

APPENDIX to April 12, 1996
BRITISH COLUMBIA/WASHINGTON
MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF AGREEMENT
Related to
REFERRAL OF WATER RIGHT APPLICATIONS

Between the
State of Washington
as represented by the Department of Ecology,
herein called "Ecology"

and the

Province of British Columbia
as represented by the Minister of Environment, Lands and Parks,
herein called "the Ministry"

October 10, 1996

RECITALS

WHEREAS, the Environmental Cooperation Agreement of May 7, 1992, between the Province of British Columbia and the State of Washington, proposed consultation and information sharing between the State and the Province on environmental matters of mutual concern, including water resource management issues such as water resource allocation;

WHEREAS, the Memorandum of Understanding of April 12, 1996 between Ecology and the Ministry provides for the development of subject-specific Memoranda as Appendices to the Memorandum of Understanding.

WHEREAS, jurisdiction over water resource allocation of waters of the Province and the State rests, respectively, with the Province and the State, subject to the exercise of any existing applicable aboriginal and treaty rights, in the case of the Province with First Nations as recognized and affirmed in Section 35 of the Canadian Constitution Act of 1982, and in the case of the State with Native Tribes as recognized by the Congress of the United States and by the State of Washington;

WHEREAS, in the exercise of that jurisdiction particular regulatory schemes have been put in place in the Province and the State, and these schemes are administered by provincial and state agencies, the Ministry and Ecology respectively;

WHEREAS, a Memorandum of Agreement was considered to be the most effective means to provide for consultation and information sharing between the Ministry and Ecology on water resource allocation by officials of those agencies, where such allocation has the potential for significantly impacting water quantity across the border.

THEREFORE, the Ministry and Ecology enter into this Memorandum of Agreement, hereafter called the MOA.

IT IS THE PURPOSE OF THIS MOA TO:

- 1) Define the respective roles and responsibilities of the Ministry and Ecology to provide for timely prior consultation on water quantity allocation permits, and
- 2) Specify procedures, schedules, and appropriate contacts within each agency to facilitate the timely sharing of the above information.

IT IS MUTUALLY AGREED THAT:

1. Statement of Work

1.01 The Ministry and Ecology agree, in order to provide for timely consultation between them prior to water resource allocation by officials of those agencies where, in the judgement of the administrating agency, such allocation may have the potential for significantly impacting water quantity on the other side of the border, to:

(a) provide information to the other party in accordance with the Scope of Work, which is attached to this MOA and forms part of it, and

(b) consult with the other party:

on any licence or permit application for water quantity allocation which if granted, could potentially significantly impact water quantity on the other side of the border.

2. Term

2.01 This MOA will take effect commencing on the date this MOA is signed by both parties and will remain in effect for a period of three years, when it shall be subject to review and renegotiation, unless it is terminated earlier by either of the parties.

3. Termination

3.01 Either party may terminate this MOA by giving 30 days written notice of termination to the other party.

4. General

4.01 This MOA is not intended to constitute a contractually binding relationship between the parties.

IN WITNESS THEREOF, the parties execute this agreement.

*A duly authorized representative of the
Minister of Environment, Lands and Parks,
on behalf of Her Majesty the Queen,
in Right of the Province of British Columbia:*

Name: Joan McCubben

Title: Regional Director

Date: October 15, 1996

*A duly authorized representative of the
Director of the Department of Ecology,
for the State of Washington:*

Name: Michael Rindt

Title: Regional Director

Date: October 11, 1996

SCOPE OF WORK

PRIOR CONSULTATION AND INFORMATION SHARING REGARDING WATER RIGHTS ALLOCATION

I. Coordination and Cooperation

Water quantity allocation is a cross-border issue. Because water resource development on either side of the border can have a significant impact on water availability on the other side, it is imperative that the Ministry and Ecology:

(a) coordinate reviews to facilitate decision-making on applications involving water rights allocation, where the water allocation applied for has the potential for significantly impacting water quantity across the border, and

(b) cooperate in sharing relevant water quantity information necessary to provide management of those water resources.

II. Elements of Consultation

In addition to the referral procedures normally followed, Ecology's Shorelands and Water Resources Program, Northwest Regional Office Section, will send all surface water, ground water, and reservoir applications for permit and applications for change of water right to the Ministry when the point of withdrawal, point of diversion, or place of use specified in the application is within or on the exterior boundaries of the Abbotsford/Sumas Aquifer as outlined in the attached plan (1:82,500 scale). Ecology will provide the Ministry a copy of the application form and a copy of the appropriate USGS quadrangle sheet or Metsker map, indicating the location of major project features such as points of diversion, nature of the works proposed, and other information normally submitted with the application. All applications will be sent to the Regional Water Manager, Lower Mainland Regional Headquarters, Ministry of Environment, Lands & Parks.

In addition to the referral procedures normally followed, the Ministry will send to Ecology all surface water licence applications and water licence amendment applications when the point of withdrawal, point of diversion, or place of use identified in the application is within or on the exterior boundaries of the Abbotsford/Sumas Aquifer as outlined in the attached plan (1:82,500 scale). The Ministry will provide Ecology a copy of the application form and a copy of the appropriate NTS, BCGS or cadastral map, indicating the location of major project features such as points of diversion, nature of the works proposed, and other information normally submitted with the application. All applications will be sent to the Supervisor, Shorelands and Water Resources Program, Northwest Regional Office, Department of Ecology.

Applications which meet the requirements identified above will be transmitted by the Ministry or Ecology to its counterpart at the same time that notice for comment is provided to other interested parties. Upon receipt of the application, the Ministry and Ecology will have 30 days for review and comment. If necessary, the Ministry and Ecology may request additional time for review and comment on any application.

Comments from the Ministry and Ecology should be substantive in nature; i.e., they should relate specifically to impairment of the aquifer's safe sustaining yield, impairment of existing rights, or to fish and wildlife biology or habitat impacts. Current information, based on a field investigation, is preferred. Projected effects should be quantified to the extent possible. If either agencies' staff does not fully understand the reviewer's comments, he or she should contact the reviewing agency for clarification. When findings significantly deviate from the substantive comments provided by the reviewing agency, a copy of the findings will be provided to the reviewing agency.

III. Information Sharing

Subject to applicable public disclosure, freedom of information, and protection of privacy laws, the Ministry and Ecology commit to freely sharing and exchanging information on water licences/permits and water licence/permit applications under consideration.

Subject to applicable public disclosure, freedom of information, and protection of privacy laws, the Ministry and Ecology commit to freely sharing and exchanging information on regional studies pertaining to water availability and development of water resources within or on the boundaries of the aquifer.