Trust Water Right Agreement
YAKIMA RIVER MITIGATION WATER SERVICES LLC

This Trust Water Right Agreement ("Agreement") is made and entered into as of the 30 day of September, 2011, by and between the Washington State Department of Ecology, State Trust Water Right Program ("Ecology") and the YAKIMA MITIGATION WATER SERVICES LLC, a Washington Limited Liability Company ("YAKIMA MITIGATION SERVICES"), collectively, the "Parties."

RECITALS

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

B. YAKIMA MITIGATION SERVICES is the owner of certain water rights in the main stem of the Yakima River as more particularly described and quantified in **Exhibit A** (the "Water") and presently appurtenant to the land legally described in **Exhibit B** (the "Land"), each such Exhibit being attached hereto and incorporated herein; and

C. YAKIMA MITIGATION SERVICES desires to create the "YAKIMA MITIGATION SERVICES EXCHANGE" ("Exchange") by utilizing the Trust to change existing water rights that divert water from the Yakima River and its tributaries and have a priority date prior to 1905 to in stream flow and water banking. The Exchange will be defined as a bank of "Mitigation Credits." The amount of Mitigation Credits will be determined by Ecology based on the consumptive quantities in acre-feet per year of the Water changed through the Trust; and

D. The Exchange shall be available to offset impacts to senior water rights and to comply with the rules and regulations of Ecology, including the protection of Total Water Supply Available ("TWSA") under the Washington Administrative Code (WAC) Chapter 173-539A for out-of-priority water right permits and for requests for water budget neutral permit exempt ground water rights for domestic projects ("Water Rights"); and

E. YAKIMA MITIGATION SERVICES desires to have the Water Rights that are approved by Ecology for change to in stream flows and water banking purposes and placed into the Exchange ("In stream Flow Rights") to become effective as State Trust Water Rights and owned by the State at such time and in such quantity that water is applied to actual beneficial use under the Water Rights; and

F. YAKIMA MITIGATION SERVICES, or its authorized agent, submitted a Trust Water Right Application to Ecology, WRTS File No. CS4-01279sb5c (the "Application"), to place the Water into the Trust for the purpose of enhancing in-stream flows and providing Mitigation Credits to offset and allow for the permitting of new Water Rights to be used for any lawful purpose within the Yakima River basin; and

G. Ecology has accepted the Application, has completed its examination of the extent and validity of the Water and is prepared to issue its Trust Water Right Report of Examination

concerning the extent and validity of the Water (the "ROE") and its trust water certificate (the "Certificate"). **Exhibit C** documents that determination, including quantification of the consumptive quantity associated with the Water; and

H. Ecology is also prepared to issue its trust water right certificate placing the Water in the Trust for in-stream and mitigation purposes pursuant to RCW 90-38.040, provided that such certificate shall be replaced if and as reasonably necessary to comply with the final decree in *Acquavella* when issued by the Court pursuant to Pre-trial Order 17 (collectively the "Certificate"); and

I. The Parties acknowledge that YAKIMA MITIGATION SERVICES may from time to time submit additional Trust Water Right Applications to Ecology requesting additional Water to be placed in the Exchange and used as Mitigation Credits in accordance with this Agreement; and

J. Subject to the terms of this Agreement and the Application, Ecology confirms that it is willing, able and authorized to hold the Water in the Trust as provided for herein.

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. **PURPOSE**: The purpose of this Agreement and the primary reason YAKIMA MITIGATION SERVICES is willing to place the Water into the Trust is to provide senior water rights as off-setting mitigation that will allow YAKIMA MITIGATION SERVICES, its assigns, or third parties to apply for and receive new ground water withdrawals or surface water diversionary permits or request and receive determinations of water budget neutrality within the Yakima River basin, particularly within Kittitas County. These new Water Rights would be mitigated by way of a permanent designation of such portion of YAKIMA MITIGATION SERVICES' 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. **ADDITIONAL WATER AND MITIGATION CREDITS**: If YAKIMA MITIGATION SERVICES requests additional Water to be added to this Agreement, Ecology will consider the request and if a trust water right application is filed by YAKIMA MITIGATION SERVICES, Ecology will process the application in accordance with laws and rules pertaining to trust water rights and water banking in effect at the time of the request. Once the processing of the application is complete and upon signature of an addendum to this agreement, management of the additional Water and Mitigation Credit issuance would be performed by YAKIMA MITIGATION SERVICES and Ecology as agreed herein.

3. **THIRD PARTY AGREEMENTS – MITIGATION CREDITS**: Once this agreement is executed, YAKIMA MITIGATION SERVICES and Ecology may begin the process of designating parties to receive Mitigation Credits based upon the Water held in the Exchange. YAKIMA MITIGATION SERVICES may, in accordance with applicable laws, rules, policies and regulations, designate a temporary beneficial use for the portion of the water in Trust that is not yet assigned as Mitigation Credit pursuant to this Agreement. The process for YAKIMA MITIGATION SERVICES to identify recipients of Mitigation Credits and for Ecology to issue mitigated permits or

determinations of water budget neutrality is as follows:

3.1 In the event YAKIMA MITIGATION SERVICES proposes or enter into a contract with a third party to provide a portion of the Water in Trust as Mitigation Credits through the Exchange on such terms consistent with this Agreement as YAKIMA MITIGATION SERVICES may elect, YAKIMA MITIGATION SERVICES, its authorized agent or such third party shall make application to Ecology (or, if appropriate, to a water conservancy board) to appropriate surface or ground water at the desired location and for the intended use and quantities, together with all regularly required supporting information (hereinafter a "New Application"). As part of the New Application or water budget neutral determination request, YAKIMA MITIGATION SERVICES will designate the specific quantity of the Water in Trust that will be used as Mitigation Credits to offset the consumptive loss associated with the uses described in the New Application or water budget neutral determination request. YAKIMA MITIGATION SERVICES or its authorized agent will also co-sign the New Application or water budget neutral determination request.

3.2 Upon receipt of a complete New Application or water budget neutral determination request Ecology, pursuant to WAC 173-539A-050, 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 Mitigation Credits reasonably needed under the quantity allocation set out in **Exhibit D** which, together with any other proposed mitigation measures, shall reasonably offset the impacts of such new withdrawal proposed in the New Application or water budget neutral determination request.

3.3. For New Applications or if otherwise required by statute, 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 RCW 90.03.

3.4. The applicant must publish the notice for any New Applications or if otherwise required by statute, and ensure that the newspaper transmits an affidavit of publication to Ecology.

3.5. YAKIMA MITIGATION SERVICES, its authorized agent, or the third party applicant in cooperation with Ecology will, as YAKIMA MITIGATION SERVICES deems appropriate, complete a Water Transfer Working Group ("WTWG") project description and will present it to the WTWG in cooperation with Ecology. Ecology, in consultation with the U.S. Bureau of Reclamation, will determine if some or all of the Water YAKIMA MITIGATION SERVICES designates as Mitigation Credits would be assigned to the Water Storage and Exchange Contract No. 09XX101700, between the Bureau of Reclamation and Ecology, dated January 29, 2009 ("Reclamation-Ecology Exchange Contract").

3.6. Ecology will investigate the New Application or request for a determination of water budget neutrality and prepare a ROE or determination, as appropriate, recommending issuance or denial of a permit or determination of water budget neutrality based on applicable policy, rules, and law. Ecology's review of New Applications and water budget neutral requests shall also include the following considerations:

3.6.1 In order to develop and confirm performance standards as set forth in WAC 173-539A-060 and any respective ROE, YAKIMA MITIGATION SERVICES and/or such

third party shall provide information to reasonably show or estimate, as the case maybe, that the consumptive uses of the proposed project, when offset by the Mitigation Credits allocated from the Trust and any other proposed mitigation measures, do not increase the consumptive use of water.

3.7. Ecology's permit relative to a New Application or its determination of water budget neutrality will specify the conditions and limitations on the use of water in a manner consistent with the Water held in the Exchange as Mitigation Credits. Conditions relating to measuring and reporting water use and for reimbursement of any Ecology costs to administer the Reclamation-Ecology Exchange Contract will also be included in the permit or water budget neutral determination.

4. **UNCOMMITTED TRUST WATER RIGHTS**: YAKIMA MITIGATION SERVICES shall have the right at any time and for any reason without prejudice, to withdraw the Application, terminate this Agreement and remove from the Trust and the Exchange any portion of the Water that has not been permanently allocated as Mitigation Credit for other water uses as set forth in this Agreement. In the case of such termination, the provisions of Section 8 of this Agreement shall apply.

5. **ESCROW - THIRD PARTY AGREEMENTS**: In the event Ecology prepares to issue an ROE for a New Application or water budget neutral determination request, it will publish the draft ROE on its internet site. If the form and substance of the ROE or water budget neutral determination is acceptable to YAKIMA MITIGATION SERVICES and to the third party applicant, if any, YAKIMA MITIGATION SERVICES shall 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 YAKIMA MITIGATION SERVICES and the third party applicant, if any, or the deposit of any other documents required for closing. Unless otherwise agreed by YAKIMA MITIGATION SERVICES, the escrow shall close within thirty (30) days of the occurrence of the last of the following events: mutual execution of all agreements and documents contemplated by or collateral to this Agreement; YAKIMA MITIGATION SERVICES' deposit of an executed document in a form acceptable to Ecology permanently allocating a portion of the then available and unallocated Water in the Exchange as Mitigation Credits for the proposed purpose of use as set forth in the New Application or water budget neutral determination request; the giving of all requisite public notices for actions contemplated by such transaction; deposit of the ROE and the new water right permit or determination of water budget neutrality, each in form and content acceptable to YAKIMA MITIGATION SERVICES and such third party, if any; 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 determination of water budget neutrality; and the deposit of all monies, documents and things relevant and necessary to conclude the transaction between YAKIMA MITIGATION SERVICES and any third party. All escrow costs shall be shared equally between YAKIMA MITIGATION SERVICES and the third party, or as otherwise set forth in the written escrow instructions or sale agreement between YAKIMA MITIGATION SERVICES and the third party. YAKIMA MITIGATION SERVICES, and any third party having the right to do so under an agreement with YAKIMA MITIGATION SERVICES, may, at any time prior to closing of escrow and without cause, withdraw the New Application or water budget neutral determination request or otherwise prevent any allocation of any portion of the Water for Mitigation Credits for such

transaction.

6. **MANAGEMENT OF TRUST WATER:** During the Term and in its capacity as a fiduciary, Ecology shall hold and manage the Water in Trust pursuant to chapter 90.38 RCW and this Agreement as a part of the total water supply available ("TWSA") in the Yakima River. Ecology:

6.1 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 and B and paragraph 3 above, and this representation shall also apply to any Water removed from the Trust and the Exchange;

6.2 Shall, in addition to the protections against relinquishment in RCW 90.38 and RCW 90.42, at all times during the Term manage, maintain, preserve and protect for the benefit of YAKIMA MITIGATION SERVICES 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;

6.3 Shall process all New Applications or water budget neutral determination requests where portions of the Water are proposed as Mitigation Credits 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; and

6.4 Shall not assess or charge YAKIMA MITIGATION SERVICES any costs or fees for maintaining the Water in the Trust and the Exchange; provided that Ecology may charge third parties its regular costs and fees for water right applications, transfers and investigations or costs attributable to processing new water right applications or water budget neutral determination requests as provided under this Agreement.

7. **REPRESENTATIONS AND WARRANTIES:** 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:

7.1 YAKIMA MITIGATION SERVICES makes the following undertakings, representations and warranties to Ecology:

7.1.1 YAKIMA MITIGATION SERVICES is a Washington limited liability company duly formed and authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

7.1.2 Upon its full execution, this Agreement is binding upon YAKIMA MITIGATION SERVICES in accordance with its terms.

7.1.3 YAKIMA MITIGATION SERVICES shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement.

7.2 Ecology makes the following undertakings, representations and warranties to YAKIMA MITIGATION SERVICES:

7.2.1 Ecology is a division of the State of Washington duly formed and authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

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

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

7.2.4 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.

8. **TERMINATION AND DEFAULT**: If either 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 elect to terminate this Agreement or otherwise 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:

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

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

8.2.1 YAKIMA MITIGATION SERVICES shall identify all in-process designation agreements for Mitigation Credits and inform Ecology of their status; and shall work with Ecology to determine whether an assignment of Mitigation Credits should be completed from the Exchange. If Ecology agrees, the permit process or the determination of water budget neutrality will be completed promptly in accordance with applicable policies, rules, and law.

8.2.2 Ecology shall promptly convey to YAKIMA MITIGATION SERVICES or its designee the portion of the Water not yet designated and assigned as Mitigation Credits for New Applications or water budget neutral determination requests.

8.2.3 Each party shall be responsible for their own costs associated with ending the Trust water right and Exchange relationship in an orderly manner.

8.3 Pursue any other remedy now or hereafter available.

8.4 In no event shall the termination of this Agreement alter or affect any Water previously allocated for Mitigation Credits granted relative to New Applications for permits or

Mitigation Credits granted relative to requests for determinations of water budget neutrality.

9. **ASSIGNMENT:** This Agreement may be assigned by YAKIMA MITIGATION SERVICES upon the giving of written notice to Ecology. 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.

10. **NOTICES:** Any notice or communication required by this Agreement between YAKIMA MITIGATION SERVICES 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 YAKIMA RIVER MITIGATION WATER SERVICES LLC:
Nathan R. Weis
P.O. Box 687
Roslyn, WA 98941

To CENTRAL CASCADES LAND COMPANY, INC.
Anne Watanabe
P.O. Box 687
Roslyn, WA 98941

With a copy to ENCOMPASS ENGINEERING AND SURVEYING
Marc Kirkpatrick
108 East 2nd Street
Cle Elum, WA 98922

11. **SEVERABILITY:** 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 and subject to the provisions of Section 8.0 herein, the party finding itself unable to enforce the provision may, at its sole discretion, declare this entire Agreement to be null and void.

12. **WAIVER:** If either 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.

13. **AMENDMENTS:** Amendments to this Agreement must be in writing and signed by an authorized representative of each of the parties.

14. **RECIPROCAL INDEMNIFICATION**: Each party shall protect, defend, indemnify, and hold the other harmless from and against their respective acts and omissions and for all third party claims arising out of or related to this Agreement.

15. **APPLICABLE LAW**: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: _____
Melissa Downes
Section Manager
Water Resources Program, CRO

YAKIMA RIVER MITIGATION WATER SERVICES LLC
A Washington Limited Liability Company

By: _____
Nathan R. Weis, Managing Member

EXHIBIT A
Water Rights Claims

CLAIM NO.	01279
CLAIMANT NAME:	Fred S. Talerico
Source:	Yakima River
Use:	Irrigation of 3.5 acres
Period of Use:	April 20 through September 30
Quantity:	0.11 cfs; 21 acre-feet per year for irrigation and 0.125 cfs for conveyance loss
Priority Date:	June 5, 1886
Place of Use:	Beginning at the north quarter corner of Section 31, T. 20 N., R 16 E., W.M.; thence East along the north section line of said Section 31, 305 feet; thence South 0° 32' 39" West 487.70 feet to the true point of beginning; thence continuing South 0° 32' 39" West 218.36 feet; thence South 89° 47' 15" West 787.79 feet; thence North 0° 32'19" East 334. 32 feet; thence South 81°48' 57" East 794.88 feet to the point of beginning.
Limitation of Use:	In the event this water right is relinquished, or otherwise not used, the proportionate share of conveyance loss associated with this right shall revert to the remaining Younger Ditch water right holders whose certificates include a discreet quantity of water for the purpose of conveyance. The reversion of this quantity of water shall be to the extent necessary to deliver the authorized quantity of water to the remaining authorized places of use. The maximum quantity of water affirmed for the entire length of the ditch for the purpose of conveyance is 2.895 cubic feet per second (cfs).

EXHIBIT B
Legal for Land Appurtenant to Claim No. 01279

Lots 1, 2, 3, 4, and 5 of the YOUNGER PLAT, according to the Plat recorded in volume 11 of Plats at page(s) 243-244, on April 21, 2010, Kittitas County Auditor's File No. 201004210025, being a portion of the Northwest Quarter of the Northeast Quarter of the Northwest of Section 31, Township 20 North, Range 16 East, W.M., Kittitas County, State of Washington.

TOGETHER WITH that certain easement for purposes of ingress and egress over the following described property:

The westerly 60 feet, of even width, of Parcel 4 of GRM Short Plat No. 1 being a portion of the Northwest Quarter of Section 31, Township 20 North, Range 16 East, W.M., Kittitas County, State of Washington, as recorded under Survey, recorded under Kittitas County Auditor's File No. 542182 as granted in instrument under recording No. 553808.

EXHIBIT C
Ecology Report of Examination and Trust Water Certificate

EXHIBIT D
Quantity Allocation CU Calculator

Consumptive Water Use Calculator

Percentage of Water Consumed by Rule

Water Use	% Consumed
In-house Use with a On-site Septic System	30%
n-house Use Hooked up to a Sanitary Septic System	20%
Outdoor Use (Irrigation)	90%

How Much Water Do I need?

In-House Use	Number of Connections		Amount of water per Connection (gallons per day) *
In-house Use with a On-site Septic System	1		350
In-house Use Hooked up to a Sanitary Septic Syste	0		350
Outdoor Use	Number of Square Feet	Number of Acres	Amount of water per acre (ac-ft)**
Irrigation	21,780	0.500	1.89

* This value is a default value based on Dept of Health minimum service

** This value is based on an irrigation requirement for pasture/turf in the Cle Elum area and an irrigation efficiency of 80% consistent with WAC 173-539A.

TOTAL CONSUMED	TOTAL USE
Consumptive Water Use (ac-ft)	Water Use (ac-ft)
0.118	0.392
0.000	0.000
Consumptive Water Use (ac-ft)	Water Use (ac-ft)
0.849	0.943
Total Consumptive Water Use (ac-ft)	Total Water Use (ac-ft)
0.967	1.335

The total consumptive water use is based on the assumptions in WAC 173-539A

Total water use is the quantity of water required for the project.