collaborate with hydroelectric project owners and involved stakeholders throughout the process to acquire and implement FERC hydroelectric licenses, including adaptive management of resource protection and enhancement measures.

As authorized by the Federal Power Act, WDFW participates in the FERC license process along with the hydroelectric project owners, federal resource agencies and other involved stakeholders. WDFW staff involvement in the collaborative process to acquire new licenses includes:

- the review and preparation of comments on natural resource study plans and environmental documents;
- scoping and conducting environmental resource studies;
- identification of feasible measures that will protect, mitigate impacts and enhance fish, wildlife and related recreational resources; and
- communicating with FERC, in addition to participation in the above identified tasks associated with Ecology's water quality certification authority.

WDFW staff will provide technical assistance and consultation during the creation, implementation, monitoring, and adaptive management of the measures that are required by the operating licenses issued by the FERC.

Current FERC license development requires the license holder to develop a series of resource protection, mitigation and enhancement plans that define and clarify the license holder's obligations to natural resources. The resource protection and enhancement plans identify specific objectives, implementation steps, monitoring methods, annual reporting requirements, and adaptive management measures with a defined FERC approval process. To prepare the plans FERC requires the license holder to work with the stakeholders and often specifies the inclusion of resource agencies like WDFW. The licensee usually creates a series of resource technical committees to develop and implement the plans. The resource technical committees cover aquatics resources, terrestrial resources, cultural resources, recreational resources, land use and water quality. WDFW staff under this contract will participate in the resource technical committees that are an integral part of implementing and adaptively managing the measures identified in the FERC license.

FERC retains final approval authority over the resource protection and enhancement plans developed by the resource technical committees, and normally requires the license holder to include evidence of consultation with the resource agencies along with their final plans when they are submitted for FERC approval. The monitoring, adaptive management and reporting functions in each plan form a basis for long term involvement of the resource technical committees with their respective resource protection and enhancement plans. Each license has a unique list of resource protection and enhancement measures that are matched to the specific conditions at that project. WDFW staff participation is anticipated in all of the resource protection and enhancement measures that affect fish and wildlife, or their habitat, in addition to measures that affect the beneficial uses of the water and fish and wildlife oriented recreation.

The following list identifies the generalized steps of WDFW involvement in the process to obtain a hydroelectric project license from FERC:

New License Pre-application Steps

- a. Identify impacts and concerns relating to fish and wildlife and habitat.
- b. Select issues of significance and identify potential mitigation measures. Prioritize issues and measures.
- c. Work with Ecology and other participants to share resource information.

New License Application Process

- a. Participate in resource study development:
 - Review preliminary information
 - Identify information gaps and recommend studies
 - Collaborate on study plan and model development
 - Participate in study implementation
 - Review and comment on study results
- b. Attend license meetings.
- c. Coordinate with other stakeholders to develop comprehensive vision.
- d. Submit formal intervention notice with FERC.
- e. Review and submit written comments on draft application and environmental documents. Coordinate comment development with other resource agencies and stakeholders.
Review final application and identify the mitigation measures proposed by the applicant. Where their measures are sufficient, support them in the 10(j) response (Section 1 of the Federal Power Act).
- f. Prepare a written response to the license application using results of resource studies and other information.
 - Describe impacts and natural resource objectives,
 - Identify potential mitigation measures, including connection to project impact.
 - Develop recommended protection mitigation and enhancement measures in FERC format.
 - Identify 10(j) recommendations.
 - Develop written justification and nexus for recommended measures.
 - Share draft response with other stakeholders.
- g. File preliminary 10(j) recommendations with FERC.
- h. Review and comment on draft Environmental Impact Statement (EIS).
- i. File revisions for 10(j) conditions and participate in resolution process.
- j. Collaborate with Ecology while they are preparing the 401 Certification. Define fish and aquatic habitat issues and recommend measures that will protect beneficial uses, especially fish and aquatic habitat.
- k. Assist Ecology in the defense of the 401 certification conditions.

License Implementation

- a. Provide recommendations where necessary to implement conditions in the section 401 certification.
- b. Assist Ecology in any 401 certification amendments that include fisheries, aquatic or terrestrial habitat, or instream flow requirements.
- c. Consultant on the fish and aquatic workgroups associated with hydropower projects and provide expertise and recommendations to Ecology on state actions such as document approvals, FERC concurrence letters, and fisheries and habitat adaptive management decisions.

CONTRACT DELIVERABLES

QUARTERLY REPORTING

Each quarter WDFW will provide Ecology's Watershed Management Section in the Lacey Headquarters Office with a report providing a summary of WDFW activities conducted by WDFW staff that are funded in part, by fees associated with RCW 16.050 and 090. Each report shall also identify staff project and tasks performed and note if charges were against this IAA.

The report will include activity information for each hydroelectric project on which RCW 16.050 and 090 funded staff members worked during that month. Information should include a description of activities associated with each FERC project in that month, including activities such as:

- Significant meetings attended;
- Participation in relicense committees; and
- License implementation activities including license measures addressed.

ANNUAL REPORTING

To meet state agency reporting requirements in RCW 90.16.050 WDFW will provide the following summary information by August 31 of each year.

- A summary table by project that contains major activities performed for each hydropower project in the preceding fiscal year.
- A report of funds expended on 401 certification development and license implementation activities associated with each hydropower project using the job and task coding structure provided by Ecology.
- An annual program work plan that summarizes the anticipate workload to implement the work identified in Activities section above.

BIENNIAL REPORTING

To meet state agency reporting requirements in RCW 90.16.050 WDFW will provide the following summary information by August 31 following.

- A table of WDFW staff leads for each FERC licensed hydropower project, including projects that are in pre-application status with FERC.
- A report of the estimated total workload, program costs, and staff time associated with both 401 certification and license implementation activities for the current biennium.

ANNUAL COORDINATION MEETINGS

Representatives and key staff of both parties to this agreement will meet annually with interested stakeholders, either in person or by teleconference, and more often if necessary, to review work plans, prioritize work products, and discuss issues that will enhance coordination and collaboration on FERC hydro projects. Preparation to participate in these meetings will include:

- Assistance preparing a summary response to an annual survey related to the professionalism and expertise of department staff assigned to each hydropower project.
- Assistance and review of material necessary to complete biennial reports to the Legislature.

BUDGET

A total of \$259,000 per fiscal year (biennium total is \$518,000) is available from the Washington State Department of Ecology for implementing the intent of SSB5881 during the 2017 – 2019 biennium.

Future budgets and any revision to the statement of work will be negotiated by Ecology and WDFW prior to the start of a new fiscal biennium by amendment of this agreement.

In summary, the budget is comprised of the following components:

Salaries	FY18	FY19	Total
Fish and Wildlife Bios (1.85 FTE)	\$136,422	\$136,422	\$272,844
Water Team (0.05 FTE)	\$4,162	\$4,162	\$8,324
Benefits			
Fish and Wildlife Bios	\$51,075	\$51,075	\$102,150
Water Team	\$1,476	\$1,476	\$2,952
Goods and Services			
Travel	\$896	\$896	\$1,792
	\$1,500	\$1,500	\$3,000
Indirect @ 32.46%			
Indirect subject to change 1 July annually	\$63,469	\$63,469	\$126,938
TOTAL	\$259,000	\$259,000	\$518,000