

**DUNGENESS MITIGATION WATER AGREEMENT FOR THE PURCHASE AND SALE OF  
TEMPORARY TRUST WATER RIGHTS AND AGREEMENT FOR RECHARGE WATER  
CONVEYANCE AND USE**

This Agreement is entered into by and among the following parties:

- Dungeness River Agricultural Water Users Association and its following members: Agnew Irrigation District, Clallam Ditch Company, Cline Irrigation District, Dungeness Irrigation Group, Highland Irrigation District, and Sequim Prairie Tri-Irrigation Association (into which Eureka Irrigation and Milling Company and Independent Irrigation District have been merged) (“DWUA”)
- Washington Water Trust (“WWT”)
- Washington State Department of Ecology (“Ecology”)

**1. RECITALS**

WHEREAS:

- 1.1. Ecology has signed WAC 173-518 the *Water Resources Management Program for the Dungeness Portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18* (the “Rule”), which provides the rules for protecting instream flow and governing future water appropriations in the Dungeness River watershed, which took effect on January 2, 2013.
- 1.2. WWT has agreed to operate the Dungeness Water Exchange for an indefinite period supported by funding from Ecology and in cooperation with Clallam County. The Dungeness Water Exchange will form an Advisory Council with participation from basin stakeholders including DWUA.
- 1.3. In accordance with its organizational mission WWT seeks to acquire water rights and invest in water management activities in order to restore flows on the Dungeness River and other creeks and streams in the Dungeness River watershed for the purposes of watershed health and the restoration of fish and wildlife.
- 1.4. In accordance with the function of the Dungeness Water Exchange as set forth in the Rule, and in accordance with the requirements for Mitigation Plans under WAC 173-518-075, WWT seeks to acquire water rights and invest in water management activities for the purpose of facilitating future groundwater appropriations in the Dungeness River watershed in accordance with the provisions of the Rule, including WAC 173-518-070.
- 1.5. To fulfill these objectives, WWT seeks to increase stream flow and acquire groundwater mitigation that will serve to:
  - i) measurably increase stream flow in the Dungeness River, particularly during the critical period as set forth in the Rule and/or during the last 30 days of the irrigation season, and
  - ii) offset stream depletions and restore small streams flowing to the Straits through above or below ground storage (recharge) during the critical period as set forth in the Rule, or at other times of the year.
- 1.6. Ecology is providing funding for costs associated with this Agreement, including the Purchase Price. Ecology will take title to the Trust Water Rights to be transferred pursuant to this Agreement.

- 1.7. DWUA entered into a Memorandum of Agreement with Ecology regarding water conservation and water rights dated September 6, 2012 (the MOA) under which Ecology and the DWUA members agree that:
- i) The DWUA have Water Rights temporarily held in the State's Trust Water Rights Program equal to 15.08 cfs (4,598 AF), resulting from water being conserved through reduction of irrigation diversions from the Dungeness River during the irrigation season from April 15<sup>th</sup> through September 15<sup>th</sup> (MOA Article III.A)
  - ii) The DWUA is to take no more than 50% of the flow in the Dungeness River at the USGS gage, and always leave at least 60 cfs instream at the gage; and that the DWUA is to consider any Temporary Trust Water Rights used for groundwater mitigation as diversions in accounting for measurement of the 50% flow and the 60 cfs commitments (MOA Article IV.B and IV.C)
  - iii) The DWUA members may use water held in the Trust Water Rights Program within the adjudicated place of use for the DWUA members without the need for authorizations through changes or approvals from Ecology (MOA Article IV.D)
- 1.8. Therefore, and in consideration of the mutual promises contained herein, the Parties enter into this Purchase and Sale of Temporary Trust Water and Agreement for Recharge Water Conveyance and Use that shall be known as the *Dungeness Mitigation Water Agreement* (the "Agreement") as follows.
- 1.9. As used in this Agreement, "convey" means to transport water. It does not refer to transfer of title to water rights.

## 2. WATER RIGHTS PURCHASE AND SALE

- 2.1. **Agreement to Sell and Purchase Temporary Trust Water.** DWUA agrees to sell, and Ecology agrees to purchase, 175 AF (one hundred and seventy-five acre-feet) annually as described in Exhibits A and B of Temporary Trust Water (the "Acquired Water") currently held in the Trust Water Rights Program, solely for the purpose of supplying mitigation water to the Dungeness Water Exchange water bank to be used annually as mitigation credits for new, out of stream uses, such as residential, municipal, commercial or industrial development, and meeting the requirements of the Rule.
- 2.2. **Agreement to Use Acquired Water.** Consistent with Section 4 of this Agreement, Ecology grants WWT, or its successors, the sole right to call on, convey and use the Acquired Water, and WWT or its successors agree to call on, convey, and use the Acquired Water only for mitigation consistent with the Rule, the purposes specified in section 2.1 above, and the following purposes:
- i) For instream use in the Dungeness River below the DWUA diversions over the last 30 (thirty) days of the irrigation season from August 16<sup>th</sup> through September 15<sup>th</sup>;
  - ii) For use at shallow aquifer recharge projects that WWT shall subsequently identify in writing through collaboration and agreement with the DWUA; and
  - iii) For other mitigation projects that WWT shall design and approve in collaboration and agreement with the DWUA as part of a Mitigation Plan under the Rule.
- 2.3. **Purchase Price.** The Purchase Price for the Acquired Water is \$350,000 (the "Purchase Price").
- 2.4. **Additional Water.** Should WWT identify a need for additional water to carry out the purposes of the Dungeness Water Exchange, DWUA will negotiate in good faith regarding future

acquisitions of Temporary Trust Water Rights. PROVIDED, HOWEVER, nothing herein shall be construed as compelling DWUA or its individual members to sell any remaining water rights.

### 3. PURCHASE AND SALE OF ACQUIRED WATER

- 3.1 **Escrow Agent.** The term “Escrow Agent” means \_\_\_\_\_, who will, pursuant to separate agreement, act as the escrow agent and closing agent for the Closing.
- 3.2 **DWUA’s Deposits to Escrow.** On or before the Closing Date, DWUA will deliver to the Escrow Agent the following:
- 3.2.1 Deed. A duly executed and acknowledged statutory warranty deed transferring the Acquired Water to Ecology.
- 3.2.2 FIRPTA Affidavit. A duly executed and acknowledged FIRPTA Tax Affidavit from the DWUA stating that neither DWUA nor any persons receiving any proceeds from the sale of the Acquired Water are “foreign persons” as defined in Internal Revenue Code Section 1445 and related regulations.
- 3.2.3 Other Documents. Such other documents necessary or advisable to effect the valid consummation of the transaction described in this Agreement, or required by the Escrow Agent, all duly executed and acknowledged where appropriate.
- 3.2.4. DWUA’s Closing Costs. DWUA’s share of the prorations and Closing Costs.
- 3.2.5 DWUA’s Escrow Instructions. DWUA’s written instructions to the Escrow Agent regarding the procedures to be followed for Closing, all of which must be in accordance with this Agreement or approved in writing by Ecology.
- 3.3 **Ecology’s Deposits to Escrow.** On or before the Closing Date, Ecology will deliver to the Escrow Agent the following:
- 3.3.1 Purchase Price. Cash, wire transfer, cashier’s check or other immediately available U.S. funds in the amount of the Purchase Price, together with Ecology’s share of all Closing Costs pursuant to this Agreement, less any credits or prorations expressly provided for in this Agreement.
- 3.3.2 Other Documents. Such other documents necessary or advisable to effect the valid consummation of the transaction described in this Agreement, or required by the Escrow Agent, all duly executed and acknowledged where appropriate.
- 3.3.3 Ecology’s Closing Costs. Ecology’s share of the prorations and Closing Costs.
- 3.3.4 Ecology’s Escrow Instructions. Ecology’s written instructions to the Escrow Agent regarding the procedures to be followed for Closing and recording, all of which must be in accordance with this Agreement or approved in writing by DWUA.
- 3.4 **Closing Costs.** If any cost described in this Section 3.4 is not subject to precise determination by the Closing Date, Ecology and DWUA will cooperate after Closing and account to each other for correct amounts at such time as the precise costs are determined.

- 3.4.1 Title Transfer Costs. DWUA will pay all recording fees, real estate excise taxes, and all other transfer taxes imposed by any governmental authority upon the sale of the Acquired Water pursuant to this Agreement.
- 3.4.2 Escrow Fees. Ecology and DWUA will each pay one-half of the Escrow Agent's fees for its services rendered in connection with this transaction.
- 3.4.3 Legal Fees. Each party will be responsible for paying for any and all legal services rendered to that party.
- 3.4.4 Other Costs. Except as expressly provided above, all other charges, costs, and expenses of any nature related to the ownership of the Acquired Water and accruing prior to Closing will be paid by DWUA. In addition, DWUA will be responsible for payment of any other taxes on the Purchase Price, including but not limited to income tax.
- 3.5. **Closing**. The term "Closing" means the transfer of title to the Acquired Water from DWUA to Ecology.
- 3.6 **Closing Date**. Closing will occur ("Closing Date") no later than 45 days after the effective date of this Agreement. However, DWUA and Ecology may agree in writing that Closing will occur on another date.

#### 4. CONVEYANCE AND USE OF ACQUIRED WATER

- 4.1. **Annual Water Use Plan**. Each year during the term of this Agreement, preferably prior to the 28<sup>th</sup> of February, WWT will provide notice to DWUA of its plans and schedule for the calling, conveyance and use of the Acquired Water for that calendar year, subject to the conditions in this Section.
- 4.2. **Costs**. All costs of conveyance and use of the Acquired Water will be borne by WWT, consistent with the remainder of Section 4 below.
- 4.3. **Early Season (May 15 to July 15) Recharge Water Use**. The amount of the Acquired Water that will be called on for diversion into the DWUA system shall:
- i) not exceed an instantaneous diversion rate ( $Q_i$ ) of 2.2 cfs (two and two-tenths of a cubic foot per second) at the point of diversion from the source;
  - ii) be called on over a period, not to exceed 62 days, that shall be subject to the terms of WWT's Mitigation Plan as approved or modified by Ecology, and determined in collaboration with those DWUA members that will convey water to the recharge project, but generally expected to be between May 15<sup>th</sup> and July 15<sup>th</sup>;
  - iii) not exceed an annual volume of 130 AF (one hundred and thirty acre-feet).
- 4.4. **Late Season (August 16-September 15) Instream Water Use**. The amount of Acquired Water shall:
- i) not exceed an instantaneous non-diversion rate ( $Q_i$ ) of 0.76 cfs (seventy-six hundredths of a cubic foot per second) at the point of diversion from the source;
  - ii) be for instream use in the Dungeness River during the last 30 (thirty) days of the irrigation season;
  - iii) not exceed an annual volume of 45 AF (forty-five acre-feet);

- iv) be subject to the terms of the MOA with respect to the 50-50 and 60 cfs rules referred to above in Section 1.7.ii, provided that such increases shall be cumulative to other transactions, including those with other parties that the DWUA may enter into for instream flow or groundwater mitigation.
- 4.5. **Recharge Water Conveyance.** The DWUA and its respective members agree to convey Recharge Water to recharge sites specified by WWT subject to the following conditions:
- i) Any such recharge sites must lie within the DWUA lands as set forth in the MOA.
  - ii) WWT shall provide working facilities to convey the water from the DWUA member's existing conveyance system to the recharge site, at WWT's sole cost and consistent with the DWUA individual landowner approval.
  - iii) WWT and the DWUA shall work with the relevant DWUA member to estimate and agree upon the amount of flow diverted that is lost to seepage during conveyance to the recharge site, and this estimated seepage amount shall be deducted from the water called on at the point of diversion in determining the water due at the point of delivery to the recharge site.
  - iv) WWT agrees to pay the DWUA \$5 per AF annually (five dollars per acre-foot) for the conveyance of Recharge Water through the DWUA members conveyance system, based on the amount of water diverted at the point of diversion ("Wheeling Fees"). As needed during the term of this Agreement, the parties shall review the Wheeling Fees and adjust them as necessary to account for any increased costs of conveyance and delivery.
  - v) WWT shall reimburse any DWUA member who incurs costs for the management and delivery of Recharge Water to recharge sites that exceed the Wheeling Fees ("Supplemental Costs"), provided that such costs are necessary and adequately documented. Any DWUA member that incurs Supplemental Costs shall provide written documentation of such costs to WWT no later than the end of the calendar year the costs were incurred.
  - vi) All use of Recharge Water under WWT's approved Mitigation Plan, including operations and maintenance, remains the sole responsibility of WWT in cooperation with the respective landowner.
- 4.6. **Cooperation.** The DWUA and its members shall cooperate fully with Ecology and WWT in planning, permitting and operational aspects of the calling, conveyance and use of Acquired Water so long as the operations do not detract or impede members' water usage in accordance with their water rights.
- 4.7. **Dispute Resolution.** The parties agree to work in good faith to resolve any disputes that arise under this Agreement. If the parties are unable to resolve a dispute within 30 days after the dispute arises, or such longer period as the parties may mutually agree to, any party may provide the other parties with a written demand for mediation. The parties agree to select a mediator within five (5) days of the written demand for mediation, and to use their best efforts to schedule a mediation session as soon as possible. If the mediation session does not resolve the dispute, any party may seek relief through a court of competent jurisdiction. Venue shall be Clallam County.
- 4.8. **Term of Agreement.** This Agreement shall take effect as of the date of the last signature below ("Effective Date") and remain in effect through December 31<sup>st</sup>, 2100, unless extended by mutual agreement of all parties. However, any party may propose that the Agreement terminate earlier if (i) changes to the State's Trust Water Rights Program affect the continued viability of this Agreement or the project described herein, or if (ii) the Acquired Water is not being used in

accordance with Section 2.2 of this Agreement or if WWT or Ecology do not obtain the funds necessary to meet its obligation pursuant to this agreement. If the other parties agree that any of the conditions described in the preceding sentence exist, they shall sign a document terminating the Agreement. If the other parties do not agree that any of the conditions exist, they shall use the dispute resolution process in Section 4.7 of this Agreement to resolve their disagreement.

- 4.9. **Funding.** WWT's obligation to expend funds as required by this Agreement is contingent on the availability of such funds.
- 4.10. **Transfer.** Transfer of water rights by DWUA from the State Water Trust Program to Ecology is contingent upon payment to DWUA in accordance with this Agreement.
- 4.11. **No Third-Party Beneficiaries.** There are no intended third-party beneficiaries of this Agreement, and there shall be no incidental third-party beneficiaries.
- 4.12. **Survival.** The provisions of Exhibit A and of Sections 2.2, 2.4, and 4 of this Agreement shall survive Closing, and shall not merge into the deed.
- 4.13. **Exhibits.** Exhibits A and B are hereby incorporated into this Agreement by this reference.

DWUA:

DWUA

By: Ben Smith  
Ben Smith, President

Address:  
30 Schmuck Rd  
Sequim, WA 98382

By: Gene Adolphsen  
Gene Adolphsen, Vice President

Address:  
4732 Old Olympic Highway  
Sequim, WA 98382

DWUA Members:

AGNEW IRRIGATION DISTRICT

By: Fred Spring  
Print Name and Title Fred Spring CHAIRMAN

Address: 539 Spring Rd  
Port Angeles WA 98362

CLALLAM DITCH COMPANY

By: Danny R Smith  
Print Name and Title Danny R Smith President

Address: 80 Cook Rd  
Sequim WA 98382

Ecology:

WASHINGTON STATE  
DEPARTMENT OF ECOLOGY

By: Polly Zehm  
Polly Zehm, Deputy Director, Washington  
State Department of Ecology

Address:  
300 Desmond Dr. SE  
Lacey, WA 98503

WWT:

WASHINGTON WATER TRUST,  
a Washington nonprofit corporation

By: Susan Adams  
Susan Adams, Executive Director

Address:  
1530 Westlake Avenue N., Suite 400  
Seattle, WA 98109

CLINE IRRIGATION DISTRICT

By: W. Omstad

STEPHEN J. OHNSTAD, PRESIDENT  
Print Name and Title

Address:  
728 HOGBACK RD  
SEQUIM, WA 98382

DUNGENESS IRRIGATION GROUP

By: Gene Adolphsen

Gene Adolphsen President  
Print Name and Title

Address:  
4732 Old Olympic Hwy  
Sequim Wa 98382

HIGHLAND IRRIGATION DISTRICT

By: Fred O. Grant

FRED O. GRANT DIRECTOR  
Print Name and Title

Address:  
P.O. Box 2618  
SEQUIM, WA. 98382

SEQUIM PRAIRIE TRI-IRRIGATION ASSOCIATION

By: Gary A. Smith, President

Gary A. Smith  
Print Name and Title

Address:  
373 Schmuck Rd  
Sequim Wa. 98382

ACKNOWLEDGEMENTS

State of Washington  
County of Clallam

I certify that I know or have satisfactory evidence that BEN SMITH is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it as the President of DUNGENESS WATER USERS ASSOCIATION, to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

Dated: 8/26/2013

Name: Cynthia K. Smith  
NOTARY PUBLIC for the State of , Washington  
residing at Sequim.  
My appointment expires: 07-22-2014



State of Washington  
County of Clallam

I certify that I know or have satisfactory evidence that GENE ADOLPHSEN is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it as the Vice-President of DUNGENESS WATER USERS ASSOCIATION, to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

Dated: 8/26/2013

Name: Cynthia K. Smith  
NOTARY PUBLIC for the State of , Washington  
residing at Sequim.  
My appointment expires: 07-22-2014



State of Washington  
County of Clallam



I certify that I know or have satisfactory evidence that FRED SPRING is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it as the CHAIRMAN of AGNEW IRRIGATION DISTRICT, to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

Dated: 08/27/13

Name: Merilin Soegel  
NOTARY PUBLIC for the State of , Washington  
residing at Sequim.  
My appointment expires: 01-11-14

State of Washington  
County of Clallam

I certify that I know or have satisfactory evidence that Danny Smith is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it as the President of CLALLAM DITCH COMPANY, to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

Cynthia K. Smith

Dated: 8/26/2013

Name: Cynthia K Smith

NOTARY PUBLIC for the State of , Washington  
residing at Sequim.

My appointment expires: 07-22-2014



State of Washington  
County of Clallam

I certify that I know or have satisfactory evidence that Steve Ohmsted is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it as the President of CLINE IRRIGATION DISTRICT, to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

Cynthia K. Smith

Dated: 8/26/2013

Name: Cynthia K Smith

NOTARY PUBLIC for the State of , Washington  
residing at Sequim.

My appointment expires: 07-22-2014



State of Washington  
County of Clallam

I certify that I know or have satisfactory evidence that Gene Adolphsen is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it as the President of DUNGENESS IRRIGATION GROUP, to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

Cynthia K. Smith

Dated: 8/26/2013

Name: Cynthia K Smith

NOTARY PUBLIC for the State of , Washington  
residing at Sequim.

My appointment expires: 07-22-2014



Dungeness Mitigation Water Agreement

State of Washington  
County of Clallam

I certify that I know or have satisfactory evidence that Fred Grant is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it as the Director of HIGHLAND IRRIGATION DISTRICT, to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

Dated: 8/26/2013

Name: Cynthia K. Smith  
NOTARY PUBLIC for the State of , Washington  
residing at Sequim.  
My appointment expires: 07-22-2014 (C)

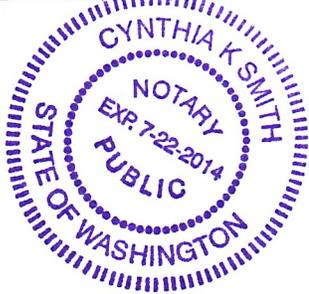


State of Washington  
County of Clallam

I certify that I know or have satisfactory evidence that Gary Smith is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it as the President of SEQUIM PRAIRIE TRI-IRRIGATION ASSOCIATION, to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

Dated: 8/26/2013

Name: Cynthia K. Smith  
NOTARY PUBLIC for the State of , Washington  
residing at Sequim.  
My appointment expires: 07-22-2014

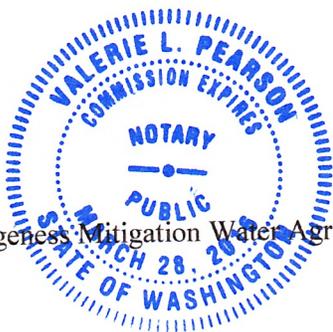


State of Washington  
County of Thurston

I certify that I know or have satisfactory evidence that POLLY ZEHM, of Washington Department of Ecology, is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act, for the uses and purposes mentioned in the instrument.

Dated: 09-09-2013

Name: Valerie L. Pearson  
NOTARY PUBLIC for the State of , Washington  
residing at 6048 Merlot Lane SE, Lacey WA 98513  
My appointment expires: March 28, 2016



Dungeness Mitigation Water Agreement

State of Washington  
County of KING

I certify that I know or have satisfactory evidence that SUSAN ADAMS is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it as the Executive Director of WASHINGTON WATER TRUST, a Washington nonprofit corporation, to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

Dated: AUGUST 30, 2013

Name:  LEO P. FERMIN  
NOTARY PUBLIC for the State of, Washington  
residing at SEATTLE, WA  
My appointment expires: 6/11/14

**LEO P. FERMIN**  
**STATE OF WASHINGTON**  
**NOTARY PUBLIC**  
**MY COMMISSION EXPIRES**  
**06-11-14**

Exhibit A – Acquired Water

**Early Season:**

**Certificate No.:** See Exhibit B

**Source:** Dungeness River

**Use:** Shallow Aquifer Recharge Projects and mitigation credits for new out-of-stream projects as described in the Dungeness Mitigation Water Agreement for the Purchase and Sale of Temporary Trust Water Rights and Agreement for Recharge Water Conveyance and Use between the Dungeness River Agricultural Water Users Association, Washington Water Trust, and Washington State Department of Ecology dated September 6, 2012

**Period of Use:** May 15 — July 15

**Instant. Quantity** 2.2 cfs

**Annual Quantity:** 130 ac-ft

**Priority Date:** See Exhibit B

**Point of Diversion:** See Exhibit B

**Place of Use:** Shallow Aquifer Recharge Project locations and project locations qualifying for mitigation credits.

**Late Season:**

**Certificate No.:** See Exhibit B

**Source:** Dungeness River

**Use:** Instream flow and mitigation credits for new out-of-stream projects as described in the Dungeness Mitigation Water Agreement for the Purchase and Sale of Temporary Trust Water Rights and Agreement for Recharge Water Conveyance and Use between the Dungeness River Agricultural Water Users Association, Washington Water Trust, and Washington State Department of Ecology dated September 6, 2012

**Period of Use:** August 16 – September 15

**Instant. Quantity** 0.76 cfs

**Annual Quantity:** 45 ac-ft

**Priority Date:** See Exhibit B

**Point of Diversion:** See Exhibit B

**Place of Use:** Instream flow from the points of diversion to the mouth of the Dungeness River and project locations qualifying for mitigation credits.

The parties agree that the Acquired Water is a portion of the Temporary Trust Water described in paragraph V.B. of the 9-6-12 MOA between Ecology and DWUA, and that it will be removed from the temporary trust and placed permanently into the Trust Water Rights Program for the purposes described in section 2.1 and 2.2 of this Agreement. Management of the Acquired Water will continue under the 9-6-12 MOA and under Section 2.2 and 4 of this Agreement. Until those agreements are deemed no longer to be in effect, the parties agree that dividing the interest in the individual rights listed in this Exhibit B is not necessary.

If it becomes necessary to allocate the amount of each individual DWUA member's water right conveyed to Ecology, then that portion of each member's water right that was previously changed to Temporary Trust Water, as reflected in Department of Ecology Order Docket No. 10110 and in Certificate of Temporary Trust Water Right dated August 13, 2013, shall be reduced pro rata computed on the basis that each member's adjudicated water right computes as a percentage of all the members' adjudicated water rights. These amounts shall be calculated based on the full quantities originally placed into temporary trust. Any disputes over the division shall be resolved using the dispute resolution process in Section 4.7 of this Agreement.

If any party defaults in its obligations under this Agreement; or if this Agreement, or a material portion thereof, is declared illegal or unenforceable; or, any party, through no fault or action of its own, is incapable or prevented from performing any material obligations or actions, the non-defaulting party in the event of a default or any party in any other event shall have the right to the following:

- (a) As the computation of damages may be difficult, continue this Agreement and bring an action to specifically perform this Agreement.
- (b) Declare the Agreement null and void, whereupon the parties shall cooperate to end the trust water right relationship in an orderly manner as follows:
  - i. DWUA shall notify each of its member districts and companies of the default and shall determine each member district's or company's pro-rata share of the Acquired Water as provided in section 2.1 of this Agreement.
  - ii. Deeds reflecting the pro-rata share of each member's individual water right will be prepared and recorded, replacing the deed conveying DWUA's undivided interest in the DWUA water rights in Exhibit B.

Exhibit B – Water Right Certificates

ADJUDICATED WATER RIGHT CERTIFICATES DECREED BY SUPERIOR  
COURT, 1924

Agnew (formerly Macleay-Lindsay) Irrigation District	Priority date: 1918 146 cubic feet per second Vol. 2, p. 237 Water Right Certificates 1924 Point of Diversion: NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 12, T 29N, R 04W
Clallam Ditch Company	Priority date: 1902 60 cubic feet per second Vol. 2, p. 224 Water Right Certificates 1924 Point of Diversion: SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 26, T 30 N, R 04 W
Cline Irrigation District	Priority date: 1919 46 cubic feet per second Vol. 2, p. 238 Water Right Certificates 1924 Point of Diversion: SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 26, T 30N, R 04W
Dungeness Irrigation Group (formerly Dungeness Irrigation Company)	Priority date: 1911 70.94 cubic feet per second Vol. 2, p. 234 Water Right Certificates 1924 Point of Diversion: SW $\frac{1}{4}$ of the $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 26, T 30N, R 04W

Eureka Irrigation and Milling Company\*

Priority date: 1897

23.08 cubic feet per second

Vol. 2, p. 221 Water Right Certificates 1924

Point of Diversion: SW  $\frac{1}{4}$  of SW  $\frac{1}{4}$  of Section 36, T  
30N, R 04W

Highland Irrigation District

Priority date: 1915

70.14 cubic feet per second

Vol. 2, p. 235 Water Right Certificates 1924

Point of Diversion: Beginning at a point on the  
Dungeness River situated in the NW  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of  
Section 12, T 29N, R 04W, which point bears S 83 d.  
19' 50" E from Sec. corner common to sections 1, 2, 11,  
12, T 29N, R 04W

Independent Irrigation Company\*

Priority date: 1906

40 cubic feet per second

Vol. 2, p. 232 Water Right Certificates 1924

Point of Diversion: NE  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Section 35, T 30N,  
R 04W

Sequim Prairie Tri-Irrigation Association  
(formerly Sequim Prairie Ditch Company)

Priority date: 1895

20 cubic feet per second

Vol. 2, p. 220 Water Right Certificates 1924

Point of Diversion: NE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 26, T 30N,  
R 04W

\* Eureka Irrigation and Milling Company and Independent Irrigation Company have been merged  
into Sequim Prairie Tri-Irrigation Association