Background to the
Grand River Notification Agreement

October 3, 1998

Summary

The Grand River Notification Agreement was originally signed in October 1996 by the First Nations and municipal governments around the lower Grand River in southern Ontario, together with the federal and provincial governments, and the Grand River Conservation Authority. It was renewed in October 1998. The parties agree to inform each other, according to a specified procedure, of actions that may affect the environment (land, water or air) within the "Notification Area". The Agreement is not legally binding. It relies on compliance advancing the interests of the parties to the Agreement.

The Agreement provides a model for improved communication and information exchange, providing a basis for a better relationship between municipal agencies and First Nations.

Context

The Grand River is one of the principal rivers of southern Ontario, flowing approximately 150 kilometers, into the eastern end of Lake Erie. Several cities and towns have been developed within the Grand River's 7,000-square-kilometer watershed including Kitchener, Waterloo, Guelph, Cambridge and Brantford, with a rapidly growing population of nearly 800,000.

Following the 1783 Treaty of Paris that ended the American War of Independence, some of the people of the Six Nations Iroquois Confederacy (Cayuga, Oneida, Mohawk, Onondaga, Seneca and Tuscarora), as allies of the Crown, relocated from their homeland in the Finger Lakes region of New York State, to settle within the "Haldimand Grant", an extensive tract of land on either side of the Grand River, within their traditional beaver hunting grounds. As time went on, portions of the original lands were surrendered to the Crown or otherwise alienated, and by the mid-19th century a much smaller Six Nations Reserve of 182 square kilometers remained within the original Grant on the south bank of the Grand River, south-east of Brantford. In 1996, the territory of the Six Nations of the Grand River had a population of some 9000 with a total population in excess of 18,000.

In 1847, the Mississaugas, who had settled near the mouth of the Credit River west of present-day Toronto, were under growing pressure from the spread of non-aboriginal settlement. They accepted an offer of land from the Six Nations and moved to the southeastern part of the Six Nations reserve. The 24-square-kilometer reserve of the Mississaugas of the New Credit First Nation, usually
known simply as New Credit, had a resident population of approximately 650 in 1986.

Background

The Grand River Notification Agreement was developed as a result of three common concerns shared by the First Nations and the municipalities along the Grand River: First Nation land claims, shared concern for environmental sustainability, and a recognized need for improved information sharing.

- Land Claims

The Six Nations of the Grand River have disputed the sale and surrender of much of the land formally known as the Haldimand Tract, and have initiated informal and formal land claims on much of the territory. By 1994, twenty-four claims had been registered, based mainly on alleged failure to receive proper compensation for the lands surrendered to the Crown or otherwise alienated.

The Six Nations were concerned about activities within municipal boundaries affecting lands subject to a claim or whose status remained legally undetermined. Since these were unresolved claims, the Six Nations did not have a formal status with respect to these lands and were not in a position to comment on or approve activities on lands in which they claimed an interest.

From a municipal perspective, uncertainty arising from the unsettled claims, and protests and demonstrations by members of the Six Nations, were seen as impeding economic development and hampering municipal public works construction. (One such issue arose over the City of Brantford’s plan to build a sewer line across the Grand River, which conflicted with the Six Nations’ claim to ownership of islands in the Grand River, and the riverbed.) On an interim basis, a number of specific issues involving the construction of various public works and utilities were resolved by implementing Interim Use Arrangements between the Six Nations and the municipalities or other parties involved.

- Environmental Concerns

The municipalities and Six Nations also shared concern for environmental sustainability, especially with respect to actions affecting water quality in the Grand River, including the impact of activities further upstream.

- Need for Improved Information Sharing

In general, a lack of communication prevailed, so that municipalities did not inform First Nations of their activities, and vice versa. Moreover, neither party clearly understood the legal framework and constraints within which the other functioned.

Mindful that in the recent past similar disputes led to violence elsewhere in Canada, towards the end of 1993 DIAND’s District Director (Southern District, Ontario Region) initiated the creation of a Brantford Area Intergovernmental Liaison Committee. This committee eventually included representatives of the Six Nations and New Credit First Nations, the heads of the lower Grand River Valley municipal councils, the local members of the federal and provincial legislatures, together with officials of DIAND, the Ministry of Natural Resources, the Ministry of Municipal Affairs, the Ontario Native Affairs Secretariat, and the Grand River Conservation Authority (GRCA). The Senior Counsel of the Indian Commission of Ontario (ICO) chaired the meetings.

The Liaison Committee was not a negotiating body and had no mandate to address land claims. The committee’s purpose was solely to “get the issues out
on the table" and provide a forum for "without prejudice" discussion among all the interested parties. Within a few meetings, the committee concluded that a system of information exchange involving all parties would help to forestall disputes relating to land use and environmental quality.

The Liaison Committee established a negotiating working group with representatives from each of the parties. The mandate of the negotiating group was to develop a protocol which would promote better communication and notification of planned development among the parties. With ready consensus on the principle of information exchange, the negotiating group produced the Grand River Notification Agreement which was signed by all the parties in October 1996.

The successful implementation of the Agreement prompted its renewal in October 1998. Notable changes in the renewal Agreement are the extension to a term of five years, and, the addition of provisions that will make it easier for other communities to become a party to the Agreement.

Parties to the Agreement

The signatories to the Notification Agreement are: Canada, represented by the Minister of Indian Affairs; Ontario, represented by the Minister Responsible for Native Affairs; the Six Nations of the Grand River; the Mississaugas of the New Credit; the County of Brant; the Regional Municipality of Haldimand-Norfolk; the City of Brantford; the Towns of Dunnville, Haldimand and Paris; the Townships of Brantford, Onondaga and South Dumfries (now under the County of Brant); and the Grand River Conservation Authority.

Nature of the Agreement

In essence the signatories agree that for a five-year period (which can be extended), they will notify each other about any contemplated action that might have a significant effect on the physical environment. The Agreement is specific about the nature of such actions.

The Agreement also specifies that the means of notification is to be written notice to a specified representative of each signatory, and contains special provisions for notification in emergency situations. It provides for meetings of the parties twice annually to review the Agreement. The Agreement also provides for parties to withdraw from the Agreement and sets out provisions for the admission of new parties.

The Grand River Notification Agreement is not, however, legally binding. It is assumed that the parties will observe it because compliance serves their interests.

Reaching the Agreement

The negotiations had to reconcile two quite different legal frameworks and administrative systems governing the First Nations and the federal government on the one hand, and the municipalities and the provincial government on the other. The parties operating within one system were unfamiliar with the other system. The negotiators had to recognize the legal rights, interests and responsibilities of all the parties. The Agreement demonstrates that First Nations and municipalities can work together, going beyond narrow legal and jurisdictional constraints to achieve common goals.

1. Established jointly by the federal and provincial governments and the Chiefs of Ontario in 1978 to provide a forum for the discussion and negotiation of issues relating to aboriginal self-government in Ontario, and other issues of mutual concern to government and First Nations.
Email:

Paul Sullivan, Intergovernmental Relations, Ontario Region, INAC.

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Grand River Notification Agreement Renewal


Recitals

Whereas the parties to this Agreement (the "Parties") all have authority to make decisions and to enact and administer laws, regulations or by-laws that affect economic development, land use and the environment in the vicinity of the Grand River watershed;

And whereas the First Nations and the Municipalities are subject to different planning and environmental laws, which has created challenges for them in relation to information-sharing and consultation about land use decisions;

And whereas the GRCA’s structure includes representatives from the Municipalities but not from the First Nations, thereby limiting the participation of the First Nations in statutory decision-making by that authority;

And whereas all Parties acknowledge that there are outstanding land issues in the Notification Area which are being addressed in other forums, and the Parties wish to work cooperatively to encourage sustainable development on the lands subject to this Agreement;

And whereas the Parties have agreed to establish a notification protocol to facilitate the sharing of information and consultation among them on economic development, land use and environmental matters;

And whereas this Agreement is intended to be without prejudice to any Party’s legal rights or obligations;

Now therefore the Parties agree as follows:
Definitions

1. For the purposes of this Agreement only:

(a) "Affected Municipality" means the Municipality whose boundaries include, or are closest to, the lands that are the subject of a Notification under this Agreement; and for greater certainty, in the case of a Notification under Section 2(b)(i), includes each Municipality whose boundaries abut a First Nation's Territory;

"Emergency" means a situation caused by the forces of nature, an accident, an intentional act or otherwise that constitutes a danger of major proportions to life or property;

"Federal Body" means a department, agency, board or commission under federal jurisdiction with responsibilities over the subject area, as set out in Schedule "B";

"First Nations" means Six Nations and New Credit;

"Municipality" means a county, regional municipality, city, town, village or township that is a party to this Agreement;

"Notification" means written notice given by a Party to another Party pursuant to Section 2 of this Agreement;

"Notification Area" means the geographic area identified on the map attached as Schedule "A" to this Agreement; and

"Territory" in relation to Six Nations or New Credit, refers to the reserves set apart for the use of Six Nations' members (commonly known as Indian Reserves 40 and 40B) and the reserve set apart for the use of the Mississaugas of New Credit (commonly known as Indian Reserve 40A).

(b) The words "Section" and "Schedule" refer to the applicable section or schedule of this Agreement.

(c) References to statutes shall be deemed to refer to such statutes and any regulations thereunder, as amended from time to time.

Activities For Which Notification Will Be Given

2. (a) Subject to Section 3(a), a Municipality will give Notification to the First Nations in accordance with this Agreement in the following circumstances:

(i) if it is considering adoption of an official plan or an amendment to an official plan within the meaning of the Planning Act (Ontario);

(ii) if it is considering passage of a new zoning bylaw within the meaning of the Planning Act (Ontario) or an amendment to an existing zoning bylaw;

(iii) if it is considering approval of a plan of subdivision, a condominium plan, or a consent to severance within the meaning of the Planning Act (Ontario) in relation to lands within the Notification Area;

(iv) if it is required to give a notice under the Environmental Assessment Act (Ontario) in relation to lands within the Notification Area;

(v) if it is required to give notice to, or seek permission from, a conservation authority in relation to an issue within the jurisdiction of the authority as set out in the Conservation Authorities Act (Ontario);
(vi) if it has acquired or disposed of a fee simple interest, or leasehold interest with a term of twenty one years or more, in land within the Notification Area after this Agreement comes into effect;

(vii) if it is proposing to declare lands surplus within the Notification Area (provided that such a declaration is required by law); or

(viii) if it is proposing to permanently close a road within the Notification Area.

(b) Subject to Section 3(a), Six Nations or New Credit, as the case may be, will give Notification in accordance with this Agreement to Affected Municipalities, Ontario and the GRCA in the following circumstances:

(i) if council is considering or recommending the adoption of a new or amended land use plan for its Territory;

(ii) if council is considering or recommending a change in permitted land use or zoning for a portion of its Territory;

(iii) if council has acquired or disposed of a fee simple interest or a leasehold interest with a term of twenty one years or more in land within the Notification Area after this Agreement comes into effect, except in the case of leases of land within the First Nation's reserve to band members for residential use;

(iv) if land within the Notification Area has been acquired in trust for the First Nation after this Agreement comes into effect;

(v) if council is considering approval of the opening, alteration or closing of a waste disposal site, sewage treatment plant, recycling facility or waste management facility on its Territory;

(vi) if council is considering approval of the construction or alteration of a septic bed or sewer system within the floodplain of the Grand River;

(vii) if council is considering approval of an activity which would change a watercourse or change water drainage within its Territory; or

(viii) if council is considering or recommending any of the following with respect to land held in trust for the First Nation: a change in land use, the opening, alteration or closing of a waste disposal site, sewage treatment plant, recycling facility or waste management facility; or any activity which would change a water course or water drainage.

(c) Subject to Section 3(a), the responsible Federal Body will give Notification in accordance with this Agreement to Affected Municipalities, the First Nations and to the GRCA in the following circumstances:

(i) if the Federal Body is considering approval of a proposed activity within the Notification Area for which notice to the public is being given under Canadian Environmental Assessment Act; or

(ii) if the Federal Body is considering approval of a major change in the use or management of any federal Crown lands or waters within the Notification Area; or

(iii) if the Federal Body acquires or is proposing to sell, lease for twenty one years or more, grant an easement over, or transfer administration and control to Ontario of land within the Notification Area.

(d) In addition to the notice provided by Ontario in the Environmental Bill of Rights registry, Ontario will give Notification in accordance with this Agreement
to Affected Municipalities, the First Nations and to the GRCA in the circumstances described in Schedule C.

(e) Subject to Section 3(a), the GRCA will give Notification to the First Nations in accordance with this Agreement of any applications it receives under section 28 of the Conservation Authorities Act which relate to the Notification Area.

(f) When a Party considers that an Emergency has developed within the Notification Area, that Party will give Notification in accordance with this Agreement to the First Nations, Ontario, Canada and any Municipality the Emergency impacts.

Contents And Timing Of Notification

3. (a) Where a statute or regulation requires that notice be given to a Party regarding an activity referred to in this Agreement, no Notification will be required to be given under this Agreement to that Party.

(b) Where a statute or regulation requires that notice be given for an activity referred to in this Agreement, but does not require that notice be given to a Party that would be entitled to Notification under this Agreement, Notification to the Party will be given within the time limit and in the manner set out by statute or regulation.

(c) Where no notice of an activity referred to in this Agreement is required by statute or regulation, Notification under this Agreement will be given in the following manner: the notice will: (i) state clearly that it is being given pursuant to this Agreement, (ii) where applicable, indicate the time limit within which any response should be provided and (iii) indicate the name and address of a contact person to whom inquiries or responses should be directed; and:

(i) if a Party is giving Notification of an Emergency under Section 2(f), it will do so as soon as reasonably possible. The Notification will describe the nature of the Emergency and, if possible and appropriate, any subsequent activities that may be required to remedy the situation which gave rise to the Emergency;

(ii) if a Party is giving Notification of a completed purchase or sale under Section 2(a)(vi), 2(b)(iii), 2(c)(iii) or Schedule C, the Notification will consist of a copy of the relevant land registry document and will be given promptly after completion of the purchase transaction;

(iii) if a Party is giving Notification of a proposal to declare lands surplus under Section 2(a)(vii) or a proposal to sell lands under Section (c)(iii) or Schedule C, the Notification will describe the location of the lands; and

(iv) in all other cases, Notification will be given as soon as reasonably possible and will include sufficient information to facilitate meaningful discussion with the Party providing the Notification.

(d) Where a statute or regulation requires that notice of an activity referred to in this Agreement be given by newspaper or other publication, and where Notification is required under this Agreement, the Party giving Notification will do so by delivering a copy of the advertisement promptly by ordinary mail.

How Notification will be Given

4. (a) All notices and Notifications required under this Agreement will be given in writing by ordinary mail or facsimile to:

Canada, at: Intergovernmental Affairs, Indian and Northern Affairs Canada P.O. Box 1980, Brantford, Ontario N3T 5W5 Telephone: 519-751-2060 Facsimile:
519-751-2666

GRCA, at: Chief Administrative Officer, P.O Box 729, 400 Clyde Road
Cambridge, Ontario N1R 5W6 Telephone: 519-621-2761 Facsimile: 519-621-4844

New Credit, at: Executive Director, R: R. #6, Hagersville, Ontario N0A 1H0
Telephone: 905-768-1133 Facsimile: 905-768-1225

Ontario, at: The Secretary Ontario Native Affairs Secretariat, 720 Bay Street, 4th

Six Nations, at: The Manager, Eco-Centre, P.O. Box 5000, Ohsweken,

Town of Dunnville, at: The Clerk, P.O Box 187, Dunnville, Ontario N1A 2X5
Telephone: 905-774-7595 Facsimile: 905-774-4294

City of Brantford, at: The Clerk, 100 Wellington Street, Brantford, Ontario N3T
2M3 Telephone: 519-759-4150 Facsimile: 519-759-7840

Regional Municipality The Clerk of Haldimand-Norfolk, at: 70 Town Centre Drive
Townsend, Ontario N0A 1S0 Telephone: 519-587-4911 Facsimile: 519-587-5554

Town of Haldimand, at: The Clerk, 45 Munsee Street North, P.O. Box 400,
Cayuga, Ontario N0A 1E0 Telephone: 905-772-3324 Facsimile: 905-772-3542

Township of Onondaga, at: The Clerk Municipal Office, 734 Highway #54, R.R.
#7, Brantford, Ontario N3T 5L9 Telephone: 519-758-1143 Facsimile: 519-758-1619

County of Brant, at: The Clerk, 1249 Colborne Street West Highway 53, Mt.
Vernon, P.O. Box 160, Burford, Ontario N0E 1A0 Telephone: 519-449-2451
Facsimile: 519-449-2454

Town of Paris, at: The Clerk, 66 Grand River Street North, Paris, Ontario N3L
2M2 Telephone: 519-442-6324 Facsimile: 519-442-3461

Township of Brantford, at: The Clerk Municipal Office, 80 Chatham Street,
Brantford, Ontario N3T 5T6 Telephone: 519-756-7470 Facsimile: 519-756-0662

Township of South The Clerk Dumfries, at: Township Office 13 Main Street
South St. George, Ontario N0E 1N0 Telephone: 519-448-1432 Facsimile: 519-
448-3105

(b) Each Party will designate in writing to the other Parties a change in address.

c) Notices by ordinary mail will be deemed to have been given on the fifth
business day after mailing.

Term Of This Agreement And Early Termination

5. (a) This Agreement will take effect on the date of this Agreement and will
remain in effect for 5 years unless it is terminated earlier in accordance with this
Section.

(b) This Agreement may be terminated at any time by the written
agreement Parties.
(c) Any Party may terminate its participation in this Agreement at any time after giving thirty days' notice by registered mail to the other Parties of its intention to do so. Unless the remaining Parties agree otherwise in writing this Agreement will remain in effect as among the remaining Parties.

Admission Of New Parties

6. (a) Other municipalities or conservation authorities may become party to this Agreement by giving notice by registered mail to all Parties of their intention to do so. The notice shall indicate a date at least thirty days thereafter at which it proposes to become a party to this Agreement. After such date, if the Party is a municipality it will be deemed to be a Municipality under this Agreement. If it is a conservation authority, after such date it will be deemed to be subject to the same obligations as the GROA under this Agreement.

(b) Where a municipality gives notice pursuant to Section 6(a), the notice shall state: i) the extent of its geographical jurisdiction which it intends to make subject to this Agreement; ii) which subclauses of Section 2(a) are to apply to the municipality, provided that any such notice shall at least require subclauses (iv) and (v) to apply, and iii) under which sections of this Agreement it wishes to receive Notification from the existing Parties.

(c) When a municipality becomes a Party: i) the Notification Area shall be amended to include the geographical area described in subclause 6(b) i); ii) the obligations of the municipality in relation to the other Parties shall be restricted to the matters identified by the municipality pursuant to subclause 6(b) ii); and iii) the obligations of the other Parties in relation to the municipality shall be restricted to the matters identified by the municipality pursuant to subclause 6(b) ii).

(d) Any successor to a Party to this Agreement will continue to be a Party to this Agreement unless it terminates its participation in accordance with Section 5(c).

Review Of This Agreement

7. (a) The Parties will meet in June and December of each year during the term of this Agreement to share their views and concerns regarding the implementation of this Agreement. During those meetings the Parties will discuss and review the effectiveness of this Agreement in improving dialogue and understanding among them in relation to the subject matter of this Agreement.

(b) Additional meetings of the Parties to discuss concerns regarding the implementation of this Agreement will be convened at the request of any two Parties.

(c) Unless the Parties agree otherwise, the meetings referred to in this Section will be convened and facilitated by the Indian Commission of Ontario.

(d) The Parties may invite such additional participants to the review meetings as they consider necessary or advisable from time to time to aid in their consideration of the matters to be discussed.

Amendment Of This Agreement

8. Except as provided in Section 5(c), this Agreement may be amended only through written agreement of all the Parties.

No Legal Effect

9. (a) This Agreement is not legally binding on any of the Parties, nor will it affect the legal rights or obligations of the Parties or any other persons, nor will it affect
the validity of any act of any of the Parties, nor will it affect the legal position of any of the Parties, or be admissible in evidence in any current or future legal proceeding.

(b) Without limiting the generality of Section 9 (a): (i) nothing in this Agreement will be construed to affect, derogate from or abrogate the aboriginal, treaty, constitutional or other rights of Six Nations or New Credit or their members; and, (ii) nothing in this Agreement will be construed to affect, derogate from or abrogate the treaty, constitutional or other rights of any Party or any other person.

(c) Nothing in this Agreement will be construed to affect in any way the application of any laws, statutory or otherwise.

In witness whereof this Agreement has been signed by: On behalf of Six Nations of the Grand River by Chief Wellington Staats, On behalf of Mississaugas of the New Credit by Chief Carolyn King, On behalf of the Corporation of the City of Brantford by Mayor Chris Friel, On behalf of the Corporation of the Township of Brantford by Reeve Stephen Comisky, On behalf of the Corporation of the County of Brant by Warden John McCorkindale, On behalf of the Corporation of the Town of Dunnville by Mayor Lorraine Bergstrand, On behalf of the Corporation of the Town of Haldimand by Mayor Marie Trainer, On behalf of Her Majesty the Queen In Right of Canada by Minister Jane Stewart Indian & Northern Affairs Canada, On behalf of the Regional Municipality of Haldimand-Norfolk by Regional Chair John Harrison, On behalf of the Corporation of the Township of Ondodaga by Reeve Mabel Dougherty, On behalf of Her Majesty the Queen In Right of Ontario by Hon. Charles A. Harnick Attorney General and Minister Responsible for Native Affairs, On behalf of the Corporation of the Township of South Dumfries by Reeve Ron Eddy, On behalf of the Grand River Conservation Authority by Chairman Peter Krause, On behalf of the Corporation of the Town of Paris by Mayor Jack Bawcutt

Email:

Paul Sullivan, Intergovernmental Relations, Ontario Region, INAC.

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AGREEMENT

THIS AGREEMENT dated as of the 15th day of OCTOBER, 2002.

BETWEEN:

CAPITAL REGIONAL DISTRICT
("CRD")

AND:

THE T'SOU-KE NATION
("T'SOU-KE")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the Department of Fisheries and Oceans Canada
("DFO")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA
as represented by the Minister of Water, Land and Air Protection
("W LAP")

WHEREAS:

A. T'Sou-ke asserts a special interest in the Sooke River, the management of its watershed, the maintenance of its fish populations and the maintenance of the ecosystem of the Sooke River Watershed;

B. T'Sou-ke asserts both aboriginal rights and rights pursuant to the Douglas Treaties in the waters of the Sooke River, in the Sooke Watershed generally and in the fisheries therein;

C. The Sooke Reservoir and associated facilities, including Deception Reservoir and the proposed Leech River Diversions are an important component of water supply infrastructure of the CRD;

D. These same facilities have had an effect on the flow of water in the Sooke River with some consequent effects on fish populations and habitat in the Sooke River;

E. The Parties have evaluated the impact of the expansion of the Sooke Reservoir on the habitat of indigenous fish in the Sooke Reservoir and its tributaries and in the Sooke River downstream of the Sooke Dam and have agreed on a schedule of water releases, as set out herein, for the management of water releases to the Sooke River;
F. The Parties acknowledge that funds will be applied for from the Federal Provincial Infrastructure Program (Green Municipal Fund) and other sources by the CRD working in association with the T'Sou-ke Nation for the development of the Water Management Plan and associated infrastructure;

G. The Parties acknowledge that this Agreement reflects the measures being taken by the CRD to comply with existing federal and provincial legislation and to address the concerns of T'Sou-ke;

H. The Parties have each agreed, subject to meeting the requirements of existing federal and provincial legislation, that steps should be taken to maintain water flows for the conservation and restoration of fish populations and habitat in and around the Sooke River subject to essential public health and drinking water requirements;

I. The Parties have agreed that the effect on the Sooke River of the Sooke Dam, storage/release at Sooke and Deception Reservoir, and the future diversion of the Leech River must be carefully assessed and monitored;

THE PARTIES HEREBY AGREE AS FOLLOWS:

T'SOU-KE FUNDING

1. In order to facilitate T'Sou-ke's capacity to meaningfully participate in the carrying out of the various negotiations, discussions and planning processes described in this Agreement:

   (a) The CRD will pay T'Sou-ke $40,000 per year (for the purpose of paying for technical, legal and other advice related to carrying out these actions and to assist in flow monitoring) for each year this Agreement is in effect including the 12 month period commencing October 1, 2002 and the 12 month period following the effective date of early termination of this Agreement, but not for any period of time after September 30, 2007;

   (b) The CRD will pay T'Sou-ke $50,000 for past technical and legal services incurred in respect of the proposal of the CRD to raise the Sooke Reservoir;

   (c) The CRD will support T'Sou-ke in applications to third parties for any additional funding required for the services noted in (a); and

   (d) The CRD will continue to provide T'Sou-ke, without charge, copies of any technical reports, plans and other materials in the CRD's possession which may be necessary for carrying out such actions.

HERITAGE CONSERVATION ACT

2. T'Sou-ke acknowledges that the CRD has retained a qualified heritage consultant, Morley Eldridge of Millennia Research Limited, and approved by T'Sou-ke who has conducted and completed a heritage inspection and if recommended by Millennia Research Limited, to conduct a heritage investigation of all areas to be inundated by the
raising of the Sooke Reservoir or affected by construction operations in relation thereto (including, without limitation, construction roads, marshalling or storage areas or equipment yards) or in relation to the diversion of water from the Leech River. The CRD will bear all costs of such inspections and investigations (including the costs associated with obtaining permits under the *Heritage Conservation Act* and shall deliver a copy of the report arising from this investigation to T'Sou-ke. In the event the *Heritage Conservation Act* is repealed, the heritage inspection and investigation described herein shall be carried out in accordance with the standards that would be expected if such repeal had not occurred.

3. The CRD agrees that it will not apply for a Site Alteration Permit pursuant to the *Heritage Conservation Act* (or any successor legislation) in respect of any heritage resources identified by the inspection and investigation described in section 2 without the consent of T'Sou-ke as to the mitigative measures to be implemented in regard to such heritage resources, such consent not to be unreasonably withheld. In the event that the *Heritage Conservation Act* is repealed, the work in question shall not be carried out until the CRD and T'Sou-ke have agreed upon the mitigative measures to be implemented.

**SHORT TERM RELEASES**

4. (1) Until agreed otherwise by the Parties, the CRD will release water from the Sooke Reservoir into the Sooke River for fish flows in accordance with the following monthly criteria:

   (i) subject to (iii), when total reservoir volume is greater than 95 million cubic metres, the release shall be 0.07m³/s + 0.14% of previous month’s total inflow, released uniformly over the month;

   (ii) subject to (iii) when the total reservoir volume is less than or equal to 95 million cubic metres and greater than or equal to 88 million cubic metres, then release shall be 0.04m³/s + 0.14% of the previous month’s total inflow, released uniformly over the month;

   (iii) when the total reservoir volume is less than 88 million cubic metres or when the CRD has imposed stage 3 or 4 water restrictions (as defined at the signing of this agreement) or when the cumulative inflow in Sooke Reservoir from October 1st to April 1st is less than 40 million cubic metres, the release shall be 0.03m³/s.

   (2) Unless otherwise agreed by the parties, and subject to the natural availability of water at Deception Reservoir, the CRD agrees to provide 4.1 million cubic metres of storage at Deception Reservoir for water to be released into the Sooke River for fish flows in accordance with a schedule of flows to be provided by T'Sou-ke and MWLAP.

**CRD COMMITMENTS**

5. The CRD makes the following commitments, subject to the appropriate regulatory approvals:
(1) **Sooke reservoir**

The CRD will:

(a) raise the Sooke Dam by six (6) metres in compliance with Federal and Provincial Environmental Assessment requirements by March 31, 2003, unless prevented from doing so by an authority having jurisdiction or by reason of force majeure;

(b) operate and maintain the facilities being used to manage flows on the Sooke River; and

(c) explore the feasibility of releasing additional winter flows while maintaining the 96% reliability criteria.

(2) **Deception Reservoir**

The CRD will:

(a) construct a spillway on Deception Reservoir by March 31, 2003; and

(b) operate and maintain the facilities used to release water from Deception Reservoir to Deception Creek in accordance with this Agreement.

(3) **Leech River**

The CRD will:

(a) undertake water quality research on the Leech River to determine the water quality impact of diverting the Leech River to the Sooke Reservoir;

(b) complete the Leech River Diversion to Deception and Sooke Reservoirs based on the reliability criteria adopted by the Regional Water Supply Commission, i.e. 96%, but not sooner than the year 2010 and no later than 2015; and

(c) explore the potential for activating the Leech Tunnel sooner for winter flows only to Deception Reservoir.

(4) **Watering Restrictions:**

The CRD will introduce watering restrictions as necessary to maintain conservation flows in accordance with this Agreement recognizing that water supply to the CRD for essential public health and drinking water requirements must be assured at all times.

(5) **Funding**

The CRD, in cooperation with T'Sou-ke, will apply for funding under the Green
Municipal Funds Program.

(6) Licence Application

The CRD will apply for all the necessary licences under the Water Act.

T'SOU-KE COMMITMENTS

6. (1) T'Sou-ke agrees not to take any legal proceedings to enjoin or stop the raising of the Sooke Reservoir in accordance with section 5(1)(a), provided that such work is carried out in accordance with this Agreement.

(2) T'Sou-ke agrees that as long as this Agreement is in effect and the water releases into the Sooke River are maintained in accordance with section 4 it shall not commence any proceeding in respect of the then current releases.

WATER LEVEL MONITORING

7. Water level and any other monitoring will be carried out in accordance with the Fisheries and Oceans authorization, and any provincial regulatory requirements.

8. (1) The results of the monitoring regime described in section 7 shall be reported to all parties in written form annually. The data collected by the monitoring regime shall be made available to the parties or their advisors upon request.

(2) T'Souke's involvement in monitoring activities is at their discretion and in accordance with section 7.

(3) The Parties shall meet three times per year or as mutually agreed to review the results of the monitoring program. Other interested government agencies may be invited to the meetings.

(4) The Parties may modify the releases established by section 4 based on the results of the monitoring program, taking into consideration the total available water release volume.

APPLICATION FOR NEW AND AMENDED WATER LICENCES

9. (1) CRD shall apply for all necessary regulatory approvals.

(2) CRD shall apply to amend the existing licences for Deception Creek and Deception Reservoir, including but not limited to the following: to change the purpose from 'waterworks' to 'conservation' and to amend the existing licences for Sooke Reservoir from 'waterworks' to 'waterworks and conservation'.

(3) When applying to amend existing water licences or for new water licences, the CRD shall, to the fullest extent possible, apply to have the relevant terms of this Agreement form part of the conditions imposed on any amended or new water licence, in particular the releases set out in section 4, including any revision to
these releases following completion of a Water Management Plan and receipt of the appropriate regulatory approvals in respect of that Plan or any modification to the Release Schedule under section 8(4).

WATER MANAGEMENT PLAN

10. The Parties agree that they shall as quickly as possible commence working toward a mutually agreeable Water Management Plan for the parts of the Sooke Watershed owned or controlled by the CRD. Subject to applicable regulatory approvals, this Water Management Plan is intended to comprehensively deal with all issues relating to the management and use of water flows and alterations and allocations thereof, and shall include the Sooke River, Deception Creek, Council Creek and the Leech River, and shall include, without limitation,

(a) an analysis of what waterflows are necessary and can be maintained for the purpose of conserving and building fish stocks and habitat in the Sooke River;

(b) an analysis of what steps are needed to ensure an adequate supply of water for the CRD;

(c) a water release program as set out in section 4 hereof for the purpose of releasing water for fishery conservation and restoration in the Sooke River;

(d) a monitoring program as set out in section 7 hereof; and

(e) a detailed description of the principles to govern the management of water releases.

11. The Parties agree that they shall make best efforts to complete the Water Management Plan before September 30, 2007.

12. After the completion of the Water Management Plan, the CRD shall apply to amend their water licences under the Water Act and the CRD shall, to the fullest extent possible, apply to have the relevant terms of the Water Management Plan form part of the conditions imposed on amended or new water licences.

WATERSHED MANAGEMENT PLAN

13. The Parties agree that they shall as quickly as possible commence working toward a Watershed Management Plan for the Sooke Watershed in co-operation with other landowners, licensees, tenure holders and interested agencies in the Sooke Watershed. This Watershed Management Plan shall include, without limitation,

(a) the Water Management Plan;

(b) a plan for land and resource use in the lands in Sooke Watershed; and

(c) a plan for a process to adaptively manage the Sooke Watershed into the future.

CONSULTATION: WATER LEVELS
14. The CRD agrees to consult with T'Sou-ke and the parties in respect of situations not provided for in this Agreement such as unusually low or high water levels or other emergencies requiring action on the part of the CRD. Consultation shall proceed as follows:

(a) the CRD shall notify T'Sou-ke and the parties as quickly as practicable in the circumstances;

(b) it shall provided reasonable information requested by T'Sou-ke or its technical consultants;

(c) it shall arrange to meet with T'Sou-ke and the parties or such representatives as T'Sou-ke may appoint as soon as possible in the circumstances;

(d) it shall where feasible attempt to address T'Sou-ke and the parties' concerns in the circumstances; and

(e) in the event that such consultation will require T'Sou-ke to incur expenses not reasonably encompassed within the work expected to be carried out in fulfilling the other requirements of this Agreement:

(i) T'Sou-ke may apply to the CRD for the payment of these reasonable expenses;

(ii) the CRD shall consider such an application and shall not unreasonably refuse to pay such additional expenses, to a maximum of $5,000.00 per year during the term of this Memorandum of Agreement or any extension of that term.

OBLIGATIONS OF THE REGULATORY AGENCIES

15. DFO agrees, subject to regulatory requirements,

(a) to issue a Precedent Authorization that reflects this Agreement, subject to section 25; and

(b) to facilitate approval of raising the Sooke Reservoir by six (6) metres;

16. DFO and WLAP agree to

(a) review the threshold flow in the Sooke River at the Charters Creek hydrometric station which must currently be met or exceeded before water from the Leech River can be diverted into either Deception Reservoir or Sooke Reservoir. CRD agrees to submit an application to amend their water licence(s) under the Water Act if the review indicates that the threshold flow may be reduced;

and, in conjunction with the T'Sou-ke Nation, to the extent the T'Sou-ke Nation chooses to participate in such monitoring,
(b) monitor the fishery downstream of the Sooke Dam.

OBLIGATION TO CONSULT

17. T'Sou-ke agrees that this Agreement demonstrates consultation by the CRD within the meaning of s. 35(1) of the Constitution Act, 1982 with respect to the Sooke River fishery. T'Sou-ke does not agree that such consultation is adequate or complete for any purpose except the raising of the Sooke Dam and the water releases under sections 4 and 8(4) in accordance with this Agreement.

NEW WATER LICENCES

1. Except as provided in sections 9, 5(6) and 12, the CRD shall not, without consulting with T'Sou-ke, apply for any amendment to its existing Water Licences or any new Water Licence, for or in respect of any of the Sooke Reservoir, the Deception Reservoir, the Leech River or any other river or body of water in the watershed of the Sooke River, until the Water Management Plan has been agreed upon. Nothing herein shall be construed as fettering the exercise of statutory discretion or statutory authority by a statutory decision maker.

33. ABORIGINAL AND DOUGLAS TREATY RIGHTS

34. 35. The Parties agree that this Agreement does not in any way limit, suspend, modify, abrogate or derogate from such aboriginal or treaty rights as T'Sou-ke or its members may have, whether arising from the Douglas Treaties or otherwise.

36. 20. For greater certainty, the parties acknowledge that T'Sou-ke, for the purpose of this Agreement or in relation to its dealings with the matters dealt with in this Agreement, has not been authorized to in any way limit, suspend, modify, abrogate or derogate in any way from the rights described in section 19.

37. 21. T'Sou-ke agrees that any Party may refer to this Agreement for the purpose of demonstrating an attempt at consultation within the meaning of s. 35(1) of the Constitution Act, 1982 but T'Sou-ke shall not be taken to have agreed that this Agreement or anything carried out pursuant to this Agreement is adequate consultation or constitutes consultation at all in respect of an issue, except as set out in section 17 hereof.

TERMINATION AND SURVIVAL OF OBLIGATIONS

22. This Agreement shall terminate, unless otherwise agreed by the Parties in writing, on the earlier of

(i) September 30, 2007, or

(ii) the adoption by the CRD of the mutually agreed upon Water Management Plan after receiving the appropriate regulatory approvals.

23. The effect of termination shall be that each Party shall be relieved of all obligations under this Agreement, except where provided otherwise by section 24.
24. The Parties expressly agree that sections 1(a), 3, 17 to 21, and 23 will survive and remain enforceable after the termination of this Agreement, including the obligations of Section 4 that continue for 6 months after termination.

25. The Parties agree that this Agreement shall not fetter DFO issuing or enforcing an Authorization pursuant to the Fisheries Act. Nothing herein shall be construed as fettering the exercise of statutory discretion or statutory authority by any other statutory decision maker.

IN WITNESS the parties have signed and sealed this Agreement on the 15th day of October 2002.

CAPITAL REGIONAL DISTRICT by its authorized signatories:

__________________________
Chair

__________________________
Corporate Secretary

SIGNED, SEALED AND DELIVERED by the T'Sou-ke Nation pursuant to the consent of the majority of the Councillors of the T'Sou-ke Nation present at a meeting duly convened at which authority was given for the T'Sou-ke Nation to enter into this Agreement as recorded in a Band Council Resolution.

__________________________
Councillor

__________________________
Councillor

Witness

__________________________
10. Beach Drive

Address

__________________________
Victoria V8S 2E2

__________________________
Occupation
SIGNED HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of Fisheries and Oceans in the presence of:

[Signature]

RON KADOWAKI
Area Director
Fisheries and Oceans Canada

Signed by HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Water, Land and Air Protection in the presence of:

[Signature]

NANCY WILKIN
Assistant Deputy Minister
Environmental Stewardship
Ministry of Water, Land and Air Protection
WATERSHED ACCORD
between
SECHELT INDIAN BAND
and
SUNSHINE COAST REGIONAL DISTRICT

GIVEN THAT:

A. The Chapman/Grey Creek Watersheds (the "Watersheds") are situated within and form part of the traditional territory of the Sechelt Indian Band (the "Band");

B. The Watersheds are situated within the Sunshine Coast Regional District ("SCRD") which has authority to provide the service of potable water to the residents of the SCRD; and

C. The Band and the SCRD have a mutual interest in improving and maintaining the safety and quality of their potable water supply and in jointly assuming the responsibility and authority for the attaining and maintaining of the highest possible safety and quality standards for their potable water supply.

WE, the Sechelt Indian Band and the Sunshine Coast Regional District jointly resolve and agree as follows:

1. We shall negotiate the terms of an agreement between the Band and the SCRD;
   
   (a) for the sharing of responsibility and the decision-making processes in respect of the shared management of the Watersheds, and
   
   (b) for the sharing of the costs, expenses and liabilities arising from the shared management of the Watersheds;

   in accordance with a decision making framework to be determined by the parties.

2. If we have not completed the negotiations of and entered into the Agreement referred to in paragraph 1 above within 90 days after the execution of this Accord, this Accord shall terminate and neither of us shall have any obligation to the other under the Accord unless, on or before the date 90 days after the execution of this Accord, we mutually agree to extend the time for the completion of the Agreement.

3. Upon the completion of the Agreement referred to in paragraph 1 above, we shall petition the Province of British Columbia for the assumption by the parties of a shared management framework for the Watersheds, which management will include, without limitation;

   (a) the right and authority to review all applications for the approval of any industrial, commercial, recreational or residential development or activity within the Watersheds,

   (b) the right and authority to approve with conditions or disapprove applications for any development or activity that may adversely affect or impact the safety and quality of the potable water supply from the Watersheds,
(c) the right and authority to disallow any activity within the Watersheds that may adversely affect or impact the safety and quality of the potable water supply from the Watersheds, and

(d) the power to prosecute offenders of the laws of the Band and the bylaws of the SCRD enacted to give effect to the foregoing, which laws and bylaws shall be enacted in consultation between the Band and the SCRD.

4. This Accord is without prejudice to the aboriginal and treaty rights of the Band and its rights under section 91(24) of the Constitution Act 1867 and section 35 of the Constitution Act 1982 and shall not be construed so as to abrogate or derogate from any aboriginal or treaty rights of the Band or the members of the Band, or any other aboriginal people of Canada.

5. This Accord is also without prejudice to the powers, duties and functions of the SCRD under the Local Government Act (British Columbia) or any subsequent legislation in relation to the watershed lands including, without limitation, the jurisdiction of the SCRD over the provision of potable water to the residents of the SCRD.

EXECUTED this 18th day of September, 2003.
### SECHELT INDIAN BAND

<table>
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<tr>
<td>Chief Garry Feschuk</td>
<td>Councillor Marita Paul-Franke</td>
<td>Councillor Rick August</td>
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<td>Councillor Stan Dixon</td>
<td>Councillor Ben Pierre, Jr.</td>
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### SUNSHINE COAST REGIONAL DISTRICT

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<tr>
<td>Ed Steeves, Chair</td>
<td>Adrian Belshaw, Vice Chair</td>
<td>Chief Garry Feschuk</td>
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<tr>
<td>Director, District of Sechelt</td>
<td>Director, Electoral Area D</td>
<td>Director, Sechelt Indian</td>
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<td>Government District</td>
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<td>John Rees</td>
<td>John Marian</td>
<td>Celia Fisher</td>
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<td>Director, Electoral Area A</td>
<td>Director, Electoral Area B</td>
<td>Director, Electoral Area E</td>
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<tr>
<td>Barry Janyk</td>
<td>Bernie Mulligan</td>
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<td>Director, Town of Gibsons</td>
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INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION
AND THE
THE WASHINGTON STATE DEPARTMENT OF ECOLOGY

I. Parties

This Intergovernmental Agreement (Agreement) is among the Confederated Tribes of the Chehalis Reservation (Chehalis Tribe), and the Washington State Department of Ecology (Ecology), (collectively referred to in this Agreement as the Parties).

II. Scope and Purpose

The purpose of this Agreement is to provide a framework to organize, plan and implement an intergovernmental partnership among the Parties to assure the protection of human health and the environment and to provide for consistent, efficient, and effective environmental regulation and management. This Agreement is not intended to, and does not, enlarge, diminish, or define the jurisdiction of any of the parties.

Under this Agreement the Parties agree in good faith to coordinate and cooperate with regard to all activities under the respective laws of the Parties relating to environmental regulation and management within the Chehalis Reservation and within the Chehalis Tribe’s aboriginal area focusing specifically on Water Resource Inventory Areas 22 and 23. These activities include, but are not limited to, the regulation and management of air and water resources, and the management, disposal and cleanup of hazardous wastes.

The parties commit to the following three key communication goals: early notification, providing adequate information and engaging in timely consultation. These goals may be achieved in a different ways depending on the decision to be made and the laws and authorities of the respective governments.
III. Authority

A. The Chehalis Tribe

1. The Chehalis Tribe is a federally recognized, sovereign Indian Tribe organized under a constitution and bylaws approved by the Commissioner of Indian Affairs. Pursuant to Article V, Section 1(a) of the Constitution of the Chehalis Tribe and other legal authorities, the Business Committee of the Chehalis Tribe has the authority to enter intergovernmental agreements with the United States and the State of Washington.

2. The Chehalis Tribe and certain of its individual members own lands held in trust by the United States, within the boundaries of the Chehalis Indian Reservation. The Chehalis Tribe has been granted treatment as a state by EPA under Section 518(e) of the Clean Water Act and has been delegated authority to carry out the Water Quality Standards Program under Section 303 of the Act on within the reservation boundaries. The Chehalis Tribe is also eligible for delegation under other federal laws including the Clean Air Act and the Safe Drinking Water Act and is a designated natural resource trustees under Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act.

B. Ecology

1. The Department of Ecology was established and designated under RCW 43.21A by the State of Washington. Ecology administers the State's Water Pollution Control Act (Ch. 90.48 RCW) and other State environmental laws and is authorized under Ch. 39.34 RCW, the Intergovernmental Cooperation Act, to enter into intergovernmental agreements for joint or cooperative actions with agencies of the United States and federally recognized tribes.

2. Ecology is delegated or is otherwise eligible to be delegated by EPA to carry out programs under the Clean Water Act, the Clean Air Act and other federal acts and is a natural resource trustee under Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act. (The Washington State Department of Health is the state agency responsible for the Safe Drinking Water Act and is not a party to this agreement.)
C. Centennial Accord

1. The 1989 Centennial Accord between the federally recognized Indian Tribes in Washington State and the State of Washington commits the parties to a government-to-government approach in dealing with issues of mutual concern. The Accord provides that "each agency ... may establish more detailed implementation procedures in subsequent agreements between tribes and the particular agency." The Accord, therefore, contemplates this type of protocol.

IV. Limitations

A. This Agreement is intended to facilitate intergovernmental cooperation among the Parties. Nothing in this Agreement is intended to, nor does it, create any right, benefit, or responsibility, substantive or procedural, enforceable at law or equity by any person or entity other than and among the Parties to this Agreement. This Agreement shall not be construed to create a right of judicial review by any person or entity other than and among the Parties to this Agreement involving the compliance or noncompliance with this Agreement.

V. Mutual Responsibilities

A. The Parties agree to cooperate and consult with and give timely notice to one another to the maximum extent practicable regarding their governmental interests, actions and decisions within the scope this Agreement.

B. Officials authorized to approve this Agreement (Authorized Officials), their successors in office or their authorized representatives will meet twice annually, once in the Spring and once in the Fall, to:

1. Review this Agreement and related procedural agreements.

2. Discuss governmental actions and decisions within the scope of this agreement each Party expects or plans to take, and

3. Set out priorities for the upcoming year, or other appropriate interval, for intergovernmental cooperation.

C. This agreement contemplates that formal and informal program or activity-specific agreements, protocols or plans pursuant to this Intergovernmental Agreement will be established by authorized representatives of the Parties to implement the intergovernmental cooperation and coordination provided for in this Agreement. Such agreements will be subject to the decision making and
dispute resolution section of this Agreement (Section VI.) and may be appended to this Agreement by amendment as provided. Specific procedural agreements may address, but are not restricted to, such areas as: information and data sharing, notification and review of permit applications, and coordination of environmental studies.

D. Governmental actions and decisions based on human health criteria to the maximum extent practicable will take into account the life-time exposures of Chehalis Tribal Members to pollutants from all pathways and sources in the Chehalis River Watershed.

E. The Parties will share information, documents, records, reports and data (information) to the maximum extent permitted by law relating to protection of environmental quality, natural resources and human health. Where necessary to preserve confidentiality of any information requested under this Agreement, the Parties may execute confidentiality agreements.

VI. Decision Making and Dispute Resolution

A. If requested by any of the Parties, a meeting of the Authorized Officials or their representatives will be scheduled to review issues arising under this Agreement. Decisions of the Parties in carrying out this Agreement shall be by consensus.

B. In the event of a dispute, authorized representatives of the Parties shall initially attempt to resolve the dispute through good faith discussion directed toward obtaining consensus among the Parties. In the event consensus cannot be reached, the matter shall be presented for resolution to the Authorized Officials. The Parties may informally or formally establish processes to help achieve consensus decisions. Nothing in this understanding shall be deemed as a transfer of authority or responsibility nor shall it be construed to limit the right of any party to act in any administrative, judicial or legislative forum to protect its rights.

VII. Effective Date, Amendment, Terminations and Execution

A. Effective Date
   This Agreement shall be effective when executed by the Authorized Officials for all the Parties.

B. Amendment
   This Agreement may be amended only in a writing executed by the Authorized Officials of all of the Parties.
C. Termination
This Agreement shall continue in effect until terminated. Any Party may
unilaterally terminate this Agreement without prejudice by giving the other Parties
60 day written notice. This Agreement shall be immediately terminated by the
approval of all Parties or at a mutually acceptable date.

D. Execution
This Agreement may be approved on separate signature pages by each of the
Parties:

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION
by
   /   /   Date
   Chair
   Chehalis Business Committee

WASHINGTON STATE DEPARTMENT OF ECOLOGY
by
   Tom Fitzsimmons
   Date
   Director