

Intermountain West Data Warehouse



Western Air Quality Study

DATA USE AGREEMENT

August 6, 2015

This data use agreement (the “Agreement”), effective as of the date of this data access request (the “Effective Date”), by and between all parties cooperating in the [Intermountain West Data Warehouse](#) (IWDW) and the associated Western Air Quality Study (WAQS) and including the National Park Service, Colorado State University, the Western States Air Resources Council (WESTAR) and WESTAR contractors (collectively “IWDW-WAQS project team”) and you (“Recipient”), establishes the terms and conditions under which Recipient will access, copy, and use certain data described below (the “IWDW-WAQS Data”). The IWDW-WAQS project team and Recipient are sometimes referred to in this Agreement singularly as a “Party” and collectively as the “Parties.” The Western States Air Resources Council (WESTAR) serves as the IWDW-WAQS coordinator. Direct all questions about the IWDW and WAQS data to Tom Moore (tmoores@westar.org).

- 1. Description of Data.** The IWDW holds and manages all original and derivative files prepared under the IWDW-WAQS for the purposes of their cooperator/sponsor agencies, using publicly available protocols and procedures. The IWDW will keep the original source data files secure at all times; only IWDW-WAQS project team members and cooperator/sponsor agencies can directly access these files for purposes related to the IWDW-WAQS. Recipient may obtain from the IWDW-WAQS all original and derivative files prepared under the IWDW-WAQS for the purposes of their cooperator/sponsor agencies, using publicly available protocols and procedures.
- 2. Recipient’s Use of Data.** Except as otherwise specified herein, the IWDW-WAQS project team grants Recipient the right to use and disclose Data in fulfillment of Recipient’s professional obligations for modeling studies pursuant to National Environmental Policy Act environmental impact assessments of oil and gas development projects in the intermountain West. Transfer and use of IWDW-WAQS Data by a Recipient for other air quality analysis and planning studies (external studies) may also be granted. The IWDW requires documentation as listed on the IWDW website prior to the transfer of the requested Data.
- 3. Restrictions on Recipient’s Use of Data.** It is understood that the IWDW-WAQS project team are authorized by the cooperator/sponsor agencies to provide files for external parties to conduct air quality studies. Any files released to external parties must be done using the protocols and procedures of the IWDW, the assignment of a Project Steward from among the cooperator/sponsor agencies, and with the prior written approval of the IWDW-WAQS Coordinator as provided in IWDW web system. The Recipient agrees to the following restrictions on their use of the IWDW-WAQS Data:
 - 3.1 The IWDW-WAQS project team will manage access to and use of the IWDW-WAQS Data as proprietary; any distribution of the Data to the Recipient is made with no implied or express

permission for the Recipient to use the Data for any purpose other than the purposes specified in the authorized Project Request, in compliance with the protocols and procedures of the IWDW. Any exceptions shall be granted in advance, in writing, by the Project Steward and the IWDW-WAQS Coordinator, and apply to only a specific external study.

- 3.2 A Modeling Study Description with sufficient detail for the external study that will use the IWDW-WAQS Data must be submitted to the IWDW web system and then authorized by the assigned Project Steward and the IWDW-WAQS coordinator before files are released, or if the external study group has and/or plans to use IWDW-WAQS Data files already in the external group's possession, an amended and/or new Modeling Study Description with sufficient detail for the external study that will use the Data must be submitted to the IWDW web system and then authorized by the assigned Project Steward and the IWDW-WAQS coordinator before those Data files can be used in the external study..
- 3.3 The IWDW-WAQS Data distributed to Recipient are not to be distributed further, and that no use or publication in any form (including papers, meeting/conference presentations, webinars, conference calls, and all other dissemination of IWDW-WAQS Data or supporting information) shall be done without prior notice to the IWDW-WAQS Coordinator, and without opportunity for the IWDW-WAQS project team to be co-authors. The Modeling Study Description for the external study shall specify these planned publications and the external study group shall provide reasonable notice for the prior review of any publication event. Any publication of results based on Data shall give a full acknowledgement of the IWDW-WAQS project team.
- 3.4 External studies that transform, change, apply different modeling tools, re-grid or otherwise modify IWDW-WAQS Data provided to the Recipient shall describe the nature of those modifications in all publications, reports, or presentations of external studies' results.
- 3.5 External studies shall cite the specific portions of IWDW-WAQS Data used as source data for the external studies' analyses and specify that the findings for the external studies do not represent the opinions or policies of the IWDW-WAQS project team or IWDW-WAQS cooperator/sponsor agencies.
- 3.6 Recipient agrees to use or disclose the IWDW-WAQS Data exclusively for the purposes set forth in Section 2 above or as required by law.
- 3.7 Recipient agrees to use appropriate safeguards to protect the IWDW-WAQS Data from misuse and unauthorized access or disclosure, including, without limitation, (i) maintaining adequate physical controls and password protections for any server or system on which the Data may reside; (ii) ensuring that Data is not stored on any mobile device (e.g. laptop, smartphone) or transmitted electronically unless encrypted; and (iii) taking any other measures reasonably necessary to prevent any use or disclosure of the Data other than as provided in this Agreement.
- 3.8 Recipient agrees to report to IWDW-WAQS Coordinator any use or disclosure of the IWDW-WAQS Data not provided for by this Agreement of which Recipient becomes aware. Such report shall be made to the IWDW-WAQS Coordinator as soon as reasonably possible, but, in any event, no later than one (1) week from the date on which Recipient becomes aware that the Data has been used or disclosed in a manner not provided for by this Agreement. Recipient agrees to fully cooperate with any remediation that the IWDW-WAQS project team, in their sole discretion, determines is necessary to (i) address any applicable reporting requirements; and (ii) mitigate any effects of such unauthorized use or disclosure of the Data, including, without limitation, measures necessary to restore goodwill with stakeholders, including research subjects, collaborators, governmental authorities, and the public.

- 3.9 Recipient shall ensure that any agents, including subcontractors, to whom it provides the IWDW-WAQS Data as part of the external study, agree to the same restrictions and conditions set forth in this Agreement.
- 4. License to Use Data for Specific Purposes.** This Agreement and the resulting transfer of IWDW-WAQS Data constitute a license to Recipient to use the Data solely for the purposes set forth in Section 2. Recipient agrees that nothing herein shall be deemed a grant of any intellectual property rights or other rights to use the Data for any products or processes for profit-making or commercial purposes. The Data will not be used in research that is subject to consulting or licensing obligations to another recipient, corporation or business entity unless written permission is obtained from the IWDW-WAQS project team. Recipient shall have no rights in the Data other than as provided for in this Agreement.
- 5. Term and Termination.** This Agreement shall be effective as of the Effective Date and shall remain in effect as long as Recipient retains the IWDW-WAQS Data. Either Party may terminate this Agreement with or without cause upon thirty (30) days' written notice to the other Party. The IWDW-WAQS project team may terminate this Agreement at any time if the IWDW-WAQS project team or IWDW-WAQS cooperator/sponsor agencies have any reason to believe that Recipient has violated any of the conditions set forth in this Agreement or has accessed any information not described herein or for any purpose not described herein. After termination of this Agreement, Recipient agrees to destroy and make no further use of the Data. Recipient agrees to provide assurances that destruction has been accomplished pursuant to industry standards for data destruction.
- 6. Indemnification.** In no event shall the IWDW-WAQS project team or IWDW-WAQS cooperator/sponsor agencies be liable for any use by Recipient, its employees or agents of the IWDW-WAQS Data, or for any loss, claim, damage or liability, of whatsoever kind or nature, which may arise from, or in connection with, this Agreement or for the use or dissemination by Recipient of the Data. Furthermore, Recipient agrees to indemnify the IWDW-WAQS project team and IWDW-WAQS cooperator/sponsor agencies and their employees and agents and hold them harmless from any action, claim, or liability, cost or expense arising directly or indirectly from Recipient's use or misuse of the Data.
- 7. WARRANTY.** THE IWDW-WAQS DATA ARE PROVIDED "AS IS," "AS AVAILABLE," "WITH ALL FAULTS" AND WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IWDW-WAQS PROEJCT TEAM AND IWDW-WAQS COOPERATOR/SPONSOR AGENCIES DISCLAIM ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE IWDW-WAQS PROEJCT TEAM AND IWDW-WAQS COOPERATOR/SPONSOR AGENCIES DO NOT MAKE ANY REPRESENTATIONS ABOUT THE ACCURACY, RELIABILITY, CURRENCY, QUALITY, COMPLETENESS, USEFULNESS, PERFORMANCE, SECURITY, LEGALITY OR SUITABILITY OF THE DATA. YOU EXPRESSLY AGREE THAT YOUR USE OF THE DATA IS AT YOUR SOLE RISK.
- 8. Miscellaneous Provisions.**
- 8.1 **Entire Agreement.** This Agreement contains all of the terms and conditions agreed upon by the Parties regarding the subject matter of this Agreement and supersedes any prior agreements, oral or written, and all other communications between the Parties relating to such matters.

- 8.2 **Severability.** If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity of the remaining provisions.
- 8.3 **Waiver.** The waiver by any Party of any provision or breach of this Agreement shall not operate or be construed as a waiver of any other provision of subsequent breach.
- 8.4 **Representation to Others.** Recipient has no rights to use the names, trademarks or other symbols of the IWDW-WAQS project team or IWDW-WAQS cooperator/sponsor agencies without prior written consent; provided, however, that Recipient may make factual statements regarding its receipt of the Data pursuant to this Agreement.
- 8.5 **Amendments.** This Agreement may be amended or modified only with mutual written consent of the Parties.
- 8.6 **Change in Law.** The Parties agree to negotiate in good faith to amend this Agreement to comport with changes in law that materially alter either or both Parties' obligations under this Agreement. Provided however, that if the Parties are unable to agree to mutually acceptable amendment(s) by the compliance date of the change in applicable law or regulations, either Party may terminate this Agreement as provided in Section 5.
- 8.7 **Construction of Terms.** The terms of this Agreement shall be construed to give effect to interpretative guidance regarding applicable federal and state regulations.
- 8.8 **No Third Party Beneficiaries.** Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 8.9 **Assignment.** This Agreement is non-assignable and non-transferrable by Recipient without the prior written consent of the IWDW-WAQS Coordinator.
- 8.10 **Authority.** Each Party represents that it is authorized to enter into this Agreement and is capable of performing its obligations under this Agreement.
- 8.11 **Headings.** The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing this Agreement.