

DRAFT
Memorandum of Understanding
between the
Confederated Tribes of the Umatilla Indian Reservation
Department of Natural Resources
and
Oregon Water Resources Department
and
Washington State Department of Ecology
related to
The Management of Walla Walla Water 2050 Strategic Plan

I. INTRODUCTION

The State of Washington, represented by the Washington Department of Ecology (Ecology), the Confederated Tribes of the Umatilla Indian Reservation Department of Natural Resources (CTUIR), and the State of Oregon, represented by the Oregon Water Resources Department (OWRD), collectively designated as “the three sovereigns,” agree to share leadership responsibilities to guide and implement the Walla Walla Water 2050 Strategic Plan.¹ This Memorandum of Understanding (MOU) delineates the duties of the parties, how decisions are made, how the MOU may be dissolved, and other terms.

Ecology, CTUIR, OWRD, the Walla Walla Watershed Partnership and other stakeholders in the basin prepared the Walla Walla Water 2050 Strategic Plan (Strategic Plan) for water resource management in the Walla Walla Watershed. The Strategic Plan lays out a 30-year effort to improve stream flows and water supplies in the Walla Walla basin by employing an integrated water resource management approach. The Strategic Plan integrates goals, objectives, and solutions from the basin’s diverse stakeholders in both Washington and Oregon to achieve a holistic and viable long-term plan for water use in the basin. The Strategic Plan provides a broad summary of key accomplishments and ongoing work with a description of current watershed conditions, and desired future conditions to support prioritized short and long terms strategies to improved water supply reliability and stream flows.

II. DESIRED FUTURE OUTCOMES

The three sovereigns share the goal of a future in the Walla Walla basin where the “*land of many waters*” is a healthy, sustainable watershed ecosystem that supports abundant fish

¹ Walla Walla Water 2050 Strategic Plan, June 30, 2021, Ecology Publication No. 21-12-011. [Walla Walla Water 2050 Strategic Plan](#)

species, is prepared for a changing climate, and can meet the demands of a growing population. The three sovereigns shall commit to a long-term effort, and provide leadership within the Walla Walla basin communities through active engagement and funding support² so that the bi-state water resources are managed in a manner that is conjunctive, fair, legal, and consistent between Washington and Oregon.

1. PURPOSE AND SCOPE

The three sovereigns agree that there is a need and value to cooperatively manage the implementation of the Strategic Plan. The purpose of this MOU is to establish a framework from which Ecology, CTUIR, and OWRD shall support a bi-state organizational structure for stakeholder engagement and implementation of the Strategic Plan, and to encourage coordination and collaboration for water management in the Walla Walla basin.

This MOU is entered into by CTUIR, OWRD, and Ecology for the purposes stated below.

- A. Duties and responsibilities. Each of the three sovereigns have their own specific responsibilities, regulations and laws to administer and abide by. The three sovereigns intend to act consistent with those responsibilities, regulations, and laws in such a manner to advance the goals and objectives of the Strategic Plan, and to promote integrated water resource management that will achieve the desired future conditions. The three sovereigns commit to provide the necessary leadership, technical advice, and legal analysis, to help solve the long term and complex challenges in a manner that retains trust with water users in the basin.
- B. Advisory committee. The advisory committee is an existing group of stakeholders representing diverse interests in the community. The advisory committee's purpose is to provide advice and guidance to the three sovereigns on future development and implementation of the Strategic Plan.
- C. Bi-state governance structure. The three sovereigns are committed to a bi-state water resource management structure that represents the diverse interests of the community. To that end, the three sovereigns intend to solicit advice and guidance from the advisory committee in implementing the Strategic Plan.
- D. Water resource management and development. The three sovereigns agree to use best available science to guide and inform water resource management in the basin. The three sovereigns recognize that the USGS Groundwater Study and the Bi-State Flow Study will provide important technical information to guide and inform implementation of the Strategic Plan and water resource management in the basin.

² Washington Department of Ecology and Oregon Water Resources funding support is conditional on future legislature appropriations.

The three sovereigns agree that a primary objective of the Strategic Plan is to align the management of water resources in this bi-state basin in a manner that provides fair and equitable management and regulation consistent with the law. The three sovereigns further agree that fair and equitable water resource management is a primary consideration in large-scale public investment in water supply infrastructure.

- E. Coordination. Coordination amongst the three sovereigns is a primary responsibility of each sovereign. Each sovereign is further responsible for coordination within their respective organizations, with other state agencies, and with state and tribal decision-making chain of command. The three sovereigns shall provide regular check-in and reporting of such coordination to the three sovereign executive team as identified in the Point of Contact, 3(F) of this MOU. The three sovereign executive team shall meet quarterly, with additional meetings as needed dependent upon the issues and need for additional coordination.
- F. Funding and resources. Each sovereign shall bear the financial costs associated with their respective staff and management to support and advance the Strategic Plan. To the degree that is possible and appropriate, the three sovereigns will support each other's Strategic Plan funding requests. The three sovereigns also recognize that additional financial resources from local, federal, and private parties shall be necessary to fulfill the desired future conditions as envisioned in the Strategic Plan, and agree to work collaboratively to obtain such funding and resources.
- G. Legislation. As necessary, the three sovereigns are committed to supporting the development of the necessary authorizing environment to achieve agreed upon goals and outcomes. This may include development of an interstate administrative agreement or compact, specific state and federal legislation, or other actions. All parties are also committed to support and seek funding to implement the stated goals and objectives of the Strategic Plan.
- H. Programmatic environmental impact statement for the Strategic Plan. Ecology shall be the lead agency responsible for complying with the duties of lead agency under Washington Administrative Code (WAC) Chapter 197-11 through its Office of Columbia River. CTUIR and OWRD will commit to assist Ecology, where possible, with carrying out its lead agency responsibilities. The three sovereigns, either jointly or independently, may determine that consultant(s) are needed to assist in completing the required State Environmental Policy Act (SEPA) analysis and documentation for the Strategic Plan. Comments on all SEPA document(s) shall be received and recorded by Ecology or its consultant(s), including oral transcripts, written and electronic comments received throughout the SEPA process. The sovereigns further agree that prior to initiation of an Environmental Impact Statement (EIS), thorough

scoping, prioritization, and stakeholder engagement is necessary. Ecology will bear the cost of its own staff and consultants for the preparation of the draft EIS and subject matter reports. Each of the three sovereigns shall be responsible for the cost of their own review and comment on any SEPA documents regarding the Programmatic EIS for the Strategic Plan.

- I. Adaptive management and performance review. The three sovereigns recognize that for the Strategic Plan to be successful over a 30-year period it must be adaptive in nature. The three sovereigns and advisory committee will periodically review the Strategic Plan to assess whether the plan is on track to achieve the objectives and desired future conditions. Adaptive management and performance review shall be built into the strategic planning effort through a 5-year review cycle. Additionally, the three sovereigns also recognize it may become apparent that alternative solutions or projects should be included into the Strategic Plan. The three sovereigns shall develop a process to assess and decide on whether to modify the current list of projects or priorities.
- J. Federal partner. The three sovereigns recognize that it may be necessary to have a Federal Partner, such as the Department of Interior's Bureau of Reclamation, to assist in performing feasibility studies, environmental review, permitting and as a cost share partner in the development and implementation of water supply projects as envisioned in the Strategic Plan. Once the appropriate Federal Partner is identified, the three sovereigns will invite the Federal Partner to join as a fourth sovereign. The MOU may be modified to include the identified Federal Partner at that time.
- K. Education and outreach. The three sovereigns are committed to providing education, outreach programs, and materials to support and promote the Strategic Plan. A specific Education and Outreach workgroup shall be formed by the bi-state organizational structure in coordination with the three sovereigns to develop methods and strategies to advance the Strategic Plan and its goals and objectives.

2. DECISION MAKING

- A. The three sovereigns agree to make decisions by consensus in further development and implementation of the Strategic Plan regarding scope, content, and timing of all Strategic Plan elements.
- B. If the three sovereigns cannot reach a consensus on approval of a document, action, or recommendation associated with this MOU, then the three sovereigns may agree to resolve the issue without consensus, provided that such resolution maintains the

overall purposes and objectives of the MOU. If the dispute cannot be satisfactorily resolved, a sovereign may withdraw from the MOU per section 3.B.

- C. If at any time the MOU is terminated, Ecology will acquire full responsibility for implementing the Strategic Plan and shall continue to meaningfully coordinate and collaborate with the other sovereigns in completion of the Strategic Plan.
- D. The three sovereigns shall support one another and may participate in any third party litigation challenging implementation of the Strategic Plan or development of the Programmatic EIS.

3. OTHER PROVISIONS

- A. Nothing herein is intended to quantify, diminish, or define the Confederated Tribe of the Umatilla Indian Reservation, State of Oregon, or State of Washington's water resources or rights, or legal authority.
- B. This MOU shall be terminated by any of the three sovereigns for any reason upon (30) days written notice to the other sovereigns.

However, the three sovereigns agree that termination of this MOU shall not lead to the automatic cessation of cooperative efforts begun under this MOU. In the event of termination, each sovereign, in its sole discretion, will decide whether to continue or cease cooperative efforts begun under this MOU.

- C. Immunity and defenses retained. Each sovereign retains all immunities and defenses provided by law with respect to any action based on, or occurring as a result of, this MOU and the cooperative work relating to development and implementation of the Strategic Plan.
- D. Legal liabilities and other liability. Nothing in this MOU shall require any of the three sovereigns to assume any legal liabilities or other liabilities on behalf of any other sovereign. This MOU does not obligate any expenditure of funds by any sovereign.
- E. No third-party rights. This MOU shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person or entity not a Part to this MOU.
- F. Entirety of the MOU. This MOU, consisting of six pages, represents the entire understanding among the sovereigns and supersedes all prior negotiations, representations, and agreements, whether written or oral.

- G. Points of Contact. The three sovereign executive points of contact are:
- a. Ecology's Director of Office of Columbia River or Water Resources Program Manager
 - b. CTUIR's Natural Resources Director
 - c. OWRD's Director
- H. Approval. This MOU becomes effective on the date of the last signature and will remain in effect unless modified or terminated as provided herein.
- I. Counterparts. This instrument may be executed in counterpart each of which is deemed to be an executed original even if all signatures do not appear on the same counterpart. Facsimile and photocopies of this instrument will have the same force and effect as the original.
- J. Modifications. Modifications within the scope of the MOU shall be made by mutual consent of the three sovereigns, by issuance of a written modification, signed and dated by all three sovereigns, prior to any changes being performed.

The three sovereigns and signatories to this MOU, through their duly authorized representatives, have executed this MOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

Laura Watson
Director
Washington State Department of Ecology

Thomas M. Byler
Director
Oregon Water Resources Department

Eric Quaempts
Director

Department of Natural Resources
Confederated Tribe of the Umatilla Indian Reservation

DRAFT