



**Trust Water Right Agreement
WESTERN WATER PARTNERS LLC**

This Trust Water Right Agreement ("Agreement") is made and entered into as of the 7th day of December, 2015, by and between the Washington State Department of Ecology, State Trust Water Right Program ("Ecology") and WESTERN WATER PARTNERS LLC, a Washington Limited Liability Company ("WESTERN WATER"), collectively, the "Parties."

RECITALS

A. Ecology is the trustee of the Trust Water Rights Program as authorized under Chapter 90.42 RCW (the "Trust"); and

C. WESTERN WATER desires to create the "WESTERN WATER 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 instream flow and be made available to mitigate for new uses. 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 rights conveyed to Ecology and held in Trust; and

D. Request for new uses mitigated through the Exchange must comply with the rules and regulations of Ecology, including but not limited to 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

B. Ecology recognizes that on January of 2015 Yakima Mitigation Services and Fabian Kuchan requested to release water held in trust by Ecology through a previous agreement (August 29, 2013 First Amendment of the Yakima River Mitigation Water Services Agreement) and assign the water to a separate agreement. The instream flow water held by Ecology (the "Water", see Exhibit A) is a result of Ecology issuing a Report of Examination (ROE) for Change Application No. CS4-01939sb9. The Water is the portion of Court Claim 01939 transferred to instream flow. The portion retained by Fabian Kuchin is for the continued irrigation of 9.65 acres (the "Retained Portion", see exhibit B). Upon execution of this Agreement, the First Amendment will be concurrently terminated by consent of all Parties. The Water will be held in the Trust for the purpose of enhancing instream 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

H. The Parties acknowledge that WESTERN WATER may from time to time request that additional water rights be placed in the Exchange and used as Mitigation Credits in accordance with this Agreement; and

I. Subject to the terms of this Agreement 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 WESTERN WATER is willing to place the Water into the Trust is to provide senior water rights as off-setting mitigation that will allow WESTERN WATER, its assignees, 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 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:** Additional water rights may be added to this Agreement if the following occur (not necessarily in this order):

- Ecology agrees that the proposed water rights are suitable to be considered for the Exchange.
- WESTERN WATER applies to change the water rights to instream flow with Ecology or a Conservancy Board. Ecology or a Water Conservancy Board processes the change application and issues a decision defining the stream reaches where the instream flows are located and the available quantities.
- Ecology and WESTERN WATER or its appointee sign an addendum to this agreement to add instream flow water rights to the Exchange.
- WESTERN WATER conveys the water right to Ecology by providing Ecology with a recorded quit claim deed.

2.1 Mitigation Credit issuance against the additional water rights would be performed by WESTERN WATER and Ecology as agreed herein.

3. **THIRD PARTY AGREEMENTS – MITIGATION CREDITS:** Once this agreement is executed, WESTERN WATER and Ecology may begin the process of designating parties to receive Mitigation Credits based upon the Water held in the Exchange. The process for WESTERN WATER 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 WESTERN WATER proposes to 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 WESTERN WATER may elect, WESTERN WATER, 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, WESTERN WATER 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. WESTERN WATER 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 estimated quantity allocation set out in Exhibit C which, together with

any other proposed mitigation measures, shall reasonably offset the impacts of such new withdrawal, or diversion proposed in the New Application or water budget neutral determination request.

3.3. For New Applications for water right permits, 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 for water right permits or if otherwise required by statute, and ensure that the newspaper transmits an affidavit of publication to Ecology. The applicant is responsible for the publication costs.

3.5. WESTERN WATER, its authorized agent, or the third party applicant in cooperation with Ecology will 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 WESTERN WATER designates as Mitigation Credits would be assigned to the Water Storage and Exchange Contract No. 09XX101700, between the U.S. 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 Report of Examination (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, WESTERN WATER 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 Credits allocated from the Trust and any other proposed mitigation measures, do not increase the consumptive use of water.

3.7. Barring any appeal of Ecology's ROE, Ecology will issue a permit. Ecology's permit or 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.

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 WESTERN WATER and to the third party applicant, if any, WESTERN WATER 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 WESTERN WATER and the third party applicant, if any, or the deposit of any other documents required for closing. Unless otherwise agreed to by WESTERN WATER, 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; WESTERN WATER's 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 WESTERN WATER 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 WESTERN WATER and any third party. All escrow costs shall be shared equally between WESTERN WATER and the third party, or as otherwise set forth in the written escrow instructions or sale agreement between WESTERN WATER and the third party. WESTERN WATER, and any third party having the right to do so under an agreement with WESTERN WATER, 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 of this agreement, Ecology shall hold and manage the Water in Trust pursuant to chapter 90.42 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 Exhibit A, 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 Chapter 90.38 RCW and Chapter 90.42 RCW, manage, maintain, preserve and protect for the benefit of WESTERN WATER and its successors, designees and assignees all aspects and attributes of the Water, including, but not limited to, the instantaneous 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 WESTERN WATER 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 WESTERN WATER makes the following undertakings, representations and warranties to Ecology:

7.1.1 WESTERN WATER 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 WESTERN WATER in accordance with its terms.

7.1.3 WESTERN WATER 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 WESTERN WATER:

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:** The Parties have the right to terminate this agreement at any time and for any reason without prejudice. WESTERN WATER may withdraw Applications, 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.

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 WESTERN WATER 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 WESTERN WATER 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 of the 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 WESTERN WATER upon the giving of written notice to Ecology. This Agreement is binding upon and insures 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 WESTERN WATER and Ecology shall be given to the addresses set forth below:

To ECOLOGY:

Water Resources Section Manager
Washington Department of Ecology
Central Regional Office
1250 W. Alder St.
Union Gap, WA 98903-0009

To: WESTERN WATER PARTNERS LLC

Legal Division
c/o Anne Watanabe
P.O. Box 711
Roslyn, WA 98941

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.

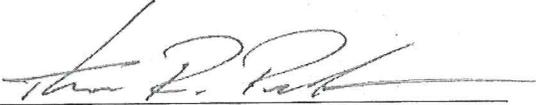
13. **AMENDMENTS:** Amendments to this Agreement must be in writing and signed by an authorized representative of each of the parties.

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.

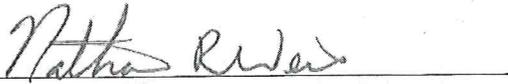
This Agreement is executed as of the date first above written.

WASHINGTON DEPARTMENT OF ECOLOGY

By: 

Thomas Perkow
Acting Section Manager
Water Resources Program, CRO

WESTERN WATER PARTNERS
A Washington Limited Liability Company

By: 

Nathan R. Weis, Managing Member

EXHIBIT A
Water Instream Flow Water Right

CLAIMANT NAME: Fabian Kuchin, Jr. COURT CLAIM NO. 01939
Yakima River Mitigation Water Services

Certificate Number: 34-88205-J

Subbasin: 09 Wilson-Nansum

Source: Whiskey Creek

Use: Instream Flow

Period of Use: May 13 through October 15

Quantity: Trust water right for the purposes of instream flow and water banking to offset consumptive use associated with new ground water uses in the Yakima Basin. The maximum quantities for instream flow in the primary reach are 0.312 cubic feet per second; 48 acre-feet annually. The flow rates and quantities allocated to the secondary reach are as follows:

<u>Period</u>	<u>Flow (cfs)</u>	<u>Acre-feet</u>
05/13 - 05/31	0.076	2.73
06/01 - 06/30	0.102	6.05
07/01 - 07/31	0.135	9.29
08/01 - 08/31	0.107	6.61
09/01 - 09/30	0.063	3.76
10/01 - 10/15	0.019	0.54
ANNUAL TOTAL		27.89

Priority Date: June 30, 1870

Point of Diversion: N/A

Place of Use: Whiskey, Mercer, and Wilson Creeks and the Yakima River tributary to the Columbia River in Kittitas County, WRIA 39 (Upper Yakima)

Primary Reach:
Beginning on Whiskey Creek on River Mile 1.5, Latitude 47.012579, Longitude -120.573140, being within the NE¼NW¼ of Section 34, T. 18 N., R. 18 E.W.M.

Ending on Mercer Creek on River Mile 0.17, Latitude 46.988247, Longitude -120.557379, being within the NW¼SW¼ of Section 2, T. 17 N., R. 18 E.W.M.

Secondary Reach:
Beginning on Mercer Creek on River Mile 0.17, Latitude 46.988247, Longitude -120.557379, being within the NW¼SW¼ of Section 2, T. 17 N., R. 18 E.W.M.

Ending on the Yakima River on River Mile 0.0, Latitude 46.24272, Longitude -119.24396, being within Section 24, T. 9 N., R. 28 E.W.M.

EXHIBIT B
Water Right Retained as Irrigation under Claim No. 01939

CLAIMANT NAME: Fabian Kuchin, Jr. COURT CLAIM NO. 01939

Certificate Number: 84-84179-J

Subbasin: 09 Wilson-Naneum

Source: Whiskey Creek

Use: Irrigation of 13 acres

Period of Use: April 1 through October 15

Quantity: 0.338 cubic foot per second, 52 acre-feet per year

Priority Date: June 30, 1875

Point of Diversion: 450 feet south and 400 feet west from the north quarter corner of Section 34, being within the ~~NE~~^{NE}~~NE~~^{NE} of Section 34, T. 18 N., R. 18. E.W.M.

Place of Use: That part of the ~~W~~^W~~NE~~^{NE} of Section 34, T. 18 N., R. 18 E.W.M., lying north and east of the northeasterly right-of-way line of State Highway No. 3, and south and west of Whiskey Creek.

Limitations Of Use: This land also receives water from the Ellensburg Water Company.

EXHIBIT C

Quantity Allocation Consumptive Use Calculator

Consumptive Water Use Calculator				
Percentage of Water Consumed by Rate				
Water Use			% Consumed	
In-house Use with a On-site Septic System			30%	
In-house Use Hooked up to a Sanitary Septic System			20%	
Outdoor Use (Irrigation)			50%	
How Much Water is Needed?				
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 System		350		
<small>* This value is a default value based on Dept of Health minimum service.</small>				
Outdoor Use	Number of Square Feet	Number of Acres	Amount of water per acre (ac-ft) **	
Irrigation	500	0.011	1.59	
<small>** This value is based on irrigation requirements for pasture/soil in the Cle Elum area and an irrigation efficiency of 60% consistent with WAC 173-533A.</small>				
			TOTAL (CONSUMED)	TOTAL (USE)
			Consumptive Water Use (ac-ft)	Water Use (ac-ft)
			0.113	0.392
			0.000	0.000
			Consumptive Water Use (ac-ft)	Water Use (ac-ft)
			0.019	0.022
			Total Consumptive Water Use (ac-ft)	Total Water Use (ac-ft)
			0.137	0.414
			The total consumptive water use is based on the assumptions in WAC 173-533A.	Total water use is the quantity of water required for the project.