

**Trust Water Right Agreement  
between Washington Department of Ecology  
and J.P. and Jan Roan**

This Trust Water Right Agreement is made and entered into as of the 7<sup>th</sup> day of August, 2012, by and between the Washington State Department of Ecology, State Trust Water Right Program ("Ecology") and J.P. and Jan Roan ("Roan").

Whereas, Ecology is the trustee of the Yakima River Basin Trust Water Rights Program ("Trust") as authorized under Chapter 90.38 RCW and Chapter 90.42 RCW; and

Whereas, Roan is the owner of certain water rights from First Creek in the Swauk Creek Basin as more particularly described and quantified in Exhibit A ("Water") such exhibit being attached hereto and incorporated herein; and

Whereas, the Roan Water Rights arise from Water Right Claim Number 00648 and are subject of a Conditional Final Order in Washington v. Acquavella. et al., Yakima County Superior Court Cause No. 77-2-01484-5; and

Whereas, Roan submitted a Trust Water Right Application to Ecology, WRTS File No. CS4-00648(AA)sb4-b ("Roan's Application No. 1"), to place a portion of the Roan Water Right into the Trust for the purpose of enhancing instream flows and providing mitigation water to offset and allow for new water uses within the Yakima River basin; and

Whereas, Ecology has accepted Roan's Application No. 1, completed its examination of the extent and validity of the water rights subject to that application and issued its Report of Examination on June 17, 2011; and

Whereas, Roan submitted a Trust Water Right Application to Ecology, WRTS File No. CS4-00648(AA)sb4-c(A) ("Roan's Application No. 2"), to place a portion of the Roan Water Right into the Trust Water Rights Program for the purpose of enhancing instream flows during the winter season and providing mitigation water to offset and allow for new water uses within the Yakima River basin; and

Whereas, Ecology has accepted Roan's Application No. 2, has completed its examination of the extent and validity of the water rights subject to that application, and issued its Trust Water Right Report of Examination on April 17, 2012. The ROEs document the tentative determination of extent and validity, including quantification of the consumptive quantity associated with the right, and are attached hereto as Exhibits C and D and incorporated by reference; and

Whereas, subject to the terms of this Agreement and the Applications, Ecology confirms that it is willing, able and authorized to hold the Water into the Trust ("Water in Trust") as provided for herein; and

Whereas, Ecology has accepted Roan's application for new uses of groundwater relying on Roan's Application No. 1 and Roan's Application No. 2 as mitigation. Ecology has accepted Roan's application for new uses of groundwater, divided that application into 8

applications (WRTS File Nos. G4-35541, G4-35542, G4-35543, G4-35544, G4-35545, G4-35546, G4-35547 and G4-35548), completed its examination of the applications and issued 8 reports of examination on June 21, 2012 ("8 groundwater permits"); and

Now, therefore, in consideration of the forgoing, the mutual covenants and undertakings as hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. The purpose of this Agreement and the primary reason Roan is willing to place the Water into the Trust is to provide a senior water right as off-setting mitigation that will allow Roan or third parties to apply for and receive new ground water withdrawal or surface water diversionary permits or water budget neutral determinations within the Yakima River basin. These new water rights will be mitigated by way of a permanent designation of such portion of Roan's beneficial interest in the Water in Trust as reasonably required to ensure no impairment to TWSA or other water rights; provided that any portion of such mitigation may also be provided by other means.

2. This Agreement shall be effective upon its mutual execution and once the quitclaim deed is executed, recorded, and delivered to Ecology and Roan receives Ecology's letter accepting the Water into the Trust and Trust Water Right Certificate. The term of this Agreement shall then be for so long as any portion of the Water remains in the Trust (the "Term").

3. Once this agreement is executed, Roan and Ecology may begin the process of designating parties to receive mitigation credit based upon the Water in Trust. Development activities that are eligible for mitigation under this Agreement may include commercial, single-family or multi-family residential development and incidental irrigation occurring within the Yakima River basin. Roan may designate a temporary beneficial use for the portion of the Water in Trust that is not yet assigned as mitigation credit for development activities as provided in this agreement. The process for Roan to identify recipients of mitigation credit and for Ecology to issue mitigated permits or water budget neutral determinations is as follows:

3.1 Roan may propose or Roan may enter into a contract with a third party to provide a portion of the Water in Trust as mitigation on such terms consistent with this Agreement as Roan may elect. Roan or such third party shall make to Ecology (or, if appropriate, to a water conservancy board) a request for determination of water budget neutrality, application for water right permit or request to assign a portion of one or more of the 8 groundwater permits mitigated by the Water in Trust to appropriate surface or ground water at the desired location and for the intended use and quantities, together with all regularly required supporting information. As part of the request for determination of water budget neutrality, application for water right permit or assignment request, such third party shall include documentation, as necessary to conform to WAC 173-539A-050 and in a form prescribed by, of a designation by Roan of the specific quantity of the Water in Trust as required to offset the consumptive loss associated with the uses described on the application or request.

3.2 Upon receipt of a complete request for determination of water budget neutrality, application for water right permit or assignment request, Ecology, pursuant to WAC 173-539A-060, shall accept and timely process it under RCW 90.03.260-.340 and

Chapter 90.44 RCW utilizing such portion of the Water in Trust as reasonably needed under the quantity allocation set out in Exhibits C and D which, together with any other proposed mitigation measures, shall reasonably offset the impacts of such new withdrawal.

3.3. If a new application for water right permit is submitted, Ecology will prepare a public notice and send it to the applicant for publication in a newspaper with general circulation in the area as required by Chapter 90.03 RCW. The applicant must publish the notice and ensure that the newspaper transmits an affidavit of publication to Ecology.

3.4. If a request for determination of water budget neutrality or application for water right permit is submitted, Ecology will complete a Water Transfer Working Group ("WTWG") project description and will present it to the WTWG. Ecology, in consultation with the U.S. Bureau of Reclamation, may determine if some or all of the Water in Trust will be assigned to the Reclamation-Ecology storage and delivery exchange contract.

3.5. If a request to assign a portion of one or more of the 8 groundwater permits mitigated by the Water in Trust is submitted to Ecology, Ecology will accept the assignment and provide an acknowledgement of the acceptance to Roan in a timely manner.

3.6. Ecology will investigate the new application for water right permit or request for a determination of water budget neutrality and prepare a Report of Examination or determination, as appropriate, recommending issuance or denial of a permit or determination, based on applicable policy, rules, and law. Ecology's review of new applications and water budget neutral requests shall also include the following consideration:

3.7. In order to develop and confirm performance standards as set forth in Chapter 173-539A WAC or any respective report of examination, Roan and/or such third party shall provide information to reasonably show or estimate, as the case may be, that the consumptive uses of the proposed project, when offset by the mitigation Water in Trust and any other proposed mitigation measures, do not increase the consumptive use of water.

3.8. Ecology's permit relative to a new application or its water budget neutral determination will specify the conditions and limitations on the use of water in a manner consistent with the water held in the Yakima Pilot Water Bank as mitigation. Conditions relating to measuring and reporting water use and for reimbursement of any Ecology costs will also be included in the permit or water budget neutral determination.

3.9. In the event Ecology prepares to issue an ROE or water budget neutral determination for a new application, it will publish on its internet site.

4. After entering into a contract with a third party to provide a portion of the Water in Trust as mitigation, Roan shall:

4.1. Cause an escrow to be opened for such transaction at the Escrow Agent upon the mutual execution and deposit of the fully executed agreement between Roan

and the third party applicant, if any, or the deposit of any other documents required for closing.

4.1.1. The escrow shall close within thirty (30) days of the occurrence of the last of the following events:

4.1.1.1. Mutual execution of all agreements and documents contemplated by or collateral to this Agreement;

4.1.1.2. Roan's deposit of an executed document in a form acceptable to Ecology permanently allocating a portion of the then available and unallocated Water in Trust to the proposed purpose as set forth in the new water right permit, water budget neutral determination or assignment of one of the 8 groundwater permits;

4.1.1.3. The giving of all requisite public notices for actions contemplated by such transaction; deposit of the ROE and the new water right permit or water budget neutral determination, each in form and content acceptable to Roan and such third party, if any;

4.1.1.4. The expiration of all notice, comment and appeal periods related to the full implementation of this Agreement, the ROE, and the new water right permit or water budget neutral determination; and

4.1.1.5. The deposit of all monies, documents and things relevant and necessary to conclude the transaction between Roan and any third party.

4.1.2. Roan shall pay fifty percent of the escrow account fee and the third party shall pay the other fifty percent.

4.1.3. Roan and any third party having the right to do so under an agreement with Roan, may, at any time prior to closing of escrow and without cause, withdraw the new application, request for determination of water budget neutrality or assignment request of one of the 8 groundwater permits or otherwise prevent any allocation of any portion of the Water to such transaction.

4.1.4. Roan shall subordinate the exercise of his remaining portion of Court Claim 00648 in the event that Ecology determines that a call for water would reduce the amount of mitigation available to assignees of one or more of the 8 groundwater permits, water budget neutral determination or new water right permit related to the Water in Trust.

5. During the Term and in its capacity as a fiduciary, Ecology shall hold and manage the Water in Trust pursuant to chapters 90.38 RCW and 90.42 RCW and this Agreement as a part of the total water supply available ("TWSA") in the Yakima River. Ecology:

5.1 Shall take no position and make no assertions that the quantities and beneficial use of the Water is other than as stated in Exhibits A, B and C and paragraph 3 above, and this representation shall also apply to any Water removed from the Trust;

5.2 Shall, in addition to the protections against relinquishment in chapters 90.38 RCW and 90.42 RCW, at all times during the Term manage, maintain, preserve and protect for the benefit of Roan and its successors, designees and assigns all aspects and attributes of the Water, including, but not limited to, the priority date, the total diversionary right, instantaneous quantity, and annual consumptive quantity from impairment, challenges, claims and relinquishment;

5.2.1 Shall, in the event Ecology determines that a call for water would reduce the amount of mitigation available pursuant to paragraph 4.1.4, curtail all junior water users that are in hydraulic continuity with First Creek and Swauk Creek.

5.3 Shall process all requests for determination of water budget neutrality, applications for water right permit and assignment requests where portions of the Water in Trust is proposed as mitigation and shall take all steps necessary to comply with any restrictions imposed by other agreements to which Ecology may be subject, including, but not limited to memorandums of agreement and groundwater moratoriums or subsequently enacted water right processing rules;

5.4 Shall not assess or charge Roan any costs or fees for maintaining the Water in Trust; provided that Ecology may charge third parties its regular costs and fees for water right applications, assignments, transfers and investigations or costs attributable to processing new water right applications or water budget neutral determinations as provided under this agreement.

6. In keeping with the purpose of this Agreement and as a material part of the consideration for this Agreement upon which its execution is dependent:

6.2 Roan makes the following undertakings, representations and warranties to Ecology:

6.2.1 J.P. and Jan Roan are individuals; owners of the Water listed in Exhibit A, and duly authorized to enter into this Agreement.

6.2.3 Upon its full execution, this Agreement is binding upon Roan in accordance with its terms.

6.2.4 Roan shall use best efforts to fully and timely perform the obligations and actions contemplated by this Agreement.

6.3 Ecology makes the following undertakings, representations and warranties to Roan:

6.3.1 Ecology is authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

6.3.2 Each individual executing this Agreement on behalf of Ecology is duly authorized to execute and deliver this Agreement.

6.3.3 Upon its full execution, this Agreement is binding upon Ecology in accordance with its terms.

6.3.4 Ecology shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement, and the obligations and actions under this Agreement shall not be unlawfully withheld.

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

7.1 As the computation of damages may be difficult, continue this Agreement and bring an action to specifically perform this Agreement.

7.2 Declare the Agreement null and void, whereupon the parties shall cooperate to end the trust water right relationship in an orderly manner as follows:

7.2.1 Roan shall identify all in-process designation agreements and inform Ecology of their status. Roan shall not make representations regarding in-process designations and shall in each instance work with Ecology to determine whether an assignment should be completed. If Ecology agrees, the request for determination of water budget neutrality, applications for water right permit or assignment requests will be completed promptly in accordance with applicable policies, rules, and law.

7.2.2 Ecology shall promptly convey to Roan or designee the portion of the Water in Trust not yet designated and assigned as mitigation for individual ground water and surface water permits. If any reserve has been set aside to address uncertainty (see paragraph 3.6) associated with the then-existing mitigated permits, Ecology will retain such reserve until it is either assigned to individual permits or Ecology determines some or all of the reserve is unnecessary. Any reserve not needed shall be promptly conveyed by Ecology to Roan.

7.2.3 Each party shall be responsible for their own costs associated with ending the trust water right relationship in an orderly manner.

7.3 Pursue any other remedy now or hereafter available.

7.4 In no event shall the termination of this Agreement alter or affect any Water previously allocated for mitigation through permits granted relative to New Applications and water budget neutral determinations.

8. This Agreement may be assigned by Roan upon the giving of written notice to Ecology. Roan may assign their interest in total in the Agreement to a third party receiving an interest in the water rights listed in Exhibit A. Roan may assign a portion of their interest to New Suncadia, LLC (Suncadia) in order for Suncadia to provide mitigation based on the water rights authorized for use for instream flows for water banking purposes under Water Right File No. CS4-00648(AB)sb4-b. This Agreement is binding upon and inures to the benefit of the parties to the Agreement as well as upon and to the benefit of their respective heirs, personal representatives, assigns and other successors in interest.

9. Any notice or communication required by this Agreement between Roan and Ecology shall be given to the addresses set forth below:

To Ecology: Water Resources Section Manager  
Washington Department of Ecology  
Central Regional Office  
15 West Yakima Avenue, Suite 200  
Yakima, Washington 98902-3452

To J.P. and Jan Roan J.P. and Jan Roan  
13991 Reecer Creek Rd  
Ellensburg, WA 98926  
Telephone: (509) 925-6758  
Facsimile: (509) 963-2871

With copies to: Mentor Law Group, PLLC  
Attn.: Joe Mentor, Jr.  
315 Fifth Avenue S., Suite 1000  
Seattle Washington 98104  
Telephone: (206) 838-7650  
Facsimile: (206) 838-7655

10. No provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be unenforceable for any reason outside the control of the parties, the party finding itself unable to enforce the provision may, at its sole discretion, declare this entire Agreement to be null and void.

11. If any party fails to exercise its rights under this Agreement, it will not be precluded from subsequent exercise of its rights under this Agreement. A failure to exercise rights will not constitute a waiver of any other rights under this Agreement, unless stated in a letter signed by an authorized representative of the party and attached to the original Agreement.

12. Amendments to this Agreement must be in writing and signed by an authorized representative of each of the parties.

13. Each party shall protect, defend, indemnify, and hold the other hold harmless from and against their respective acts and omissions.

14. This Agreement will be governed and enforced under the laws of the State of Washington. Venue for any action arising under or related to this Agreement shall be in Kittitas County, Washington.

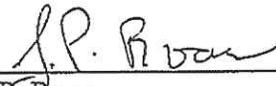
This Agreement is executed as of the date first above written.

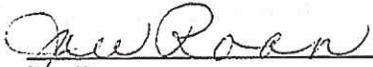
WASHINGTON DEPARTMENT OF  
ECOLOGY

By:   
Mark Kemner  
Section Manager  
Water Resources Program/CRO  
Date: 8/9/12

Address: 15 West Yakima Avenue,  
Suite 200  
Yakima, WA 98902-3452

J.P. AND JAN ROAN

By:   
J.P. Roan  
Date: 8-7-12

By:   
Jan Roan  
Date: 8-7-12

Address: 13991 Reecer Creek Rd  
Ellensburg, WA 98926



REAL ESTATE EXCISE TAX AFFIDAVIT
CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

This form is your receipt when stamped by cashier.

PLEASE TYPE OR PRINT

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED

(See back of last page for instructions)

Check box if partial sale of property

If multiple owners, list percentage of ownership next to name.

Form with fields for Seller/Grantor and Buyer/Grantee information, including names, addresses, and phone numbers.

Form section for property address and legal description, including checkboxes for county location and parcel segregation.

Form section 5: Select Land Use Code(s) and tax exemption questions with YES/NO columns.

Form section 6: Questions regarding forest land, current use, and special valuation with YES/NO columns.

Form section 7: NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE) with instructions and signature line.

Form section 7: NOTICE OF COMPLIANCE (HISTORIC PROPERTY) with instructions and signature line.

Form section 7: OWNER(S) SIGNATURE and PRINT NAME fields.

Form section 7: List all personal property included in selling price, including exemption details and a tax calculation table.

Form section 8: I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. Includes signature lines for Grantor and Grantee.

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).