



## **UTILITIES COMMITTEE**

**APRIL 10, 2015**

**4:00 P.M.**

**COUNCIL CHAMBERS**

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1. **2014 STORMWATER MANAGEMENT PROGRAM**  
*DOUG CHRISTENSON, UTILITIES CIVIL ENGINEER*  
(VERBAL REPORT-NO ATTACHMENT)
  
2. **INTERLOCAL AGREEMENT FOR IMPLEMENTING DESCHUTES  
WATER RIGHTS MITIGATION STRATEGY – PHASE IV**  
*JULIE RECTOR, WATER QUALITY ANALYST*  
(ATTACHMENT)
  
3. **PSA WITH SOUTH PUGET SOUND SALMON ENHANCEMENT**  
*JULIE RECTOR, WATER QUALITY ANALYST*  
(VERBAL REPORT-NO ATTACHMENT)
  
4. **ALTERNATE DAY IRRIGATION POLICY RECOMMENDED CHANGES**  
*KIM BENEDICT, WATER RESOURCES SPECIALIST*  
(VERBAL REPORT-NO ATTACHMENT)



**UTILITIES COMMITTEE**  
**April 10, 2015**

**SUBJECT:** Phase IV Interlocal Agreement for continuing water rights mitigation work with Olympia and Yelm on the Deschutes River property

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**RECOMMENDATION:** Authorize sending Interlocal Agreement to City Council for approval.

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**STAFF CONTACT:** Scott Spence, City Manager *SS*  
Scott Egger, Director of Public Works *SE*  
Peter Brooks, Water Resources Manager *PB*  
Julie Rector, Water Quality Analyst *JR*

**ORIGINATED BY:** Public Works Department

**ATTACHMENTS:** 1. [Draft Interlocal Agreement between the Cities of Olympia, Lacey and Yelm for Implementing Deschutes Water Rights Mitigation Strategy – Phase IV](#)

**FISCAL NOTE:** \$55,267 / account 410-3418-534.90-01, project WA12SF

**PRIOR REVIEW:** The 2015 budget authorized funds for work related to mitigating new water rights.

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**BACKGROUND:**

Water rights mitigation in the Deschutes River basin has been a joint effort with the cities of Olympia and Yelm, and has been approached in phases that have each had a separate interlocal agreement and budget. Phase I identified potential water rights that could be acquired for mitigation purposes. Phase II authorized the purchase of water rights and land for mitigation purposes, and in 2011 the cities purchased approximately 200 acres of farmland on the Deschutes River (also known as the Smith Farm) and water rights associated with the property. The cities completed water rights acquisition needed for mitigation by purchasing the Jensen water right in 2012. Phase III authorized the cities to contract with a firm to manage the Deschutes property (e.g., control noxious weeds and

access), and to contract with an engineering consultant to conduct collect onsite data and initiate the design of the following restoration projects to be constructed on the property:

- Reshape the existing channel from the main spring to a more natural state;
- Re-establish the wetland around the smaller springs; and
- Construct a live crib-wall along an eroding reach of the Deschutes River.

These projects were identified in the cities' water rights mitigation plans that were approved by the Department of Ecology. The mitigation plans state that these projects will be constructed on the property during 2012 through 2017. The cities have been making progress on the projects but the timing has been affected by an appeal of Ecology's decision on the City of Yelm water right.

Phase IV of water rights mitigation is to continue joint property management, to complete the designs and develop bid specifications for the engineered projects, and to apply for permits needed to construct the projects. Project construction will occur in Phase V of implementation under a separate agreement and budget.

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**ADVANTAGES:**

1. Completing the design plans, preparing the bid specifications and obtaining permits will allow the cities to move forward on required mitigation.

**DISADVANTAGES:**

1. None.

*When recorded return to:*  
City of Olympia  
PO Box 1967  
Olympia, WA 98507-1967

**INTERLOCAL AGREEMENT BETWEEN  
THE CITIES OF OLYMPIA, LACEY AND YELM  
FOR IMPLEMENTING DESCHUTES WATER RIGHTS  
MITIGATION STRATEGY – PHASE IV**

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**Whereas**, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

**Whereas**, pursuant to RCW 39.34.080, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

**Whereas**, the Cities of Olympia and Lacey have received approval for water rights from the Department of Ecology and Yelm’s application is approved, pending an appeal; and

**Whereas**, in order to secure approvals of those water rights, the Cities have cooperatively developed a mitigation strategy for the Deschutes River that has been accepted by the Washington Department of Ecology; and

**Whereas**, the mitigation strategy includes restoration of 200 acres of farmland jointly purchased by the cities in the Deschutes River watershed. Restoration projects will take place over several years and include: riparian planting along 1 mile of river frontage, stream channel and wetland restoration, and ongoing land management responsibilities; and

**Whereas**, by Interlocal Agreement effective November 14, 2007, the Cities completed Phase I of a water rights acquisition strategy by identifying potential water rights for acquisition; and

**Whereas**, by amended Interlocal Agreement effective January 19, 2010, the Cities completed Phase II of a water rights acquisition strategy for mitigation purposes by jointly acquiring water rights and property in the Deschutes River basin and developing a habitat restoration assessment for that property; and

**Whereas**, through Interlocal Agreement effective August 23, 2012, the Cities completed Phase III of the Deschutes Mitigation Strategy by retiring water rights; fencing the Deschutes River property; developing a 60% design, project schedule and costs for habitat restoration projects identified in the cities' mitigation plans; and contracting for the services of a project manager to coordinate and lead this effort; and

**Whereas**, the cities will continue implementation of the Deschutes Mitigation Strategy in Phase IV by completing the design and bid specifications for the habitat enhancement projects that were designed to 60% under Phase III, applying for and obtaining necessary project permits, and hiring consultants to help support this effort and to oversee ongoing property management. Authorization for construction of designed restoration projects will be accomplished through a separate agreement after design work is completed; and

**Whereas**, the cities may be doing other restoration work on the Deschutes River Farm property not related to this Interlocal Agreement, but through a Memorandum of Understanding (MOU) with the Squaxin Island Tribe signed November 29, 2011. In this MOU the cities have agreed to form the Budd/Deschutes Watershed Environmental Stewardship Coalition and provide additional funding for habitat restoration activities; and

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Cities of Lacey, Olympia and Yelm (Cities) agree as follows:

**I. Purpose/Objective**

The Cities have each developed mitigation plans to offset potential surface water impacts to the Deschutes River from groundwater withdrawals from the McAllister and Yelm sub-basins of the Nisqually River watershed and the Hawks Prairie area of WRIA 13. Within each of these plans, the cities submitted a joint mitigation plan for the Deschutes River Basin to the Washington Department of Ecology (WDOE). The WDOE has issued the Cities of Olympia (CS2-SWC8030, CS2-01105, CS2-SWP10191) and Lacey (ROEs G2-29165, G2-29304, G2-30250, G2-30251, G2-30248, G2-30249) water rights, and has issued the City of Yelm's water rights pending an appeal (ROE G2-29085).

The purpose of this Agreement is to allow the Cities to continue with implementation of projects identified in their mitigation plans and meet conditions of final water rights approval by WDOE.

## **II. Scope of Agreement/Work**

This Agreement provides authority for the City Managers or Mayor of each Party to enter into the necessary agreements to accomplish all tasks necessary for completion of Phase IV work. Specific Phase IV work to be accomplished under this agreement include contracting for project and property management, riparian area maintenance, engineering design and services, and permitting work. Future implementation work will be accomplished through a separate agreement after design work is completed. This agreement also allows the cities to coordinate on decision-making related to contract management, consultant communication and dissemination of project information to appropriate staff within their own jurisdiction.

The Cities agree to jointly engage the services of one or more consultants, organizations, or agencies to assist the Cities in services related to implementation of the Deschutes Mitigation strategy submitted to the WDOE.

The Cities will jointly enter into a professional services agreement with one or more consultants, organizations, or agencies agreed upon by the parties for Phase IV development and implementation, including riparian monitoring and maintenance, habitat enhancement design, project management, permitting assistance, property management activities, and legal analysis and review services as needed.

The Cities will jointly direct the work of the consultant, organization, or agency through a consensus-based decision making process. Consultants will be chosen through the standard selection process for professional services as required by the laws of the State of Washington and the Cities will jointly develop and issue the Request for Qualifications (RFQ), including the general scope and nature of the project or work, when required by law for consulting work and will make a unified recommendation for selection of the firm.

The consultant selection process shall include one or more project managers or engineers familiar with the municipal public work construction process. In addition to other criteria, consultants shall be evaluated on: 1) their ability to produce a complete, final bid-able set of project specifications; and 2) their ability to provide municipal construction support which may include but not be limited to bid award support, inspections, documentation, project management, and submittal review. Once the consultants are selected, the Cities shall coordinate with the consultants to develop any final Scope of Work and Professional Services Agreements amenable to each Party.

In recognition that one City would need to approve change orders, make payments, and keep track of insurance, bond and other legal requirements, the consultant that is hired would be instructed to use Olympia's project specifications with the Olympia City

Engineer or designee as the approver of change orders, pay estimates and related construction decisions.

This agreement also allows the cities to coordinate on decision-making related to contract management, consultant communication and dissemination of project information to appropriate staff within their own jurisdiction.

The cities may also jointly hire legal counsel on issues related to acquisition of water rights, property management and habitat enhancement for the purpose of mitigation and other related topics. Legal advice provided to the cities jointly shall be considered attorney client privileged not subject to disclosure.

**III. Implementation Activity Cost Sharing**

The Cities will equally contribute to all implementation activities under this Agreement.

**IV. Consultant Cost Sharing**

The Cities will equally divide costs for consultant services. Total costs for such services under this agreement are not to exceed \$165,800.00. Costs for future Phase V work will be determined as a result of the design work conducted in this Agreement.

**V. Method of Payment**

- a. Consultants will invoice each City separately on a monthly basis.
- b. Payment will be made separately by each City to the consultants upon receipt of an acceptable invoice, after completion of each task agreed upon in the professional services agreement.

**VI. Indemnification & Insurance**

Each City agrees to defend, indemnify and hold the other cities, their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the indemnifying City's performance of this Agreement, including injuries and damages caused by the negligence of the indemnifying City's officers, officials and employees.

**VII. No Separate Legal Entity Created**

This Agreement creates no separate legal entity.

**VIII. Duration of Agreement**

This Agreement shall be effective on the date of the last signature affixed hereto and shall terminate upon completion of the tasks necessary to accomplish the purpose of the agreement, unless sooner terminated by the Cities as provided herein.

**IX. Dispute Resolution**

a. Step One – Negotiation. In the event of a dispute concerning any matter pertaining to this Agreement, the Parties involved shall attempt to address their differences by informal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Parties in writing of the general nature of the issues. The letter shall be identified as a formal request for negotiation and shall propose a date for representatives of the Parties to meet. The other Parties shall respond in writing within ten (10) business days. The response shall succinctly and directly set out that Party’s view of the issues or state that there is no disagreement. The Parties shall accept the date to meet or shall propose an alternate meeting date not more than ten (10) business days later than the date proposed by the Party initiating dispute resolution. The representatives of the Parties shall meet in an effort to resolve the dispute. If a resolution is reached the resolution shall be memorialized in a memorandum signed by all Parties which shall become an addendum to this Agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step One expenses. Negotiation under this provision shall not exceed 90 days. If a resolution is not reached within 90 days, the Parties shall proceed to mediation.

b. Step Two – Mediation. If the dispute has not been resolved by negotiation within ninety (90) days of the initial letter proposing negotiation, any Party may demand mediation. The mediator shall be chosen by agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step Two expenses. The parties to the mediation will share the cost of the mediator. A successful mediation shall result in a memorandum agreement which shall become an addendum to this Agreement. Mediation under this provision shall not exceed 90 days. If the mediation is not successful within 90 days, the Parties may proceed to litigation.

c. Step Three – Litigation. Unless otherwise agreed by the Parties in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any legal action.

A Party may initiate an action without exhausting Steps One or Two if the statute of limitations is about to expire and the Parties cannot reach a tolling agreement, or if either Party determines the public health, safety, or welfare is threatened.

**X. Termination of Agreement**

This Agreement may be terminated upon mutual agreement of the Cities.

**XI. Interpretation and Venue**

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The parties hereby agree that venue for enforcement of any provisions shall be the Superior Court of Thurston County.

**XII. Entire Agreement**

This Agreement sets forth all terms and conditions agreed upon by the Cities and supersedes any and all prior agreements oral or otherwise with respect to the specific subject matter addressed herein.

**XIII. Recording**

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the Cities' websites as provided by RCW 39.34.040.

**XIV. Counterparts**

This Agreement may be executed in counterparts, and all such counterparts once so executed shall together be deemed to constitute one final agreement, as if one document had been signed by all Parties, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding on the parties. A faxed or email copy of an original signature shall be deemed to have the same force and effect as the original signature.

**XV. Notice**

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit with the United States Postal Service.

**CITY OF OLYMPIA:**

Attn: Laura Keehan, Senior Planner  
Re: Water Rights Mitigation/Deschutes Basin  
PO Box 1967  
Olympia, WA 98507-1967

**CITY OF LACEY:**

Attn: Peter Brooks, Water Resource Manager  
Re: Water Rights Mitigation/Deschutes Basin  
420 College St SE  
Lacey, WA 98503

**CITY OF YELM:**

Attn: Shelly Badger, City Administrator  
Re: Water Rights Mitigation/Deschutes Basin  
105 Yelm Ave. W  
Yelm, WA 98597

This Agreement is hereby entered into between the Cities and shall take effect on the date of the last authorizing signature affixed hereto:

**CITY OF OLYMPIA**

\_\_\_\_\_  
Stephen H. Buxbaum, Mayor

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Darren Nienaber, Deputy City Attorney

**CITY OF YELM**

\_\_\_\_\_  
Ron Harding, Mayor

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
P. Stephen DiJulio, Attorney

**CITY OF LACEY**

\_\_\_\_\_  
Scott Spence, City Manager

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
David Schneider, City Attorney