

## RESPONSES TO COMMENTS RECEIVED REGARDING THE 3/31 ILA DRAFT OF THE CHEHALIS ILA

### STEELHEAD & SALMON CONSERVATION SOCIETY [attached]

1. Objected to the “lack of specific references to restoring riparian habitat, utilizing natural resources, or other means of managing flood water such as off-channel storage.”

*Answer: Language can be incorporated that acknowledges these means are included in the palette of flood control and mitigation measures*

2. “Critical that the citizens of the Flood Control Zone District(s) should have the opportunity to vote for the following:
  - a. Members of the FCZD;
  - b. Projects to be undertaken by the FCZD;
  - c. Approval of taxes, rates, and assessments.”

*Answer: Until the new State legislation is enacted allowing for a directly elected multi-jurisdiction FCZD, the only opportunity for direct election of FCZD members is within each individual county. Similarly, with the levying of taxes, rates or assessments, only counties or their individual FCZDs have this authority until the new legislation is enacted. Both these requests should be made directly to Lewis, Grays-Harbor and Thurston Counties. Secondly, the projects to be undertaken by a FCZD or a multi-jurisdiction FCZD have not yet been developed. A provision exists within the ILA to put these to a public vote when developed. Stronger language could be added with the direction of the Flood Authority.*

### LEWIS COUNTY COMMENTS ON THE ILA [attached]

1. Who are the contracting parties?

*Answer:*

- a. Lewis FCZD
- b. Thurston County through its SWM Utility or as a FCZD
- c. Grays-Harbor County or FCZD
- d. The Chehalis Tribe if they decide to rejoin
- e. The timing of which participants join at which point is a policy question rather than a legal matter.

2. The Scope of the Proposed Agreement is unclear.

*Answer: The concern here appears to be regarding whether counties or individual FCZDs do their own projects, outside of the control of the ILA. This was not mentioned within the ILA nor was it the intent of the ILA to contain such a limitation. However, if this is unclear, it can be made explicit by adding specific language.*

3. The Board of the interim authority should not include county commissioners.

*Answer: This is not an issue if Members are directly elected per the new legislation, or if individual counties decide to elect their own FCZD members. The ILA makes it the decision of each county whether to elect or to appoint their own FCZD members. Lewis County could decide to provide for an election or it could decide to appoint a non-elected Member to the*

*Board. If the Flood Authority wishes, language could be added that prohibits BoCC persons from serving as Board Members. This is a policy matter.*

4. Can any entity “succeed” the Flood Authority?

*Answer: The ILA doesn't eliminate and/or replace the existing Flood Authority. It creates an outcome for the Flood Authority's efforts.*

5. Must the parties execute the Proposed Agreement before July 1, 2011?

*Answer: This was the subject of significant debate at the 3/31/2011 Flood Authority meeting, demonstrating that it is open to interpretation of both the letter and the spirit of the State's language and intention. Coming to agreement prior to July 1, 2011 is not absolutely required if the risk to continued funding is not significant or important.*

6. All Members should have flood control authority within their respective jurisdictions and should be subject to the same rules and conditions of membership. [Please refer to full text]

*Answer:*

- a. No reference to the requirement for land use authority is made in the ILA.*
- b. The ability to substitute a FCZD for a county is provided in the ILA.*
- c. FEMA is used in the ILA to define the flood plain; if desired this can be made more explicit.*
- d. No suggestion is made that other counties join the flood entity; a provision to allow the flood entity to add additional counties is included. If the Flood Authority does not wish to allow additional county members in the future, this provision can be deleted.*

7. Flood control duties should be undertaken by separate legal entities. [Please refer to full text]

*Answer: For over 20 years the King County Council has served as the Board of Supervisors for their FCZD (first in the Green River basin and then expanded to county-wide) without this being an issue. The FCZD statute allows for FCZD Boards that are either identical to the county legislative authority, or separately chosen. This involves a policy choice for the Flood Authority to make.*

8. The proposed Agreement does not adequately address the risk of individual Members being deemed joint employers of the staff employed by the proposed entity.

*Answer: We can add the proposed language if the Flood Authority so directs.*

9. Audits need to be made available to all Members.

*Answer: We can add explicit language to this effect. However, these documents are public documents and as such are already open to all*

10. The proposed allocations/contributions appear to be based on incomplete and inaccurate information, fail to take into account the Interstate and BNSF line, as well as the economic activities associated with those assets in the floodway, and appear to penalize the counties with those assets in the floodplain.

*Answer:*

- a. The flood plain is as determined by FEMA, now or as hereafter amended. Once the geographic and jurisdictional limits of the floodplain and funding boundary are determined, an “official floodplain and basin funding area map” can be created and adopted. That map should be tax lot based, and take into account jurisdiction boundaries that participate in the district. The map may also be periodically updated in the future.*

- b. *If the flood plain is changed the allocation calculations will need to be updated as you suggest. This can be made more explicit if desired. See comment above.*
- c. *With regard to I-5 and BNSF railroad, the property damage costs to the infrastructure, and the economic losses to the State of Washington that were attributed to I-5 closure from the 2007 flood event were taken into account in our Economic Benefit Analysis Memorandum, using available background information. The estimated damage avoidance benefits to the State of Washington associated with I-5/BNSF are cited in the Memorandum (Tables 7, 9 and 10), and are intended for comparison purposes, and may serve useful to leverage state/federal (non-local) funding participation for flood mitigation capital improvements (e.g., I-5 reconstruction). While the I-5/BNSF facilities are assets that are partially located in the floodplain, they are not directly impacting the current methodology used by FCS to determine local funding allocations, because they we have not included any estimate of their direct assessed valuation amounts, or direct “local” jobs associated with these interstate assets, unless the local jobs are embedded in the direct local job estimates provided by the Census estimates (e.g., state highway maintenance workers or businesses that depend on rail spurs within the floodplain) .*
- d. *Some work will be necessary to update the allocation calculations as data changes, such as the flood plain maps; however this could be done by county or FCZD staff, and responds to your concern raised in b, above.*
- e. *Does Lewis County have an alternative methodology to propose?*
11. How the floodplain will be managed is up to the counties, not the contracting parties, and the ratepayers of the contracting parties should not be penalized for decisions over which they exercise no control; the issue of floodplain management is for the counties and is not an appropriate subject to this agreement.

*Answer: The language regarding development regulations (land use) in the flood plain was requested by some members of the Flood Authority, and could be removed. However, management of the flood plain is a very appropriate subject of the ILA because addressing the costs to protect development in the flood plain is a major purpose of the ILA. Additionally, some counties may become Members of the ILA, and they do have land use authority.*

12. The Agreement is inflexible and the sanctions for disagreement draconian.

*Answer: The choice of sanctions for a Member’s breach of contract is a policy matter for the Flood Authority to address.*

13. Binding arbitration is expensive and impractical.

*Answer: Nothing in the ILA requires binding arbitration. We can drop the arbitration language and replace it with direct court review.*

#### LEWIS COUNTY COMMENTS ON THE TRANSITION PLAN [attached]

*Answer: Lewis County’s proposal is an option.*

*At the Flood Authority meeting on 3/31/2011 the risk to continued State funding was discussed at length and open to interpretation of both the letter and the spirit of the State’s language.*

#### ONE-VOICE’S COMMENTS [attached]

Objecting to an interim or permanent multi-county district because:

- ◆ Citizens would be taxed this year without a vote.

*Answer: This is a decision for only Lewis County at this time through its own FCZD. They can choose to put to a public vote the election of FCZD Board Members and/or the raising of revenues. When the other Counties form their FCZDs, expand their SWM Utilities, and/or when and if the newly enacted state legislation regarding a multi-jurisdictional FCZD is established, additional revenues could then be raised for this purpose along with decisions on public ballots.*

- ◆ FCS Group has a conflict of interest in proposing the Transition Plan

- *Answer: The Transition Plan was proposed by ESA Adolfson, not FCS GROUP.*

- ◆ The Flood Authority should complete its work before July 1, 2011.

- *Answer: The Flood Authority is attempting through contracts with ESA Adolfson, and FCS GROUP, to complete its work as requested by the State and within its existing ILA, which includes the establishment of a multi-jurisdictional flood entity empowered to raise additional revenues for flood management purposes and accept sponsorship of capital projects for same.*



March 29, 2011

Terry Willis, Chair  
Chehalis River Basin  
Flood Authority

Commissioner Willis;

The Steelhead and Salmon Conservation Society is concerned with two aspects of the proposed Interlocal Agreement (ILA). We believe that these concerns require the attention and consideration of the members of the Flood Authority.

The first concern we have is the lack of specific references to restoring riparian habitat, utilizing natural resources, or other means of managing flood water such as off-channel storage. The references throughout the ILA focus on the utilization of built resources to mitigate flood damage. Below are several examples of this.

Article 3, Purposes, (d) states:

Constructing, purchasing land, and operating and maintaining flood control, land and management facilities to prevent or minimize flood damage.

In Article 4, Powers, (a) and (b) the references are as follows;

Acquire, construct, receive, own, manage, lease and sell real property, personal property, intangible property and other flood management assets;

Operate and maintain facilities.

Finally, in Article 7, Capital Plans, Operations and Maintenance, the section 7.1, Flood Management Plan says the following;

The Authority shall prepare an initial Capital Improvement and Program Plan describing a system of flood control facilities and programs designed to manage and control flood waters of the Chehalis River Basin and its major tributaries, and the costs and financing thereof. The Board may from time to time amend the Capital Improvement and Program Plan.

We urge the Flood Authority to amend the ILA to include specific references to utilizing natural resources as a means of mitigating flood damage.

Second, we note that other than a vague reference in Article 5, Organization and Board of Directors, Section 5.2, Provision for an Elected Board of Electors, there are no other references to voting. It seems to us that it is critical that the citizens in the Flood Control Zone District(s) should have the opportunity to vote for the following;

1. Members of the FCZD;
2. Projects to be undertaken by the FCZD;
3. Approval of taxes, rates, and assessments.

We strongly urge the Flood Authority to address this issue in a concrete and specific way. Without direct public involvement, via voting, we suspect this will be a fatal flaw in attempting to create FCZD(s).

Sincerely,

Ric Abbett

President and CEO

James Wilcox

Secretary and Treasurer

Bruce Treichler

Vice president

Cc; Karen Valenzuela, Vice Chair  
Chehalis River Basin  
Flood Authority

Ron Averill,  
Chehalis River Basin  
Flood Authority

## LEWIS COUNTY COMMENTS

RE: DRAFT INTERLOCAL PROVIDED AT MEETING ON THURSDAY, MARCH  
17, 2011

MARCH 28, 2011

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This memorandum summarizes the comments of Lewis County regarding the draft Inter-local Agreement prepared by FCS Group.

### **1. Who are the contracting parties?**

A fundamental element of any contract is the identity of the contracting party or parties. Prior to the Flood Authority meeting on Thursday, March 17, 2011, it was generally understood that the contracting parties (“Members”) would be the State, the Confederated Tribes of the Chehalis (“Tribe”), and three flood control zone districts (“FCZDs”) formed pursuant to RCW 86.15. These entities would be joined by an Inter-local that complies with current law or that met the requirements of the pending multi-county FCZD legislation, if it passes.

At the Thursday meeting, FCS announced that the Agreement might instead be entered into by a FCZD in Lewis County, a county-wide storm-water district in Thurston County, and the County itself in Grays Harbor. Additionally, the Tribe announced it would leave the Authority and not take part in a successor entity. These announcements confuse the situation. It is unclear who will contract with whom.

FCS explained that the other two counties might need “a little more time” to form FCZDs. However, media reports suggest Grays Harbor County and Thurston County have determined not to form FCZDs, even if they are granted extensions of time.

The identities of the entities make a difference. If the Agreement is between three FCZDs, the contracting entities’ only duties will be to develop, operate and maintain flood control measures in their respective jurisdictions. They will have no other responsibilities. On the other hand, if the contracting parties are counties or county-wide hybrid agencies, the contracting entities will have many, potentially conflicting, duties. The breadth and potential conflict among duties of such larger entities detracts from their effectiveness for flood control purposes.



**2. The scope of the Proposed Agreement is unclear.**

There needs to be a provision expressly stating that each Member reserves to itself the power and right to carry out such projects as it wishes to carry out that are within its statutory powers, without submitting the project for review or approval of the Authority. In effect, the Member has the power to choose which projects it will submit for Authority consideration and financing.

**3. The Board of the interim authority should not include county commissioners.**

The Board of the interim authority should not include county commissioners. During the time that the interim authority is beginning operations, the county commissioners will be the supervisors of the flood control zone districts and will have the opportunity –in their capacities as supervisors and commissioners--to consider and act on budget allocation and contribution proposals as well as bonding proposals. However, they should not both act as supervisors and as representatives on the Board. One purpose of the Agreement, both short-term and long-term, is to appoint representatives to the Board that have sufficient time and effort to dedicate to flood control issues in the Basin. Appointing county commissioners to the Board derogates from this purpose.

In the medium or long term, the FCZDs need to elect their supervisors. In this manner, the FCZDs will be led by supervisors that have no other governmental responsibilities, enabling them to dedicate all of their energies to the task. Additionally, elected supervisors will be directly accountable to the taxpayers and/or ratepayers within the Basin.

**4. Can any entity “succeed” the Flood Authority?**

FCS has stated that the budget legislation passed in last year’s session requires the creation of a “successor” to the Flood Authority by July 1, 2011. Technically, the Flood Authority will not cease to exist on July 1, 2011, whether or not this Agreement is executed before that date. Although the Tribe has terminated its participation in the Authority, the Authority continues to exist as an organization comprised of the remaining Members, as it will after the Legislature pulls the plug on the Authority’s funding.

As long as the Authority exists, any entity created pursuant to the proposed contract will not be a “successor” to the Authority. If all of the members of the Flood Authority agree to terminate the Authority, the Authority will cease to exist. If less than all of the members of the Authority terminate their participation, the Authority will continue to exist and there will not be a “successor” organization.

**5. Must the parties execute the Proposed Agreement before July 1, 2011?**

As a general matter, it is imprudent to rush into an ill-defined agreement simply to meet a deadline. Although the 2010 budget legislation requires “governance agreements” providing for the development, operation and maintenance of flood control measures in the Basin, the failure to meet the stated deadline appears merely to mean that the money currently held by the Office of Financial Management (OFM) for Flood Authority purposes will be disbursed directly by OFM, not through the Flood Authority.

The Flood Authority and its fiscal agent do not hold the money appropriated by the legislature this past year. The County, as fiscal agent, has no money to return or disburse. OFM holds the money. OFM is capable of disbursing the funds as needed to continue the work of the Flood Authority, including continuing the fish study and the hydrological study of the River past Porter.

As a practical and legal matter, an agreement cannot be executed until the FCZDs are legally effective, which is after the Boundary Review Board (BRB) in each jurisdiction renders a final decision on the creation of the FCZD, assuming the jurisdiction of the BRB is invoked. If the jurisdiction of the BRB is not invoked, then the FCZD because legally effective after the 45-day waiting period for invoking jurisdiction expires without anyone invoking that jurisdiction.

**6. All Members should have flood control authority within their respective jurisdictions and should be subject to the same rules and conditions of membership.**

Whether a Member does or does not have “land use” authority over the floodplain of the River is not the correct criterion. FCZDs have no “land use” authority, meaning authority to enact development regulations or enforce permits. The correct criterion is whether the entity has “flood control” authority within the Basin.

The Agreement does not address subsequently created FCZDs in the Basin. For example, if Thurston County is permitted to proceed with a countywide storm-water district as the Member of the tri-partite inter-local, and subsequently, either Thurston County or the property owners in the Basin in Thurston County form a FCZD covering either all or a portion of the Basin, that district should be substituted for the county-wide storm-water district in the Agreement. The FCZD, whether created by petition or by the BOCC, would have the properly-focused flood control authority in the Basin, not the county-wide storm-water district.

As a condition to membership, all Members must have accepted a current FEMA flood study of the entirety of the River (including the floodplain and floodway as those terms are defined by the CFRs and used by FEMA) within their jurisdiction prepared in compliance with the applicable federal regulations governing preparation of FEMA flood studies and maps. For example, the Lewis County Member would be required to provide a FEMA flood study and map of the entirety of the floodplain and floodway along the main-stem within its jurisdiction.

It is essential that all Members are subject to the same floodplain/floodway definitions, rules and regulations. A map of the floodplain and floodway that has not been prepared by FEMA or that is based on a different and subjective definition of floodplain rather than that employed by the FEMA and applicable to the other jurisdictions is not sufficient unless, at a minimum, it is peer-reviewed for accuracy and completeness by an expert unanimously agreed to by the existing members of the Agreement. Incomplete maps are insufficient. A Flood Hazard Management Plan is pointless if the members employ different definitions of floodplain and if a Member, in the absence of FEMA mapping, refuses to submit all or a portion of the Basin in its territory to mapping by an independent and qualified agency agreed upon by the other members.

After the Tribe declared it would not participate, FCS suggested adding other counties within the Chehalis River Basin, including Mason and presumably Pacific and Wahkiakum Counties. The suggestion to change the plan midstream was unexplained. While Lewis County has no objection to the participation of these counties, it is unclear whether the counties have been briefed on the work of the Flood Authority or the nature of the obligations assumed as part of the proposed contract.

In the new Agreement, the admission of new Members should require the unanimous consent of all Members. No party should have the power to compel another party to contract with someone with whom it does not wish to contract.

### **7. Flood control duties should be undertaken by separate legal entities.**

The Agreement empowers the Members to create a separate legal entity with authority to engage in flood control, contract, hire and fire, sue and be sued, etc.

An important advantage obtained by creating a separate legal entity to handle Basin flood control is limited liability. Up to this time, this task has been handled by counties, which incur a risk of liability for actions taken or not taken. The advantage obtained by creating a legal entity separate from the counties is potentially lost if the county commissioners continue to control the actions and decisions of the new entity.

The three counties are owners of the Washington Counties' Risk Pool. The entity insures them for their actions and inaction on flood control. To the extent the commissioners are supervisors of the FCZDs, an entity wishing to sue the FCZDs will name and serve as defendants the county commissioners. From the point of view of Risk, the counties should form FCZDs and provide for each FCZD to have elected supervisors.

The Tribe has stated that it does not wish to participate in the entity. If it were to change its mind and express a wish to participate, then it must agree to be subject to the same risk of liability as other Members and waive sovereign immunity.

**8. The proposed Agreement does not adequately address the risk of individual Members being deemed joint employers of the staff employed by the proposed entity.**

The proposed Agreement creates a separate legal entity that will be the employer of the employees. If it is operated properly, the employees of the separate entity will not be deemed employees of the Members for purposes of worker's compensation, tort, employment, retirement and health and welfare benefits. However, if county commissioners make determinations concerning who will be hired, fired, etc., their day-to-day control over employment issues may render the Counties "joint employers" of the entity's employees. A provision needs to be added in Article 5.5 clearly stating that the employees/consultants of the entity are not employees of the constituent Members for any purpose, whether industrial insurance (workers comp), retirement, health and welfare benefits, discrimination, etc. Nonetheless, the presumption created by this provision may be negated in practice by the county commissioners' involvement in employment decisions.

As a related matter, the suggestion was made at the meeting that the Treasurer would be a county Treasurer. For reasons already explained, there is an assumption of a risk of liability by any County that accepts this responsibility. There is a provision for indemnification in the Agreement but it is limited to the Members. The Counties will not be Members (the FCZDs/districts will be the Members). Hence, that indemnification does not help the county that is designated as Treasurer. That County will need to obtain a separate indemnification from the Members for providing this service to the Authority and will need to charge appropriately.

**9. Audits need to be made available to all Members.**

Article 5.5(f) needs to be broadened at least to permit inspection of the books and records of the Authority by the County Auditor of the county that has been appointed Treasurer for the Authority. However, it should go further and permit inspection by any Member. Each Member contributing to the organization should have the right to see that it is properly applied by Authority Staff.

**10. The proposed allocations/contributions appear to be based on incomplete and inaccurate information, fail to take into account the Interstate and BNSF line, as well as the economic activities associated with those assets in the floodway, and appear to penalize the counties with those assets in the floodplain.**

Article 6 allocates expenses on the basis of “floodplain.” The term is not defined. We understand that there may be a disagreement among the members as to what is meant by the term. We are told that the Tribe, for example, has taken the position that its property is not in “floodplain.” However, the Chehalis Reservation has not been mapped by FEMA, at least not in its entirety. Thus, how do we know what part of the Reservation is or is not in the “floodplain” as FEMA defines the term and as the term is used by the counties? As a consequence the allocation formula, which is premised on “floodplain” measurements of land, population, assessed valuation and economic activity, is based on inaccurate and incomplete information. The resulting allocation formula magnifies the error.

FEMA flood studies are issued over time with some areas (e.g., Thurston County and Grays Harbor County) not having been studied for a long time. Thus, one county (Lewis) may receive a very recent flood study that broadens the FEMA floodplain, whereas other counties may not be the recipients of such a study for a very long time and may therefore have a much smaller floodplain. How is this inequity going to be addressed by the Authority? The present proposal seems to fail to take these issues into account, possibly penalizing the ratepayers in counties that have accepted recent FEMA flood studies.

Moreover, the Lewis County Member’s contribution needs to be reduced by, e.g., the “contribution” to the elevation of the flooding made by the State’s construction, operation and maintenance of Interstate-5. For purposes of allocations, it is unclear whether the Interstate (or the BNSF/Union Pacific line) is deemed part of the floodplain and/or floodway. Again, the allocation formula is based on assessed valuations and economic activities within the floodplain. Does it count the Interstate and the BNSF/Union Pacific? If not, why not? How will the analytical methodology used by FCS impact Lewis County’s contribution/allocation? These questions have been raised but, to our knowledge, have not been addressed.

The Analysis was based on admittedly incomplete and inaccurate figures. Have they been adjusted since the last presentation? How often will they be adjusted in the future? For example, the assessed values of the property in the floodplain in Lewis County will be substantially reduced (50% to 70%) in the next round of valuations due to new FEMA mapping. The figures need to be updated at least annually to match the annual cycle of assessments. In this manner, the Authority is going to spend an inordinate amount of time and resources calculating the Members' allocations.

**11. How the floodplain will be managed is up to the counties, not the contracting parties, and the ratepayers of the contracting parties should not be penalized for decisions over which they exercise no control; the issue of floodplain management is for the counties and is not an appropriate subject to this agreement.**

The nature and scope of the proposed floodplain management surcharge created by Article 6(f) is subject to uncertainty because it is unclear what definition of "floodplain" is being applied. As mentioned above, different Members use different definitions of "floodplain" and, while some Members are subject to FEMA regulation and mapping, other members apparently are not. Until all Members are subject to the same regulatory definitions and requirements, the surcharge provision cannot be permitted to apply.

Further, the decision to impose standards of floodplain management is up to, in part, the counties, who are not contracting parties. The issue is not an appropriate question for this contract between FCZDs. An FCZD and its ratepayers should not be penalized for a county's policy decision, a decision over which the ratepayers have no control. The issue needs to be raised to the counties outside of the context of this agreement.

**12. The Agreement is inflexible and the sanctions for disagreement draconian.**

Any Member disagreeing with the allocation/contribution assigned to it has a stark choice: agree to the allocation/contribution imposed or terminate participation in the new entity. This is a highly inflexible or "brittle" arrangement. The entity will "break" as soon as one Member refuses to agree to what the member deems an unequal or disproportionate allocation/contribution voted by the majority or supermajority, as applicable.

The agreement needs to be made more flexible for the entity to survive. For example, allocations for operations and bonding could be "negotiated" just as FCS proposes the negotiation of capital projects and the negotiation of the

State's contribution. If negotiation will not work for the Members' allocations, there is no reason to expect it to work for the State's contribution or for allocations for capital projects.

Similarly, Article 9 provides that any Member that fails to agree to pay what is deemed appropriate by the Authority Board is terminated and must forfeit its interest in all Authority assets, regardless of the amount of those assets. Also, the Member forfeits voting rights. These forfeitures appear to be disproportionate.

**13. Binding arbitration is expensive and impractical.**

The conflict dispute resolution procedure requires binding arbitration through the American Arbitration Association (AAA). The purpose of arbitration is to minimize attorney fees and quickly end disputes. Unfortunately, binding arbitration through AAA is anything but inexpensive and efficient. While the County has no objection to an agreement to require non-binding mediation (redundant) before or concurrent with resort to the courts, it cannot accept binding arbitration, at least not on the unlimited terms proposed in this Agreement. Recourse in the event of unsuccessful mediation should be through the courts, whichever courts may have jurisdiction or venue, including the federal courts. For obvious reasons, venue cannot be limited to a particular county.

## **COMMENTS ON TRANSITION PLANNING**

*What are the purposes of transition planning for the Authority?*

1. To complete the current studies, including: fish study, hydraulic model, and warning system.
2. To assist the counties in the creation of flood control zone districts.
3. To assist the FCZDs in the development of an appropriate governance agreement.

*How will these efforts be funded?*

As of July 1, 2011, the Office of Financial Management (OFM) will have \$400,000 or so from the prior budget legislation to use for the purposes stated. The Governor has submitted a capital budget bill to appropriate \$1.32 million to the Authority to accomplish the tasks enumerated above.

*Is July 1, 2011 a firm deadline for an inter-local agreement to be executed?*

If the Governor's proposed budget legislation is passed, \$1.32 million will be appropriated specifically for the above-enumerated purposes and the July 1 deadline is a false deadline. The proposed legislation does not require a particular form of entity. If the budget legislation does not pass, the July 1 deadline is irrelevant and the remaining \$400,000 should be administered by OFM to complete the fish study.

*What form of inter-local agreement should the FCZDs enter into?*

It is unclear whether FCZDs will be formed in Grays Harbor and Thurston County, it is unclear whether the Tribe will or will not participate, it is unclear what monies will be made available to those parties that eventually contract, and it is unclear what projects will be possible given the results of the completed fish study and economic analysis. With these uncertainties, it is difficult to devise an inter-local agreement.

*How will the flood control zone districts be governed?*

The RCW states how flood control zone districts are governed. The flood control zone districts, like any special district, are authorized to hire staff, conduct public outreach and plan and implement budgets. To the extent the flood control zone districts need to address the development of *Basin-wide* flood control measures they may consider the development of agreements for that purpose.



*What options exist for proceeding in addition to those identified by FCS/ESA?*

1. Create flood control zone districts in each county.
2. Appoint advisory committees in each county to assist those FCZDs.
3. Authorize OFM (i) to work directly with existing fish study, hydraulic model and warning system contractors to finish those tasks or have OFM work with the appropriate local district to finish each task, or (ii) to work through the relevant FCZD(s) to complete the fish study, hydraulic model and warning system.
4. Empower the FCZDs to proceed with planning, budgeting, outreach and staffing to address the flood control needs in their respective jurisdictions and equip them to develop appropriate cooperation agreements with each other, the Tribe and State (as appropriate) to carry-out effective Basin-wide flood control initiatives.

One voice is a grassroots group of citizens from Lewis, Southern Thurston and Grays Harbor counties formed in response to the terrible human suffering caused by the 2007 flood. Our only mission is to try to find a basin wide plan to reduce the threat to families and communities in this basin from flooding.

We have learned that flood control must be consistent with environmental protection. We have learned that while we will never have everyone in the basin agree to any plan, we can create a broad consensus behind a basin wide plan.

Over 25 organizations in the basin, including a majority of the jurisdictions represented on the Flood Authority, have passed Resolutions asking for the Twin Cities Project to be reformulated so that it no longer focuses on filling 11 miles of the floodway with levees to protect I-5 but instead focuses on upper basin retention with modest downstream levees as needed.

Scientific hydrology reports show that such a plan would have lowered the peak of the 2007 flood by 3.1 feet at Mellen Street and 1.6 feet at Porter in Grays Harbor.

We have learned that with climate change we can expect that our winter storms will become more severe while our summers will be hotter with lower flows, higher temperatures and lower oxygen levels for fish in the upper Chehalis basin. The only plan on the table that can address both problems is water retention.

The Flood Authority was created in response to the 2007 flood with the purpose of seeking a basin wide flood solution. We appreciate the scientific studies that have been conducted with the support of the current Flood Authority. We know how many hours the members have spent and we thank you for this service.

But now there is discussion as to whether some form of this group needs to be created as either an interim body or as a permanent multi-county district. One Voice does not support either step at this time. Our reasons are as follows.

The proposal on the table now from FCS group for a multi-county flood district would be a big step backward for flood control. That plan proposes to start taxing the citizens in the basin this year. FCS proposes hiring staff this year and, of course, FCS proposes that the new district hire FCS, and pay FCS more money this year.

It is an incredible conflict for FCS to be paid by taxpayers now to draft and push for a proposal to pay FCS. Page 6 of the "Transition Planning Report" spells out 5 "Options" each beginning as follows: Option 1. = *Continue FCS contract...*, Option 2. = *Expand the FCS contract*. Option 3. = *Hire FCS...* Option 4. = *Hire FCS....*

These "options" are followed by the "Recommendations" including 1 and 2 above – i.e. *Continue and Expand FCS Group's contract*.

FCS also suggests that citizens in the basin pay taxes before a public vote. On Page 4 "*Given the need for a robust outreach plan before a vote is held the member jurisdictions may want to consider initially raising administrative funds without a public vote.*"

What the FCS proposal lacks is any plan for flood control.

The proposal calls for taxing communities in Grays Harbor like Westport, Ocean Shores and McCleary. Westport will never be flooded from the Chehalis River. The only reasons we can see why this proposal includes those communities is to collect more tax revenue and to balance the political power on the district board. Those are the wrong reasons to draw a map for a flood district.

The public that wants flood control is tired of bureaucracy, facilitators, and staff. They do not want to pay higher taxes now before there is a "project" ready for flood control. Adopting a multi county district now, before there is a project, is a sure way to enflame the public.

The legislators in Olympia have told the flood authority "no more doughnuts." Yet this proposal is a plan to pay for more doughnuts – not a plan for flood control.

The right answer is for the Flood Authority to complete its work between now and June 30.

The state can work with existing counties or flood zone districts to complete the fish and hydrology study. There is no need for any other interim or permanent body at this time.