

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 trustee 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 Interlocal 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

/ /
Date

Tom Fitzsimmons
Director