



PUBLIC UTILITY DISTRICT NO. 1 of CHELAN COUNTY

P.O. Box 1231, Wenatchee, WA 98807-1231 • 327 N. Wenatchee Ave., Wenatchee, WA 98801

(509) 663-8121 • Toll free 1-888-663-8121 • www.chelanpud.org

Department of Ecology

SEP 19 2017

September 11, 2017

Water Resources Program

Department of Ecology

Attn: Terrie Fields, Water Resources Program

300 Desmond Dr. SE

Lacey, WA 98503

Re: First Amendment to the 1992 Agreement and the Memorandum of Understanding

Dear Terrie Fields:

Please find attached the First Amendment to the 1992 Agreement and the Memorandum of Understanding, signed by Chelan PUD General Manager, Steve Wright. These documents are ready for Mary Verner's signature. Upon signature, please return the originals to Marcie Clement at Chelan PUD, 327 North Wenatchee Ave, Wenatchee, Washington, 98801. Please feel free to contact Trevor Hutton with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Marcie Clement".

Marcie Clement

Water Resources Program Manager

marcie.clement@chelanpud.org

509.661.4186

Enclosures

**FIRST AMENDMENT
TO
AGREEMENT CONCERNING WATER RIGHT CERTIFICATE NO. 319**

This First Amendment is entered into this 22 day of September, 2017, by and between the State of Washington, Department of Ecology ("Ecology") and Public Utility District No. 1 of Chelan County, Washington ("the District") (collectively "the parties"), to the **Agreement Concerning Water Right Certificate No. 319** dated April 29, 1992.

Recitals

A. The District is the current holder of a license from the Federal Energy Regulatory Commission ("FERC") for Lake Chelan Project No. 637, entitling it to operate a hydroelectric project on Lake Chelan.

B. The District is owner, as successor in interest to Chelan Electric Company, of Certificate of Water Right No. 319 authorizing use of water for hydroelectric power ("Certificate 319"), and Certificate of Water Right No. 500 authorizing impoundment and storage of water behind the Chelan Dam ("Certificate 500").

C. Under its FERC license and Certificate 500, the District stores water in Lake Chelan between elevations 1079 feet and 1100 feet (the "Lake Chelan Reservoir").

D. On April 29, 1992, the parties entered the agreement entitled "Agreement Concerning Water Right Certificate No. 319" ("1992 Agreement").

E. By Order issued March 22, 1993 ("1993 FERC Order"), FERC approved the use for non-Project purposes of up to 65,000 acre-feet per year ("afy") of project waters as described in the 1992 Agreement.

F. Applicable statutes, caselaw, and administrative policies and practices have changed since execution of the 1992 Agreement and issuance of the 1993 FERC Order.

G. The parties have determined that changes to the 1992 Agreement are necessary to conform to existing law and administrative practices, to fully implement the parties' agreement, and to remain consistent with the 1993 FERC Order authorizing use for non-Project purposes of a total of 65,000 afy of water from Lake Chelan.

H. The parties intend to substitute, in place of the provisions of the 1992 Agreement referring to transfers of Certificate 319, their agreement to make available up to 20,000 afy of stored water for secondary permits from the Lake Chelan Reservoir authorized under Certificate 500 and rights to groundwater, including permit-exempt wells, within the Lake Chelan Water Basin.

I. The parties intend to replace the definition of the "Lake Chelan Water Basin" and "Water Basin" as WRIA 47 with a more precise definition incorporating the boundaries of the U.S. Geological Survey's Level 8 Hydrologic Unit Code No. 170200009, except that portion lying east of the line described on Attachments 1 and 2.

J. The parties intend to establish in a separate Memorandum of Understanding specific procedures for implementing the ongoing accounting required under the 1992 Agreement.

Agreement

The 1992 Agreement is hereby amended as follows:

1. All references in the recitals and Paragraphs 2 through 10 to transfers or partial transfers pursuant to RCW 90.03.380 or 90.03.390 of the right to use water under Certificate 319 are stricken and deemed replaced by corresponding references to issuance of secondary permits from the Lake Chelan Reservoir authorized under Certificate 500, pursuant to RCW 90.03.370(1) as it now exists or may hereafter be amended; issuance of rights to groundwater in the Lake Chelan Water Basin pursuant to RCW 90.44.060 as it now exists or may hereafter be amended; and establishment of rights to groundwater in the Lake Chelan Water Basin that are permit-exempt pursuant to RCW 90.44.050 as it now exists or may hereafter be amended.

2. All references in the recitals and Paragraph 4 to the definition of "Lake Chelan Water Basin" or "Water Basin" as WRIA 47 are stricken. The "Lake Chelan Water Basin" and "Water Basin" are hereby defined as that area lying within the boundaries of the U.S. Geological Survey's Level 8 Hydrologic Unit Code No. 170200009, except that portion lying east of the line described on Attachments 1 and 2 to this First Amendment, which are hereby incorporated by reference.

3. Paragraph 2 is amended to provide that up to 20,000 afy of water stored in the Lake Chelan Reservoir is available for secondary permits from the Lake Chelan Reservoir and for groundwater rights, including permit-exempt wells, in the Lake Chelan Water Basin.

4. The District's agreement herein constitutes documentary evidence of agreement by the owner of the reservoir as required by RCW 90.03.370(1).

5. Nothing herein is intended to be inconsistent with the FERC authorization in the 1993 FERC Order.

6. The parties agree to enter into a Memorandum of Understanding that will specify procedures for implementing the ongoing accounting of water rights allocated pursuant to the 1992 Agreement and this First Amendment.

7. Except as amended herein, all provisions of the 1992 Agreement remain in effect.


PUBLIC UTILITY DISTRICT NO. 1 OF
CHELAN COUNTY, WASHINGTON

By 

Printed Name: STEVE WRIGHT

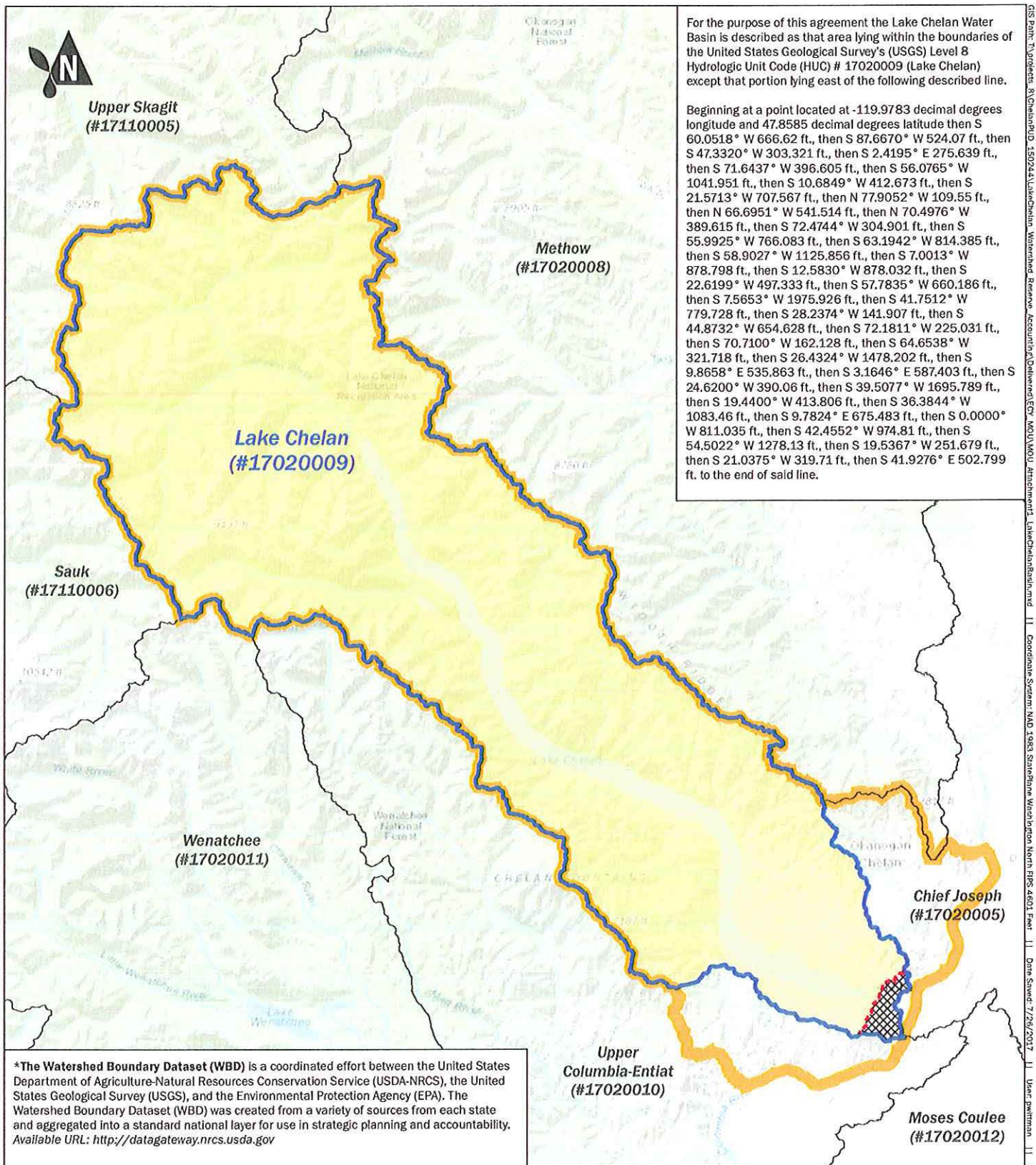
Title: General Manager

STATE OF WASHINGTON, ACTING BY
AND THROUGH THE DEPARTMENT OF
ECOLOGY







By 

Printed Name: Mary Verner

Title: Water Resources Program Manager



*The Watershed Boundary Dataset (WBD) is a coordinated effort between the United States Department of Agriculture-Natural Resources Conservation Service (USDA-NRCS), the United States Geological Survey (USGS), and the Environmental Protection Agency (EPA). The Watershed Boundary Dataset (WBD) was created from a variety of sources from each state and aggregated into a standard national layer for use in strategic planning and accountability. Available URL: <http://datagateway.nrcs.usda.gov>

-  Lake Chelan Level-8 Watershed Boundary Dataset* (WBD) Hydrologic Unit Code (HUC) #17020009
-  "Lake Chelan Water Basin", as defined. (Above-Dam Portion of Lake Chelan Level 8 HUC #17020009) (see Inset metes bounds description)
-  Below-Dam Portion of Lake Chelan Level 8 HUC #17020009
-  Above/Below Dam Dividing Line Through Level 8 Lake Chelan HUC (see Inset metes and bounds description)
-  Other WBD Level 8 HUCs
-  WRIA 47 Boundary

Lake Chelan Water Basin

First Amendment to 1992 Agreement



JUL-2017

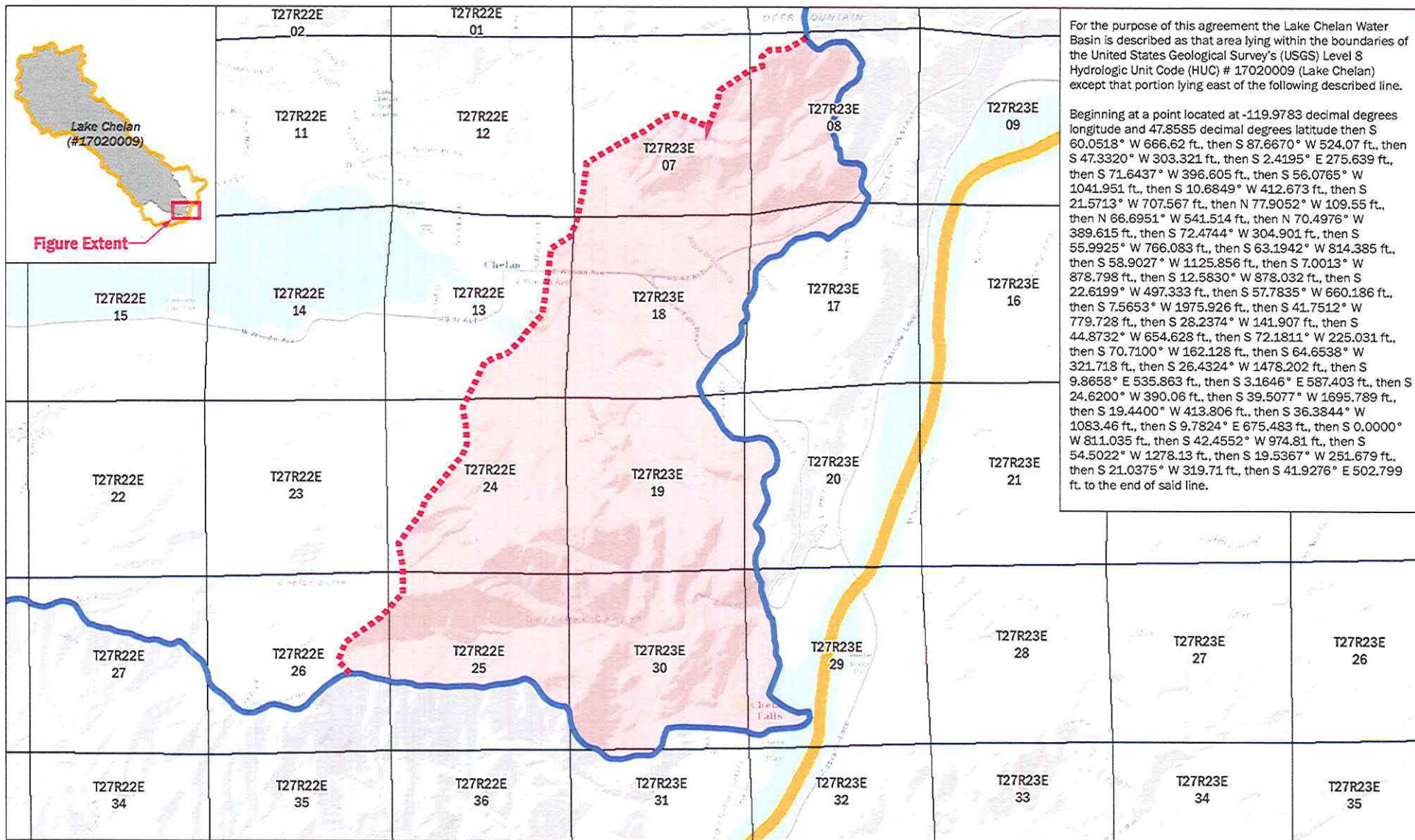
PROJECT NO.
150244-004

BY:
PPW

REVISED BY:

ATTACHMENT

1



For the purpose of this agreement the Lake Chelan Water Basin is described as that area lying within the boundaries of the United States Geological Survey's (USGS) Level 8 Hydrologic Unit Code (HUC) # 17020009 (Lake Chelan) except that portion lying east of the following described line.

Beginning at a point located at -119.9783 decimal degrees longitude and 47.8585 decimal degrees latitude then S 60.0518° W 666.62 ft., then S 87.6670° W 524.07 ft., then S 47.3320° W 303.321 ft., then S 2.4195° E 275.639 ft., then S 71.6437° W 396.605 ft., then S 56.0765° W 1041.951 ft., then S 10.6849° W 412.673 ft., then S 21.5713° W 707.567 ft., then N 77.9052° W 109.55 ft., then N 66.6951° W 541.514 ft., then N 70.4976° W 389.615 ft., then S 72.4744° W 304.901 ft., then S 55.9925° W 766.083 ft., then S 63.1942° W 814.385 ft., then S 58.9027° W 1125.856 ft., then S 7.0013° W 878.798 ft., then S 12.5830° W 878.032 ft., then S 22.6199° W 497.333 ft., then S 57.7835° W 660.186 ft., then S 7.5653° W 1975.926 ft., then S 41.7512° W 779.728 ft., then S 28.2374° W 141.907 ft., then S 44.8732° W 654.628 ft., then S 72.1811° W 225.031 ft., then S 70.7100° W 162.128 ft., then S 64.6538° W 321.718 ft., then S 26.4324° W 1478.202 ft., then S 9.8658° E 535.863 ft., then S 3.1646° E 587.403 ft., then S 24.6200° W 390.06 ft., then S 39.5077° W 1695.789 ft., then S 19.4400° W 413.806 ft., then S 36.3844° W 1083.46 ft., then S 9.7824° E 675.483 ft., then S 0.0000° W 811.035 ft., then S 42.4552° W 974.81 ft., then S 54.5022° W 1278.13 ft., then S 19.5367° W 251.679 ft., then S 21.0375° W 319.71 ft., then S 41.9276° E 502.799 ft. to the end of said line.

Lake Chelan Level-8 Watershed Boundary Dataset* (WBD) Hydrologic Unit Code (HUC) #17020009

Below-Dam Portion of Lake Chelan Level 8 HUC #17020009

Above/Below Dam Dividing Line Through Level 8 Lake Chelan HUC (see inset metes and bounds description)

Sections (WA DNR)
 WRIA 47 Boundary

0 2,000 4,000
Feet

*The Watershed Boundary Dataset (WBD) is a coordinated effort between the United States Department of Agriculture-Natural Resources Conservation Service (USDA-NRCS), the United States Geological Survey (USGS), and the Environmental Protection Agency (EPA). The Watershed Boundary Dataset (WBD) was created from a variety of sources from each state and aggregated into a standard national layer for use in strategic planning and accountability. Available URL: <http://datagateway.nrcs.usda.gov>



Lake Chelan Water Basin - Detail of Above/Below Dam Divide

First Amendment to 1992 Agreement

Aspect
CONSULTING

JUL-2017

PROJECT NO.
150244-004

BY:
PPW
REVISED BY:

ATTACHMENT

2

MEMORANDUM OF UNDERSTANDING
between
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
and
PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

Related to
WATER RIGHT ALLOCATIONS FROM LAKE CHELAN
AND RESERVE ACCOUNTING

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into by and between the DEPARTMENT OF ECOLOGY (Ecology) and PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY (District), to set forth the parties' accounting procedures for water allocations from Lake Chelan under the Agreement Concerning Water Right Certificate No. 319 and the First Amendment thereto dated Sept. 22, 2017 (collectively referred to herein as the Agreement).

IT IS MUTUALLY AGREED THAT:

AUTHORITY

This MOU is made and entered into by Ecology and the District under the authority granted by chapters 54.16, 90.03, 90.44, 90.54, and 90.82 RCW.

PURPOSE AND SCOPE

The purpose of this MOU is to facilitate coordination and cooperation between Ecology and the District in the ongoing accounting of water rights allocated from Lake Chelan pursuant to the Agreement. This MOU establishes the following:

1. Procedures for accounting for existing rights and secondary water right allocations from the Lake Chelan Reservoir authorized under the Agreement;
2. Procedures for notification to and comment by the District regarding future water right applications and applications for changes/transfers of existing water rights from the Lake Chelan Reservoir; and
3. Procedures for informing the public and stakeholders regarding the status of the Reserve identified in the Agreement.

AGENCY RESPONSIBILITIES RELATED TO THE MOU

Ecology administers Washington State's water resource management program, including water rights administration under Chapters 90.03 and 90.44 RCW, and watershed planning under Chapter 90.82 RCW. Ecology is responsible for making decisions under RCW 90.03.370 and RCW 90.03.290 regarding water allocations from the 65,000 acre-feet per year Reserve identified in the Agreement.

The District holds a license from the Federal Energy Regulatory Commission (FERC) to operate the Lake Chelan Hydroelectric Project No. 637. The District holds Reservoir Certificate No. 500, which authorizes the District to impound and store the entire flow of the Chelan River and Lake Chelan between elevations 1079 and 1100 feet (Lake Chelan Reservoir). The District also holds Water Right Certificate No. 319, which authorizes use of 4,000 cubic feet per second (cfs) for hydropower production. Under the Agreement, the District has agreed that up to 20,000 acre-feet per year of water stored in the Lake Chelan Reservoir is available for secondary permits from the Lake Chelan Reservoir and for groundwater rights, including permit-exempt wells, in the Lake Chelan Water Basin.

AGENCY ROLES

Ecology will:

1. Provide notice and an opportunity for the District to comment on all water right applications and applications for change of water rights affecting the Lake Chelan Reservoir, through the process provided under RCW 90.03.280 and Ecology Water Rights Processing Procedures PRO-1000, which will take the form of District subscription to Ecology's Water Right Application RSS Feed for WRIA 47. In the event the RSS Feed for WRIA 47 is terminated or modified in a manner that does not enable separate review of relevant applications, Ecology will provide equivalent notice.
2. Create and update an electronic spreadsheet accounting (Reserve Accounting) of each water right in the Lake Chelan Water Basin, as defined in the Agreement, identifying the assumptions underlying the inclusion or exclusion of each right from the Reserve identified in the Agreement, and identifying future investigation or evaluation, if any, needed for each right. Underlying assumptions will include the following:
 - a. Water Right Claims: The Reserve Accounting will not assess the extent and validity of individual water right claims. Instead, the accounting will initially include an aggregate debit of 5,500 acre-feet per year attributable to water right

claims representing existing water rights senior to Certificate 319. Ecology will adjust this initial aggregate debit for water right claims to reflect future extent and validity determinations or other relevant new information.

- b. Annual Quantities: In accounting for water right records with unspecified annual quantities, Ecology will initially assign default water duties of 1 acre-foot per year per domestic connection; 3.5 acre-feet per year per irrigated acre; and 1 acre-foot per year for stock watering. Ecology will adjust these amounts for specific water rights to reflect future extent and validity determinations, any final determinations of relinquishment or other administrative orders, an update to the Washington Irrigation Guide, or other relevant new information.
 - c. Correcting Errors: Ecology will exercise its discretion and follow internal procedures for resolving any typographical or scriveners' errors in water right records included in the Reserve Accounting, for example by substituting a reasonable annual quantity for an identified annual quantity that is substantially inconsistent with irrigated acreage or other attributes of the water right.
 - d. Effect of Accounting Assumptions: Ecology lacks authority to determine relative priority, amount, and validity of water rights outside the context of a general adjudication in superior court under RCW 90.03.110 *et seq.* The parties agree that underlying assumptions applied to specific water rights for the purpose of the Reserve Accounting are not binding on individual water right holders or on Ecology in any future adjudication or tentative determination of extent and validity.
3. Exclude from the Reserve Accounting the following categories of water rights:
 - Rights from sources within WRIA 47 outside the Lake Chelan Water Basin
 - Rights overlapping or duplicative of other existing rights debited against the Reserve
 - Non-consumptive rights
 4. Record any evaluations of potentially overlapping or duplicative water rights conducted as a part of water right changes or issuance of new permits, and adjust the Reserve Accounting spreadsheet accordingly.
 5. Adjust the Reserve Accounting when holders of water right permits receive certificates.
 6. Coordinate with Chelan County to account for exempt wells debited against the Reserve.

7. Edit the Reserve Accounting spreadsheet as necessary, maintaining version controls, and provide edits to the District on an annual basis, or on another frequency mutually agreed upon, for review and comment.
8. Publish an on-line summary of the Reserve Accounting, at regular intervals at least annually, on Ecology's website.
9. Designate an interagency coordination liaison to work with the District and key stakeholders in the Lake Chelan Watershed Planning Unit.
10. Work with the Lake Chelan Watershed Planning Unit and local stakeholders to help the public understand the Reserve and how it works, including how much water has been allocated and how much remains available for allocation.
11. Meet with the District annually, or on another frequency as mutually agreed, to review the status of the Reserve, Reserve Accounting metrics, and potential legislative, case law, or other changes that may affect the Agreement.

The District will:

1. Designate an interagency coordination liaison to work with Ecology and key stakeholders in the Lake Chelan Watershed Planning Unit.
2. Review and submit any comments on applications for permits and water right changes/transfers in accordance with statutory guidelines.
3. Review and submit comments on edits/revisions to the Reserve Accounting spreadsheet within 60 days after receipt, unless a longer period is agreed to in writing.
4. Work with Ecology and local stakeholders on public outreach as described in #10 above.

GENERAL PROVISIONS

This MOU will take effect and be fully implemented by Ecology and the District when signed by both parties.

This MOU may be amended at any time by written approval by Ecology's Water Resources Manager and the District's General Manager.

The Agreement and this MOU contain all the terms and conditions agreed upon by Ecology and the District with respect to allocation of water from Lake Chelan. No other understandings, oral

or otherwise, regarding the subject matter of the Agreement or this MOU shall be deemed to exist or to bind the parties hereto.

MOU COORDINATION

The interagency coordination liaisons for Ecology and the District will be responsible for all communications regarding implementation of this MOU. Either party may change its liaison by giving written notice to the other party at the addresses below.

The Liaison for Ecology is:	The Liaison for the District is:
Trevor Hutton Section Manager 1250 W. Alder Street Union Gap, WA 98903-0009 Phone: (509) 575-2490 Email: thut461@ecy.wa.gov	Marcie Clement Program Manager – Water Resources P. O. Box 1231 Wenatchee, WA 98807 Phone: (509) 661-4186 Email: Marcie.Clement@chelanpud.org

IN WITNESS WHEREOF, the parties have executed this MOU.

State of Washington
Department of Ecology

Public Utility District No. 1 of Chelan County

By Mary Verner
Mary Verner
Water Resources Program Manager

By Steve Wright
Steve Wright
General Manager

Date: 9/22/17

Date: 9.8.17