

AGREEMENT TO ASSIGN TRUST WATER RIGHTS

THIS AGREEMENT TO ASSIGN TRUST WATER RIGHTS is made and entered into this 15th day of May, 2014, by and between Aqua Mitigation LLC, a Washington limited liability company (hereinafter referred to as "Aqua" or "Assignor"), and Kittitas County, a political subdivision of the State of Washington (hereinafter referred to as the "County" or "Assignee").

RECITALS

A. WHEREAS, Aqua is a party to a Trust Water Right Agreement, which Aqua entered into with the Washington State Department of Ecology, Yakima River Basin Trust Water Rights Program (hereinafter referred to as "Ecology") on August 9, 2011, which agreement was amended on March 25, 2013 (hereinafter collectively the "Trust Water Right Agreement"). The Trust Water Right Agreement and the First Amendment to Trust Water Right Agreement are attached hereto as Exhibits A and B, respectively; and

B. WHEREAS, the Trust Water Right Agreement provides the terms and conditions under which water rights conveyed by Aqua to Ecology by Deeds dated August 30, 2011 and recorded under Kittitas County Auditor's File Nos. 201108300036 and 201108300035 are used and managed for a variety of purposes, including but not limited to mitigating for domestic use of water from permit exempt groundwater wells; and

C. WHEREAS, the water rights that are in trust pursuant to the Trust Water Right Agreement consist of two water rights: the "Williams Trust Water Right," which is legally described on Exhibit A-1 of the Trust Water Right Agreement, and was conveyed to Ecology by Deed recorded under Auditor's File No. 201108300036; and the "Amerivest Trust Water Right," which is legally described on Exhibit A-2 of the Trust Water Right Agreement attached hereto and incorporated herein, and was conveyed to Ecology by Deed recorded under Auditor's File No. 201108300035 (hereinafter collectively referred to as the "Trust Water Rights"); and

D. WHEREAS, Aqua agrees to assign to the County and the County desires to purchase all of Aqua's beneficial interest in the Williams Trust Water Rights held by Ecology pursuant to the Trust Water Rights Agreement, which amount is 14.1375 acre-feet of consumptive use.

NOW, THEREFORE, in consideration of the foregoing, payment of the assignment price and of the mutual covenants hereinafter set forth, the parties hereto hereby agree as follows:

1. Assignment. Subject to the terms and conditions set forth in this agreement and the contingencies described herein in Paragraph 3, Aqua agrees to assign to the County the following portions of the Aqua's Trust Water Right Agreement (Agreement) with Ecology.

1.1 Williams Trust Water Right. No portion of the Williams Trust Water Right has been irrevocably obligated to serve as mitigation for third party beneficiaries. Aqua agrees to assign to the County all of the consumptive use of the Williams Trust Water Right, which amount is 14.1375 acre-feet of consumptive use.

1.2 Purchase Price. The County agrees to pay to Aqua the sum of \$735,000.00, payable in cash at closing.

2. Disclosures. Aqua and the County acknowledge and agree to the following disclosures and agreements, all of which shall survive the closing of this transaction.

2.1 Aqua and the County agree and acknowledge the actual number of (Equivalent Residential Units (ERUs) the beneficial interest in the Trust Water Rights conveyed by Aqua to the County may be used for (i) may vary depending on the specific circumstances of each ERU mitigation; (ii) may change over time based on Ecology's and/or the Washington State Department of Health's interpretation of how much domestic water a single family residence needs and/or uses; and/or (iii) may vary depending on how and the circumstances under which the County allows third parties to rely on the Trust Water Rights in the future.

2.2 Aqua and the County agree and acknowledge the geographic area and the time of year the Trust Water Rights may be used to mitigate for domestic use is not certain and depends on the particular circumstances of each specific ERU mitigation request and may change in the future.

2.3 The County acknowledges and agrees that Aqua has made no promises, representations or warranties of any kind that relate to: (i) the extent and validity of the water rights that are the subject of the Trust Water Right Agreement; (ii) the quantity of ERUs the Trust Water Rights can be used to mitigate for; (iii) the geographic location where the Trust Water Rights can be used to mitigate ERUs; (iv) the season of use during which the Trust Water Rights can be used.

2.4 Aqua and the County acknowledge and agree that how the Trust Water Rights are used and managed to mitigate for domestic use is subject to Ecology's approval.

2.5 Aqua and the County acknowledge and agree that through this assignment the County will assume Aqua's place and role in the Trust Water Right Agreement with Ecology.

2. Earnest Money. The County hereby deposits, and receipt is hereby acknowledged of a \$10,000.00 promissory note in the form attached hereto as Exhibit C as earnest money in part payment of the purchase price for the aforescribed Water Right. The earnest money promissory note and this Agreement shall be held by the Closing Agent for the benefit of the parties hereto.

3. Contingencies. Aqua and the County agree that Aqua's obligation to assign the Trust Water Rights to the County and the County's obligation to accept and pay for the

assignment of the Trust Water Rights shall be contingent upon timely satisfaction of the following events, which events are hereinafter referred to as "Contingencies":

3.1 Funding and Resolution Ratifying Agreement. This Agreement is contingent upon (i) the County's ability to obtain funding in order to pay for the assignment of the Trust Water Rights and (ii) the Kittitas County Board of Commissioners passing a resolution in the ordinary course of its business ratifying this Agreement and appropriating sufficient funds for the assignment of the Trust Water Rights on or before June 1, 2014. In the event either of these contingencies are not satisfied or waived by June 1, 2014 then this Agreement shall terminate and the Earnest Money shall be refunded.

3.2 Ecology Consent. Consent by Ecology on or before closing of the Assignment of the Trust Water Right Agreement, which consent shall be deemed given when Ecology signs the consent in the form attached hereto as Exhibit D provided, however, if Ecology's consent is appealed, then Ecology's consent shall be deemed given when any appeals of Ecology's consent are resolved in manner that preserves the essential terms of this Agreement. In the event Ecology consents to the assignment of the Trust Water Right Agreement and in the consent attaches terms and conditions to the assignment of the water which are not acceptable to Aqua or the County, then, in that event, Aqua or the County has the option, to be exercised in Aqua or the County's sole and absolute discretion, to cancel this sale and receive a full refund of the earnest money. Aqua or the County must elect to cancel this sale within fourteen (14) days of Ecology's consent. If Aqua or the County fail to object within said fourteen (14) day period, then they will be deemed to have consented to any terms or conditions Ecology attaches to Ecology's consent.

3.3 Notice of Assignment to Ecology. In advance of the execution of this agreement, Aqua agrees to provide written notice of this assignment to Ecology, pursuant to paragraph 9 of Aqua and Ecology's First Amendment to Trust Water Agreement, executed and dated March 25, 2013.

4. No Litigation. To the best of Assignor's knowledge, no litigation, suit, arbitration, claim, or proceeding, at law or equity, judicial, municipal, or administrative, with the exception of the *Acquavella* water rights adjudication, Yakima County Superior Court Cause No. 77-2-01481-5, is pending or threatened, which does or could materially affect the use or possession of the Trust Water Rights, or involve the County due to its respective use of and interest in the Trust Water Rights.

5. No Violation of Agreements. To the best of Assignor's knowledge, this Agreement and the performance of the parties hereunder will not violate any written or oral contract, agreement, or instrument to which Assignor is a party or that affects any portion of the Trust Water Rights.

6. Assignment of the Trust Water Rights. Assignor's interest in the Trust Water Rights is free and clear of all encumbrances or defects. Title to the Water Right shall be transferred by assignment to the County in the form attached hereto as Exhibit E.

7. Closing.

7.1 Definitions.

7.1.1 Closing Agent. For purposes of this Agreement “closing agent” shall be defined as a person authorized to perform escrow services pursuant to the provisions of Chapter 18.44 of the Revised Code of Washington who is designated by the parties hereto to perform such services.

7.1.2 Date of Closing. For purposes of this Agreement, “date of closing” shall be construed as the date upon which all appropriate documents are recorded and proceeds of this sale are available for disbursement to Assignor. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available for disbursement to Assignor.

7.1.3 Place and Time of Closing. The sale shall be closed in the offices of AmeriTitle, Ellensburg (hereinafter the “Closing Agent”), within twenty-one (21) days after the waiver of Contingencies, but in any event not later than the **1st day of June, 2014, which shall be the Termination Date.**

7.2 Obligations of Assignee and Assignor at Closing. Assignee and Assignor shall deposit with the Closing Agent all instruments, documents, and monies necessary to assigning the Trust Water Rights from Assignor to Assignee and close the sale in accordance with this Agreement.

7.3. Payment of Assignment Costs.

7.3.1 Costs to be divided Equally. Escrow fees, if any, the closing fee charged by the closing agent and document preparation fees shall be divided equally between Assignor and Assignee.

7.3.2 Costs to be paid by Assignor. Assignor shall pay all real estate excise taxes, attorney’s fees incurred by Assignor, if any, and other charges normally borne by an Assignor.

7.3.3 Costs to be Paid by Assignee. Assignee shall pay Assignee’s attorney fees, if any, and those costs or expenses normally allocated to an Assignee in a real estate transaction.

8. Default. If the County defaults (that is fails to perform the acts required of it, including, but not limited to failing to close after waiver or satisfaction of the contingencies) in its contractual performance herein, Aqua may seek specific performance pursuant to the terms of this Agreement and/or damages and/or any other legal or equitable remedy available to Aqua. In the event the Aqua fails, without legal excuse, to complete the purchase of the Trust Water Rights, the County may seek specific performance pursuant to the terms of this Agreement and/or damages and/or any other legal or equitable remedy available to the County.

9. Execution of All Documents. Assignor and Assignee, individually and severally, hereby acknowledge that the execution of all documents associated with this transaction will substantially affect their legal rights and that each has the opportunity to obtain and consult with independent legal counsel for the purposes of this transaction and matters relating thereto.

10. Attorneys' Fees. If either party hereto is required to retain an attorney to enforce any provision of this Agreement, whether or not a legal proceeding is commenced, the substantially prevailing party shall be entitled to reasonable attorneys' fees regardless of whether at trial, on appeal, in any bankruptcy proceeding, arbitration matter or without resort to suit.

11. Governing Law and Venue. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Washington and venue of any lawsuit arising out of this Agreement shall be in Kittitas County, Washington.

12. Notices. Subject to the requirements of any applicable statute, any notices required or permitted by law or under this Agreement shall be in writing and shall be (i) personally delivered, (ii) sent by first class certified or registered mail, return receipt requested, with postage prepaid, or (iii) dispatched by facsimile transmission (accompanied with reasonable evidence of receipt of transmission and with a confirmation copy mailed no later than the day after transmission) to the parties' addresses set forth below. Either party may change such address for notice. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if mailed, on the earlier of receipt or two (2) days after deposit thereof in the U.S. mail.

Aqua Mitigation, LLC
c/o Mitch Williams
P.O. Box 1702
Ellensburg, WA 98926

Kittitas County
Board of County Commissioners
205 W 5th Avenue, Suite 108
Ellensburg WA 98926-2887

13. Time of Performance. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto, including, but not limited to, the proper tender of each of the sums required by the terms hereof to be paid.

14. Section Headings. The word or words appearing at the commencement of sections and subsections of this Agreement are included only as a guide to the contents thereof and are not to be considered as controlling, enlarging or restricting the language or meaning of those sections or subsections.

15. Invalidity. In the event any portion of this Agreement should be held to be invalid by any court of competent jurisdiction, such holding shall not affect the remaining provisions hereof unless the court's ruling includes a determination that the principal purpose and intent of this Agreement are thereby defeated.

16. Legal Relationships. The parties to this Agreement execute the same solely as an Assignor and an Assignee. No partnership, joint venture or joint undertaking shall be construed

from these presents, and except as herein specifically provided, neither party shall have the right to make any representation for, act on behalf of, or be liable for the debts of the other. No third party is intended to be benefited by this Agreement. Any married person executing this Agreement hereby pledges his or her separate property and such person's and his or her spouse's marital communities in satisfaction hereof.

17. Assignment; Successors. Neither the Assignee nor the Assignor may sell, transfer, assign, pledge or encumber its interest in this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. A purported sale, transfer, assignment, pledge or encumbrance without prior written consent of the other party shall be null and void and of no force or effect. Subject to the restrictions contained herein, the rights and obligations of the Assignee and Buyers shall inure to the benefit of and be binding upon their respective estates, heirs, executors administrators, successors, successors-in-trust and assigns.

18. Entire Agreement. All understandings and agreements previously existing between the parties, if any, are merged into this Agreement, which alone fully and completely expresses their agreement, and the same is entered into after full investigation, neither party relying upon any statement or representation made by the other not embodied herein. This Agreement may be modified only by a written amendment executed by all parties.

19. Interpretation. This Agreement has been reviewed by both parties and each party has had the opportunity to consult with independent counsel with respect to the terms hereof and has done so to the extent that such party desired. No stricter construction or interpretation of the terms hereof shall be applied against either party as the drafter hereof.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original instrument. All such counterparts together shall constitute a fully executed Agreement. Facsimile transmission of this Agreement and retransmission of any signed facsimile transmission shall be the same as delivery of an original.

21. Amendment. This Agreement may not be modified or amended except by the written agreement of the parties.

IN WITNESS WHEREOF the parties have signed and delivered this Agreement as of the day and year first above written.

ASSIGNOR:

AQUA MITIGATION LLC



By: Mitchell F. Williams
Its: Member

ASSIGNEE:

KITTITAS COUNTY



By: Paul Jewell
Title: Boee Chairman

Julie A. Williams
By: Julie A. Williams
Its: Member

Date: 5-7-14

Assignor's address: 1880 Quail Run Ln
Ellensburg WA 98926

Assignor's phone: 509 899-0168

Date: May 15, 2014

Assignee's Address: 205 W. 5th Ave.
Ellensburg, WA 98926

Assignee's phone: 509-942-7508

INDEX TO EXHIBITS

- Exhibit A: Trust Water Right Agreement, dated August 9, 2011
- Exhibit B: First Amendment to Trust Water Right Agreement, dated March 25, 2013
- Exhibit C: Form of Promissory Note
- Exhibit D: Form of Notice of Assignment of Trust Water Rights and Consent to Assignment of Trust Water Rights
- Exhibit E: Form of Irrevocable Partial Assignment of the Beneficial Interest in a Trust Water Right

EXHIBIT A
(Trust Water Right Agreement)

Trust Water Right Agreement

This Trust Water Right Agreement is made and entered into as of the 9th day of AUGUST, 2011, by and between the Washington State Department of Ecology, Yakima River Basin Trust Water Rights Program ("Ecology") and Aqua Mitigation LLC, a Washington limited liability company ("Aqua").

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

B. WHEREAS, Aqua is the owner of certain water rights in Manastash Creek, a tributary of the Yakima River as more particularly described and confirmed under Claim No. 01968 in the Conditional Final Order issued in Subbasin 11, dated June 14, 2001 in *Ecology v. Acquavella*, Yakima County Superior Court No. 77-2-01484-5 ("*Acquavella*"), as divided pursuant to that certain Order to Divide Water Right and Join Parties entered on October 14, 2010;

C. WHEREAS, the place of use and purpose of use of the water rights were changed from irrigation to instream flow in Change Application Nos. KITT-10-11 (CS4-01553sb11a) and KITT-10-12 (CS4-01968sb11a) approved by the Kittitas County Water Conservancy Board and approved by Ecology in its certain letter modifying the transfers dated April 8, 2011 and May 17, 2011 (the "Modification Letters"); and

D. WHEREAS, the water rights designated as Trust Water Right A in both of the Modification Letters have been sold to Ecology to be used in perpetuity for instream flow purposes; and

E. WHEREAS, the water rights identified as Trust Water Right B in both of the Modification Letters and set forth on Exhibits A-1 and A-2 (the "Mitigation Water Rights") have an authorized purpose use for mitigation of future residential use; and

F. WHEREAS, Aqua and Ecology now desire to place the Mitigation Water Rights in trust and establish the terms and conditions under which said Mitigation Water Rights may be used for mitigation purposes; and

G. WHEREAS, Aqua submitted Trust Water Right Applications to Ecology, WRTS File Nos. CS4-01553sb11a (KITT-10-11) and CS4-01968sb11a (KITT-10-12) (the "Applications"), to place the Water into the Trust for the purpose of enhancing in-stream flows, providing mitigation water to offset and allow for the permitting of new water rights to be used for any lawful purpose, and providing mitigation water to mitigate for current water uses within the Yakima River basin; and

H. WHEREAS, Ecology has accepted the Applications, has completed its examination of the extent and validity of the Water based on Kittitas County Water Conservancy Board Report of Examination, modified and confirmed by Ecology's Modification Letters 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"). Attached as Exhibit B hereto is the ROE and the Certificate, which documents that determination, including quantification of the consumptive quantity associated with the right; and

J. WHEREAS, subject to the terms of this Agreement and the Applications, Ecology confirms that it is willing, able and authorized to hold the Water in the Trust and does accept the Water in trust for the intended purposes as provided for herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and undertakings as hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, Ecology and Aqua hereby agree as follows:

1. The purpose of this Agreement and the primary reason Aqua is willing to place the Water into the Trust is to provide senior water rights as off-setting mitigation that will allow Aqua or third parties to apply for and receive new ground water withdrawal or surface water diversionary permits within the Yakima River basin. An additional purpose of this agreement is to place water into Trust to provide a senior water right as offsetting mitigation that will allow Aqua or a third party to apply for and receive mitigation for existing groundwater withdrawals or surface water diversion permits. These water rights will be mitigated by way of a permanent designation of such portion of Aqua's beneficial interest in the Water in Trust as reasonably required to ensure no impairment to the total water supply available in the Yakima River ("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 the Trust shall commence upon the transfer of the mitigation water rights to Ecology as hereinafter provided. The term of this Agreement shall then be for so long as any portion of the Water remains in the Trust (the "Term"). The escrow shall be opened at AmeriTitle, Ellensburg, Washington (the "Escrow Agent") upon the mutual execution of this Agreement and its deposit with the Escrow Agent.

2.1 Aqua shall transfer the mitigation water rights to Ecology 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; Aqua's deposit of an executed quit claim deed in recordable form of the Water to the Trust substantially in the form of Exhibits C-1 and C-2 attached hereto and incorporated herein (the "Deed"); the giving of all requisite public notices for actions contemplated or referred to herein; the deposit of Ecology's letter accepting the Water into the Trust (the "Acceptance"); the deposit of Ecology's record of decision and/or modification letters, in a form and content acceptable to Aqua; and the expiration of all notice, comment and appeal periods related to the Ecology's record of decision and/or modification letters. The parties shall execute appropriate instructions to an Escrow Agent designated by the parties, and all escrow costs shall be shared equally by the parties.

2.2 Upon closing, the Escrow Agent shall record the Deed with the Kittitas County Auditor and/or such other places as may be appropriate and shall deliver the ROE and Certificate to Aqua.

3. Once this agreement is executed, Aqua and Ecology may begin the process of designating parties to receive mitigation credit based upon the Water held in trust. The process for Aqua to identify recipients of mitigation credit and for Ecology to issue mitigated permits is as follows:

3.1 In the event Aqua shall propose or 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 Aqua may elect, Aqua 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, Aqua will designate the specific quantity of the Water in Trust as required to offset the consumptive use associated with the uses described on the New Application. Aqua will also co-sign the New Application.

3.2 Upon receipt of a complete New Application, Ecology, pursuant to WAC 173-539A-060 or WAC 173-152-050(2)(g), as now existing or hereafter amended or such other laws or rules as may from time to time apply to the priority processing of water right transfers, shall accept and timely process the New Application 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 designated by Aqua in Paragraph 3.1 which, together with any other proposed mitigation measures, shall reasonably offset the impacts of such new withdrawal.

3.3 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 and ensure that the newspaper transmits an affidavit of publication to Ecology.

3.5 Ecology will, if necessary, complete a Water Transfer Working Group ("WTWG") project description and will present it to the WTWG; provided, however, that in the future the WTWG ceases to exist or determines it does not need nor desire to review the New Application then Ecology shall not be required to present the New Application to the WTWG. Ecology, in consultation with the U.S. Bureau of Reclamation, will determine if some or all of the Water Aqua designates would be assigned to the Reclamation-Ecology storage and delivery exchange contract or such other existing agreement between Ecology and any other entity.

3.6 Ecology will investigate the New Application and prepare a Report of Examination recommending issuance or denial of a permit based on applicable policy, rules, and law. Ecology's review of New Applications shall also include the following considerations:

3.6.1 In order to develop and confirm performance standards as set forth in any respective report of examination, Aqua 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 allocated from the Trust and any other proposed mitigation measures, do not increase the consumptive use of water.

3.6.2 With regard to new applications which seek approval of new or mitigation of existing domestic uses and so long as withdrawals are metered to domestic users; and the subject project is, or will be made, subject to covenants, conditions and restrictions which impose water use restrictions for both inside and outside purposes which will be recorded against the project; reasonable water use enforcement provisions are provided; and return flows are provided for through an approved septic or other waste treatment facility reasonably designed to infiltrate treated water in the general area from which it is being withdrawn, the allocation of Trust Water for mitigation shall be at a withdrawal or diversionary consumptive use rate per equivalent residential unit ("ERU") of not more than 0.114 acre-feet of consumptive use per ERU unless such amount of consumptive use is changed by agreement of the

parties or can be lowered based on the particular circumstances of the proposed mitigation and new or existing use..

3.7 In order to expedite and simplify Ecology's investigation of the New Application and preparation of Reports of Examination as required in paragraph 3.6 and to provide Aqua certainty on which Mitigation Water Rights can be used where, Ecology and Aqua have identified certain areas where the Mitigation Water Rights are best suited to be relied on without the new use of water causing impairment to existing water rights or detriment to the public interest. Areas where the Mitigation Water Rights are best suited are referred to as "Green Zones;" areas where the Mitigation Water Rights might result in impairment to existing right or prove detrimental to the public interest are referred to as "Yellow Zones;" areas where the Mitigation Water Rights are likely unsuitable for mitigating new uses are referred to as "Red Zones" (collectively referred as "Zones"). The Green Zones, Yellow Zones and Red Zones for each Mitigation Water Right are set forth in Exhibits D-1 and D-2.

3.7.1 Future Adjustment of Zones and Quantities. Aqua and Ecology agree to meet in the future at intervals to be determined by Aqua and Ecology, but not less than annually, to review and adjust the Zones described above in paragraph 3.7. In addition to review of the Zones, the parties recognize that, over time, more information and data will be developed as to the quantity of water actually consumed by homes in the given area may become available. Therefore, the parties agree as part of the annual review process to adjust the quantities set forth in Paragraph 3.6.2. If the parties agree to adjust or modify the Zones and/or quantities, then the new Zones and/or quantities will be established pursuant to an amendment of this Agreement.

3.8 Ecology's permit relative to the New Application 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 to administer the Reclamation-Ecology Exchange Contract will also be included in the permit.

3.9 Ecology's permit shall also establish a development schedule. The development schedule shall establish the time by which the mitigation water approval in the ROE and permit shall be fully used. Once full use is attained, then Ecology, upon receipt of a complete Proof of Appropriation, shall issue a Certificate of Water Right. Upon issuance of a Certificate of Water Right, that portion of the mitigation water rights identified in the new application and confirmed for use in the ROE and permit and as used in the Proof of Appropriation, shall be permanently allocated to trust. At any point in time, up to the commencement of the withdrawal of water after issuance of a permit, the mitigation water right identified in the new application may be revoked by Aqua and/or the third party designated to receive the water right in the new application. In the event of said revocation, that portion of the mitigation water right shall remain in trust and, unless removed by Aqua pursuant to Paragraph 4, be available for re-designation by Aqua.

3.10 In the event Ecology is prepared to issue an ROE for a New Application, it will publish the draft ROE on its internet site or such other means of disseminating the proposed draft ROE.

4. Aqua shall have the right at any time to withdraw an Application, terminate this Agreement and remove from the Trust any portion of the Water that has not been permanently allocated as mitigation of other water uses as set forth in this Agreement.

5. Aqua may cause an escrow to be opened for such transaction between Aqua and the third party designated in the new application at the Escrow Agent upon the mutual execution and deposit of the fully executed agreement between Aqua and the third party applicant, if any, and the deposit of any other documents required for closing. The escrow may 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; Aqua'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 Trust to the proposed purpose as set forth in the New Application; the giving of all requisite public notices for actions contemplated by such transaction; deposit of the ROE and the new water right permit, each in form and content acceptable to Aqua 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; and the deposit of all monies, documents and things relevant and necessary to conclude the transaction between Aqua and any third party. All escrow costs shall be shared equally between Aqua and the third party. Aqua, and any third party having the right to do so under an agreement with Aqua, may, at any time prior to closing of escrow and without cause, withdraw the New Application or otherwise prevent any allocation of any portion of the Water to such transaction.

6. 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 TWSA. 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-1 and A-2 and paragraph 3 above, and this representation shall also apply to any Water removed from the Trust:

6.2 Shall, in addition to the protections against relinquishment in RCW 90.03.380, 90.03.615 and 90.14.140, at all times during the Term manage, maintain, preserve and protect for the benefit of Aqua and its successors, designees and assigns all aspects and attributes of the Water as quantified in Exhibits A-1 and A-2, 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 where portions of the Water 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; and

6.4 Shall not assess or charge Aqua any costs or fees for maintaining the Water in the Trust; provided that Ecology may charge third parties its regular costs and fees for water right applications, transfers and investigations or costs attributable to assignment of a portion of the Water to Ecology's USBR contract for storage and exchange contract.

7. 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 Aqua makes the following undertakings, representations and warranties to Ecology:

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

7.1.3 Upon its full execution, this Agreement is binding upon Aqua in accordance with its terms.

7.1.4 Aqua 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 Aqua:

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.

8. 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, if 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:

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 relationship in an orderly manner as follows:

8.2.1 Aqua shall identify all in-process designation agreements and inform Ecology of their status. Aqua 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 permit process will be completed promptly in accordance with applicable policies, rules, and law.

8.2.2 Ecology shall promptly convey to Aqua or its designee the portion of the trust water right 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 Aqua.

8.2.3 Each party shall be responsible for their own costs associated with ending the trust water right 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 or permits granted relative to New Applications.

9. This Agreement may be assigned by Aqua 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. Any notice or communication required by this Agreement between Aqua 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 Aqua:

Aqua Mitigation LLC
1880 Quail Run Lane
Ellensburg, Washington 98926

11. 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 Paragraph 8.2, the party finding itself unable to enforce the provision may, at its sole discretion, declare this entire Agreement to be null and void.

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

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

15. 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.


16. If either party hereto is required to retain an attorney to enforce any provision of this Agreement, whether or not a legal proceeding is commenced, the substantially prevailing party shall be entitled to reasonable attorneys' fees regardless of whether at trial, on appeal, in any bankruptcy proceeding, arbitration matter or without resort to suit.

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY:

By: 
Print Name: ROBERT F. FARWIN
Its: ACTING SECTION MANAGER

AQUA MITIGATION LLC:

By: 
Print Name: Julie Williams
Its: member

001 - 20100000-Williams-Med-Treat-Water-Agreement-Sub-E-03-01-Trust-Water-Agreement-2-11-08

INDEX OF EXHIBITS
TO TRUST WATER RIGHT AGREEMENT

- A-1 CS4-01968sblla (KITT-10-12) Trust Water Right B
- A-2 CS4S4-01553sblla (KITT-10-11) Trust Water Right B
- B ROE and Certificate
- C-1 Quit Claim Deed
- C-2 Quit Claim Deed
- D-1 Mitigation Water Right Zones
- D-2 Mitigation Water Right Zones

Exhibit A-1
(Trust Water Right B)

Court Claim No.:	01553
Claimant Name:	Mitchell F. Williams and Julie A. Williams
Source:	Manastash Creek
Use:	Trust Water Rights Program
Period of Use:	(1) April 1 – June 30 (2) July 1 – October 31
Quantity:	(1) 0.047 cfs (2) 0.024 cfs and 14.1375 acre-feet/year of consumptive use
Priority Date:	June 30, 1871
Point of Diversion:	Does not apply as the water will no longer be diverted.
Place of Use:	<p>The primary reach is described as follows: within the ordinary high-water mark of Manastash Creek commencing at the Jensen and Keach Ditch Diversion, which is located 550 south and 650 feet east from the N¼ corner of Section 14 within the NW¼NE¼ of Section 14, T. 17 N, R. 17 E.W.M. and ending at the confluence of Manastash Creek and Yakima River; and</p> <p>The secondary reach is described as follows: commencing at the confluence of the Manastash Creek and Yakima River and terminating at the confluence of the Columbia River and Yakima River</p>

**Exhibit A-2
(Trust Water Right B)**

Name: Amerivest Development LLC, a Washington limited liability company

Source: Manastash Creek

Use: Trust Water Rights Program

Period of Use: April 1 through October 31 for irrigation

Priority Date: June 30, 1874

Quantity: .234 cfs from April 1 through June 30; .118 cfs from July 1 through October 31;
71,753 acre-feet/year of consumptive use for irrigation

Point of Diversion: Not applicable because the water will be placed in trust

Place of Use: The primary reach is described as follows: within the ordinary high-water mark of Manastash Creek commencing at the Jensen and Keach Ditch Diversion, which is located 550 south and 650 feet east from the N¼ corner of Section 14 within the NW¼NE¼ of Section 14, T. 17 N, R. 17 E.W.M. and ending at the confluence of Manastash Creek and Yakima River; and

The secondary reach is described as follows: commencing at the confluence of the Manastash Creek and Yakima River and terminating at the confluence of the Columbia River and Yakima River

Exhibit B
(ROE and Certificate)

**Exhibit C-1
(Quit Claim Deed)**

After recording return to:
Jeff Slothower
Lathrop, Winbauer, Harrel, Slothower & Denison
P.O. Box 1088
Ellensburg, WA 98926

DOCUMENT TITLE:	Quit Claim Deed (as to Water Rights)
GRANTOR:	AQUA MITIGATION LLC, a Washington limited liability company
GRANTEE:	STATE OF WASHINGTON, TRUST WATER RIGHTS PROGRAM
LEGAL DESCRIPTION:	That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14 lying north and west of the Minnastash Road and east of the Kittitas Reclamation District Canal; that portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 lying south of Manastash Creek; the south 300 feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12; and the N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, A.L.L. in T. 17 N., R. 17 E., W. M.
ASSESSOR'S TAX PARCEL NUMBER(S):	10685; 835033; 895133; 956554; 845133

**QUIT CLAIM DEED
(as to Water Rights)**

THE GRANTOR, AQUA MITIGATION LLC, a Washington limited liability company ("Aqua"), for and in consideration of a transfer to the Yakima River Basin Trust Water Rights Program pursuant to a revocable Trust Water Rights Agreement and no monetary consideration, and pursuant to WAC 458-61A-211(2)(g), conveys and quit claims to the STATE OF WASHINGTON, TRUST WATER RIGHTS PROGRAM, Grantee, a portion of Grantors' right, title, interest and beneficial use of, in and to the water right confirmed under Court Claim Number 01553 in the Conditional Final Order issued in Subbasin 11 (Manastash Creek), dated June 14, 2001, in *State of Washington, Department of Ecology, v. James J. Acquavella, et al.*, Yakima County Superior Court Cause No. 77-2-01484-5. The portion of the right conveyed is more fully described as follows:

Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.,
Attorneys at Law
PO Box 1088201 West 7th Avenue
Ellensburg, WA 98926
Fax (509) 962-8093
Tel (509) 925-6916

Page 1 of 3

Name: Aqua Mitigation LLC, a Washington limited liability company

Source: Manastash Creek

Use: Instream flow (intended for mitigation of future residential water use)

Period of Use: (1) April 1 – June 30
(2) July 1 – October 31

Quantity: (1) 0.047 cfs
(2) 0.024 cfs
And 14,1375 acre-feet/year of consumptive use

Priority Date: June 30, 1871

Point of Diversion: Does not apply because the water will not be diverted

Place of Use: The primary reach is described as follows: within the ordinary high-water mark of Manastash Creek commencing at the Jensen and Keach Ditch Diversion, which is located 550 south and 650 feet east from the N¼ corner of Section 14 within the NW¼NE¼ of Section 14, T. 17 N, R. 17 E.W.M. and ending at the confluence of Manastash Creek and Yakima River.

The secondary reach is described as follows: Commencing at the confluence of Manastash Creek and the Yakima River and terminating at the confluence of the Columbia River and the Yakima River.

and incorporated herein by reference (hereinafter referred to as the "Williams Water Right"), which water right was appurtenant to the real property situated in the County of Kittitas, State of Washington, legally described as follows:

That portion of the NE¼NE¼ of Section 14 lying north and west of the Manastash Road and east of the Kittitas Reclamation District Canal; that portion of the SE¼SE¼ of Section 11 lying S. of Manastash Creek; the S. 300 feet of the SW¼SW¼ of Section 12; and the N¼NW¼NW¼ of Section 13, ALL in T. 17 N, R. 17 E.W.M.

provided, however, Grantor does not warrant and makes no warranty as to Grantee's ability to transfer or use the Williams Water Right to other purposes of use or places of use, nor does the Grantor warrant the quantity of water that the Washington State Department of Ecology may allow Grantee to transfer to other purposes of use or places of use;

SUBJECT TO the pendency of *State of Washington, Department of Ecology, v. James J. Acquavella, et al.*, Yakima County Superior Court Cause No. 77-2-01484-5; notice of which is given by Lis Pendens recorded on October 14, 1977, in Volume 90, page 589 under Kittitas County recording number 417302, and supplemental

Latrop, Weinbauer, Harrel, Stethower & Demick L.L.P.
Attorneys at Law
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Ellensburg, WA 98926
Fax (509) 962-8093
Tel (509) 925-6916

Page 2 of 3

notice of Lis Pendens recorded on June 4, 1980, in Volume 131, page 63, under Auditor's File No. 442263; being an action for the determination of the rights to divert, withdraw, or otherwise make use of the surface waters of the Yakima River Drainage Basin, in accordance with the provisions of Chapters 90.03 and 90.44 Revised Code of Washington which action is not yet final.

AND SUBJECT TO the terms and conditions of the Report of Examination issued in Water Right Change Application No. KITT-10-11 (Ecology Control No. CS4-01553sb11a) and Ecology's approval of the change of the water rights in Ecology's approval letter dated April 8, 2011 and subject to the terms and conditions of the Trust Water Right Agreement between Grantor and Grantee.

Grantee shall assume any and all obligation that may be necessary to include Grantee as a party under *State of Washington, Department of Ecology, v. James J. Acquavella, et al.*, Yakima County Superior Court Cause No. 77-2-01484-5. Grantor shall cooperate with Grantee in executing any reasonably necessary documents relative thereto.

DATED this _____ day of _____, 20__

AQUA MITIGATION LLC

By: _____
Its: _____

STATE OF WASHINGTON)
County of Kittitas) ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, and on oath stated that they are authorized to execute the instrument and acknowledged it as the _____ of Aqua Mitigation LLC, a Washington limited liability company, to be the free and voluntary act of such Limited Liability Company for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this _____ day of _____, 20__

Printed Name: _____
Notary Public in and for the State of Washington
My commission expires: _____

Y:\Utilities\01484-5\Trust Water Right Agreement with Ecology\Court Cause Used Aqua Mitigation to Quote (Williams) 9-17-11.doc

Kathrop, Weinbauer, Horrel, Stalhofer & Denison L.L.P.
Attorneys at Law
PO Box 10889201 West 7th Avenue
Ellensburg, WA 98926
Fax (509) 962-8093
Tel (509) 925-6916

Page 3 of 3

**Exhibit C-2
(Quit Claim Deed)**

After recording return to:

Jeff Slothower
Lathrop, Winbauer, Harrel, Slothower & Denison
P.O. Box 1088
Ellensburg, WA 98926

DOCUMENT TITLE:	Quit Claim Deed (as to Water Rights)
GRANTOR:	AQUA MITIGATION LLC, a Washington limited liability company
GRANTEE:	STATE OF WASHINGTON, TRUST WATER RIGHTS PROGRAM
LEGAL DESCRIPTION:	Portions of the SW ¼ of Section 8, Township 17 N, Range 18 E., W.M.
ASSESSOR'S TAX PARCEL NUMBER(S):	956861; 956862; 956863; 956864; 956865; 956866; 954943; 954942; 954941; 954936; 954937; 954938; 954939; 954940

**QUIT CLAIM DEED
(as to Water Rights)**

THE GRANTOR, AQUA MITIGATION LLC, a Washington limited liability company ("Aqua"), for and in consideration of a transfer to the Yakima River Basin Trust Water Rights Program pursuant to a revocable Trust Water Rights Agreement and no monetary consideration, and pursuant to WAC 458-61A-211(2)(g), conveys and quit claims to the STATE OF WASHINGTON, TRUST WATER RIGHTS PROGRAM, Grantee, all of Grantor's right, title, interest and beneficial use of, in and to the portion of the water right confirmed under Court Claim Number 01968 in the Conditional Final Order issued in Subbasin 11 (Manastash Creek), dated June 14, 2001, in *State of Washington, Department of Ecology, v. James J. Acquavella, et al.*, Yakima County Superior Court Cause No. 77-2-01484-5 and more fully described as follows:

Name: Aqua Mitigation LLC, a Washington limited liability company

Page 1 of 4

Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
Attorneys at Law
PO Box 1088/201 West 7th Avenue
Ellensburg, WA 98926
Fax (509) 962-8093
Tel (509) 925-6916

Source: Manastash Creek

Use: Instream flow (intended for mitigation of future residential water use)

Period of Use: April 1 through October 31

Priority Date: June 30, 1874

Quantity: 234 cfs from April 1 through June 30; 118 cfs from July 1 through October 31;
71.53 acre-feet of consumptive use

Point of Diversion: Does not apply as the water will no longer be diverted.

Place of Use: The primary reach is described as follows: within the ordinary high-water mark of Manastash Creek commencing at the Jensen and Keach Ditch Diversion, which is located 550 south and 650 feet east from the N¼ corner of Section 14 within the NW¼NE¼ of Section 14, T. 17 N, R. 17 E W.M. and ending at the confluence of Manastash Creek and Yakima River

The secondary reach is described as follows: Commencing at the confluence of Manastash Creek and the Yakima River and terminating at the confluence of the Columbia River and the Yakima River.

and incorporated herein by reference (hereinafter referred to as the "Amerivest Water Right"); which water right was appurtenant to the real property situated in the County of Kittitas, State of Washington, legally described as follows:

44.59 acres of property legally described as follows:

Lot 19 of that Certain survey as recorded in Book 29 of Surveys at page 174, under Auditor's File Number 200312040048, records of Kittitas County, State of Washington which is bounded by a line described as follows:

Beginning at the southwest quarter corner of Section 8, Township 17 North, Range 18 East, W.M., Kittitas County, State of Washington; thence north 01°18'18" east along the west boundary of Section 8, 49.53 feet to the north boundary line of Manastash Road; thence continuing north 01°18'18" east along the west boundary of said Section 8, 787.06 feet to the true point of beginning of said line; thence continuing north 01°18'18" east along the west boundary line of said Section 8 and the west boundary line of said Lot 19, 1393.68 feet; thence south 89°43'06" east, 160.83 feet to the beginning of a curve to the right having a radius of 273.00 feet; thence along said curve to the right an arc length of 169.27 feet, through a central angle of 35°31'35"; thence south 54°11'32" east, 99.41 feet to the beginning of a curve to the left having a radius of 273.00 feet, thence along said curve to the left an arc length of 169.27 feet, through a central angle of 35°31'35"; thence south 89°43'06" east, 137.49 feet; thence south 01°15'49" west, 429.28 feet; thence north 85°38'50" east, 606.25 feet; thence south 88°35'21" east, 721.98 feet; thence south 03°07'36" west, 567.98 feet; thence south 47°29'38" east, 148.25 feet; thence south 82°05'04" west, 1176.09

Lallrop, Winbauer, Barrett, Sletthover & Denison L.L.P.
Attorneys at Law
PO Box 1088201 West 7th Avenue
Ellensburg, WA 98926
Fax (509) 902-8093
Tel (509) 925-6916

Page 2 of 4

feet, thence south 90°00'00" west, 957.41 feet to the true point of beginning and terminus of said line.

Situated in Section 8, Township 17 North, Range 18 East, W.M., Kittitas County, State of Washington.

provided, however, Grantor does not warrant and makes no warranty as to Grantee's ability to transfer or use the Amerivest Water Right to other purposes of use or places of use, nor does the Grantor warrant the quantity of water that the Washington State Department of Ecology may allow Grantee to transfer to other purposes of use or places of use;

SUBJECT TO the pendency of *State of Washington, Department of Ecology, v. James J. Acquavella, et al.*, Yakima County Superior Court Cause No. 77-2-01484-5; notice of which is given by Lis Pendens recorded on October 14, 1977, in Volume 90, page 589 under Kittitas County recording number 417302, and supplemental notice of Lis Pendens recorded on June 4, 1980, in Volume 131, page 63, under Auditor's File No. 442263; being an action for the determination of the rights to divert, withdraw, or otherwise make use of the surface waters of the Yakima River Drainage Basin, in accordance with the provisions of Chapters 90.03 and 90.44 Revised Code of Washington which action is not yet final.

AND SUBJECT TO the terms and conditions of the Report of Examination issued in Water Right Change Application No. KITT-10-12 (Ecology Control No. CS4-01968ab11a) and Ecology's approval of the change of the water rights in Ecology's approval letter dated April 8, 2011 and Ecology's amended approval letter dated May 17, 2011 and subject to the terms and conditions of the Trust Water Right Agreement between Grantor and Grantee.

Grantee shall assume any and all obligation that may be necessary to include Grantee as a party under *State of Washington, Department of Ecology, v. James J. Acquavella, et al.*, Yakima County Superior Court Cause No. 77-2-01484-5. Grantor shall cooperate with Grantee in executing any reasonably necessary documents relative thereto.

DATED this _____ day of _____, 20____

AQUA MITIGATION LLC

By: _____
Its: _____

Leahrup, Weinman, Hurrell, Stathmer & Devotion LLP
Attorneys at Law
PO Box 1088201 West 7th Avenue
Ellensburg, WA 98926
Fax (509) 962-9093
Tel (509) 925-6916

Page 3 of 4

STATE OF WASHINGTON)
) ss.
County of Kittitas)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, and on oath stated that they are authorized to execute the instrument and acknowledged it as the _____ of Aqua Mitigation LLC, a Washington limited liability company, to be the free and voluntary act of such Limited Liability Company for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this _____ day of _____, 20_____.

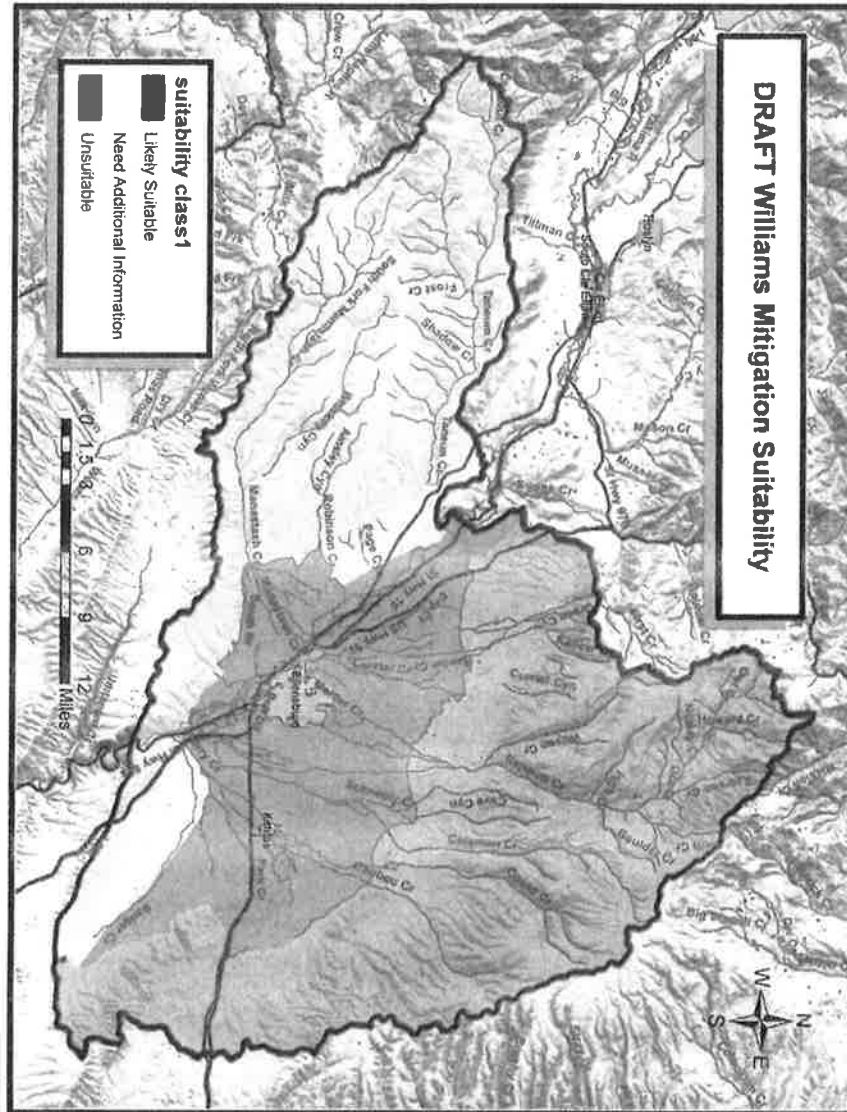
Printed Name: _____
Notary Public in and for the State of Washington
My commission expires: _____

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Page 4 of 4

Latrop, Wiesner, Barret, Slotnover & Denison L.L.P.
Attorneys at Law
PO Box 1088201 West 7th Avenue
Ellensburg, WA 98926
Fax (509) 962-8093
Tel (509) 925-6916

**Exhibit D-1
(Mitigation Water Right Zones)**



(Mitigation Water Right Zones)

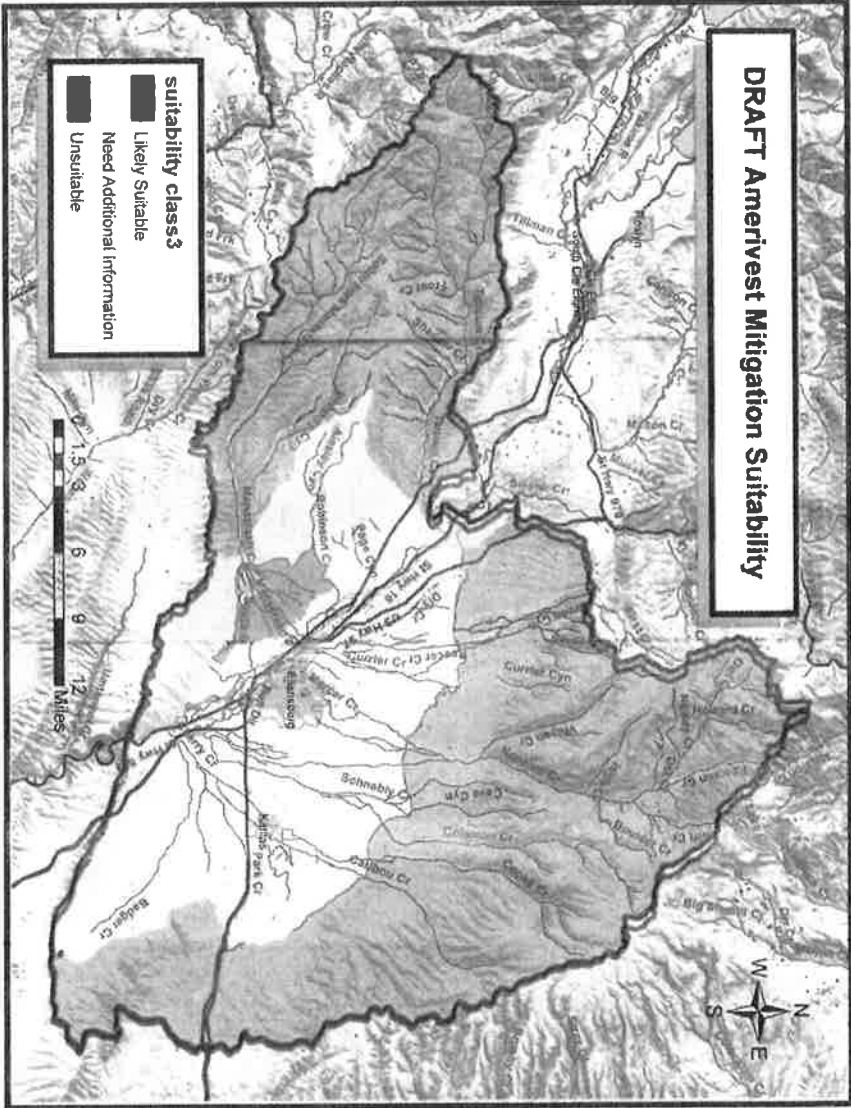


EXHIBIT B
(First Amendment to Trust Water Right Agreement)

First Amendment to Trust Water Right Agreement

This First Amendment to Trust Water Right Agreement ("First Amendment") is made and entered into as of the 25 day of MARCH, 2013, by and between the Washington State Department of Ecology, Yakima River Basin Trust Water Rights Program ("Ecology") and Aqua Mitigation LLC, a Washington limited liability company ("Aqua").

A. WHEREAS, Ecology and Aqua entered into that certain Trust Water Right Agreement dated August 9, 2011; and

B. WHEREAS, Ecology and Aqua are now desirous of amending that Trust Water Right Agreement to allow for and provide a mechanism for the Department of Ecology to expedite processing of mitigation transfers;

NOW, THEREFORE, in consideration of the mutual benefits contained herein and contained within the Trust Water Right Agreement, Ecology and Aqua hereby agree to amend the Trust Water Right Agreement as follows:

1. Paragraph 3 of the Trust Water Right Agreement is amended to read as follows:

3. The process for Aqua's sale of any uncommitted Water in Trust to third parties, and the corresponding issuance of mitigated permits or water budget neutrality determinations by Ecology, shall be as follows:

3.1 Aqua will propose or 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 Aqua may elect. Aqua or such third party shall make applications to Ecology (or, if appropriate, to a water conservancy board) for a water budget neutrality determination or to appropriate surface or ground water at the desired location and for the intended use and quantities, together with all regularly required supporting information (each, hereinafter a "New Application"). As part of the New Application, Ecology will assist in designating the specific quantity of the Water in Trust as required to offset the consumptive loss associated with the uses described on the New Application.

3.2 Ecology will process the New Application in accordance with applicable law, utilizing such portion of the Water in Trust as reasonably needed under the quantity allocation set out in Exhibit E which, together with any other proposed mitigation measures, shall reasonably offset the impacts of such new withdrawal.

1

COPY

3.4.4 If issued, Ecology's permit or determination of water budget neutrality relative to a New Application 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.

3.4.5 If all or a portion of the Water is deemed adequate to fully mitigate a New Application, then the third party, upon receipt of final approval from Kittitas County of its land use applications for development of the real property that is the intended place and purpose of use of the New Application, and exhaustion of all applicable appeal periods thereof, the third party applicant (beneficiary of the Water) shall execute such documentation as necessary to irrevocably and perpetually commit the Water to Trust for purposes of offsetting the New Application.

3.5 If Ecology intends to issue an ROE for a New Application, it will publish the draft ROE on its internet site. If Ecology intends to issue a determination of water budget neutrality, it shall notify Aqua. If the form and substance of the draft ROE or water budget neutrality determination is acceptable to Aqua or the third party, Aqua or the third party applicant promptly shall cause an escrow to be opened for such transaction at the Escrow Agent. All escrow costs shall be borne by Aqua Ranch, or as otherwise set forth in the written escrow instructions or sale agreement between Aqua and the third party. Aqua and any third party having the right to do so under an agreement with Aqua, may, at any time prior to closing of escrow and without cause or penalty, withdraw the New Application or otherwise prevent any allocation of any portion of the Water to such transaction.


2. Except as amended herein, all other terms and conditions of the Trust Water Right Agreement remain in full force and effect as first written.

This First Amendment is executed as of the date first above written.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY:

AQUA MITIGATION LLC:

By: 
Print Name: MARK REMNER
Its: SECTION MANAGER

By: 
Print Name: Mitch Williams
Its: MANAGER

HH F:\Slotoher\Williams, Mitch\Trust Water Agreement with Ecology\First Amendment to Trust Water Agreement 3-14-13 FINAL.doc

Exhibit E
(Quantity Allocation for New Application)

Consumptive Water Use Calculator			
Estimated Annual Water Consumption by Sector			
Indoor Use with a On-site Septic System	97%		
Indoor Use Hooked up to a Sanitary Sewer System	2%		
Outdoor Use (Irrigation)	8%		
How Much Water Do I need?			
Indoor Use with a On-site Septic System	1	250	
Indoor Use Hooked up to a Sanitary Sewer System	0	500	
Irrigation	100	0.611	0.69
<small>1. This value is a default value based on 100% of monthly water use (no discounts). 2. The value is based on a 100% water use discount. For a water use discount of 10% to 90%, use the following formula: Discounted Value = Default Value x (1 - Discount %) 199-0316</small>			
Total Consumptive Water Use (ac-ft)		0.137	
Water Use (ac-ft)		0.359	
Consumptive Water Use (ac-ft)		0.000	
Water Use (ac-ft)		0.000	
Consumptive Water Use (ac-ft)		0.019	
Water Use (ac-ft)		0.022	
Total Consumptive Water Use (ac-ft)		0.137	
Total Water Use (ac-ft)		0.416	
The total consumptive water use is based on the assumptions in 199-0316, 504.		Total water use is the quantity of water required for the project.	

EXHIBIT C
(Form of Promissory Note)

PROMISSORY NOTE

\$10,000.00

Ellensburg, Washington

_____, 2014

FOR VALUE RECEIVED, KITTITAS COUNTY, a political subdivision of the State of Washington ("Borrower"), promises to pay to the order of AQUA MITIGATION LLC, a Washington limited liability company ("Payee"), the sum of Ten Thousand Dollars (\$10,000.00) with interest thereon, from the date first written above on the terms and conditions set forth herein.

1) **Interest Rate.** The interest rate on the unpaid principal balance of this Promissory Note shall be zero (0%) percent per annum simple interest.

2) **Payment.** The Promissory Note shall be payable at closing or upon termination of the terms of the Purchase and Sale Agreement of even date.

3) **Default.** In the event any payment required to be paid by this Promissory Note is not paid within five (5) days after the date on which it was due, then the Maker shall be in default. If such default is not cured within five (5) business days after delivery or attempted delivery by registered mail as set forth in this Note that such payment is in default, the whole sum of both principal and interest shall become immediately due and payable at once without further notice at the option of the Holder hereof.

4) **Default Interest.** From the date of any default under this Note to the date of reinstatement, if any, this Note shall bear interest at the rate of twelve percent (12.0%) per annum.

5) **Severability.** The provisions of this Promissory Note are severable to the extent that any provision or clause of this Note which conflicts with the applicable law shall not affect other provisions of this Note, which shall be given effect without the conflicting provision.

6) **Attorneys' Fees.** In the event this Promissory Note is placed in the hand of an attorney for collection or if suit shall be brought to collect any of the principal or interest of this Promissory Note, Maker shall pay reasonable attorneys' fees in addition to all costs of collection and expenses of suit.

7) **Waiver of Presentment.** Presentation for payment, notice of dishonor, protest, and notice of protest are hereby waived.

8) **Nonwaiver.** Failure to exercise any right or option of Holder shall not constitute a waiver of right to exercise such right or option if Maker is in default hereunder.

9) **Execution as Principal.** Each Maker of this Promissory Note executes the same as a principal and not as surety.

10) **Applicable Law.** This Promissory Note shall be governed by and construed and enforced in accordance with the laws of the State of Washington. Venue for any action arising from or in connection with this Promissory Note shall be in the federal and state courts of Kittitas County Superior Court.

11) **Notices.** All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant to the terms of this Promissory Note or the Security Agreement

securing this Promissory Note shall be in writing and shall be deemed to have been properly given if sent by registered mail, postage prepaid, return receipt requested, to the addresses of the parties.

MAKER:

KITTITAS COUNTY

By:

EXHIBIT

Title: _____

Approved this __ day of _____, 2014:

HOLDER:

AQUA MITIGATION LLC

EXHIBIT

By: Mitchell F. Williams
Its: Member

EXHIBIT

By: Julie A. Williams
Its: Member

EXHIBIT D
(Form of Notice of Assignment of Trust Water Rights
and Consent to Assignment of Trust Water Rights)

**NOTICE OF ASSIGNMENT OF TRUST WATER RIGHTS
AND
CONSENT TO ASSIGNMENT OF TRUST WATER RIGHTS**

THIS NOTICE OF ASSIGNMENT OF TRUST WATER RIGHTS AND CONSENT TO ASSIGNMENT OF TRUST WATER RIGHTS is entered into this ____ day of _____, 2014 by and between the Washington State Department of Ecology ("Ecology"), Kittitas County, a political subdivision of the State of Washington (the "County") and Aqua Mitigation LLC, a Washington limited liability company ("Aqua").

RECITALS

A. WHEREAS, Aqua is a party to a Trust Water Right Agreement, which Aqua entered into with the Washington State Department of Ecology, Yakima River Basin Trust Water Rights Program on August 9, 2011, which agreement was amended on March 25, 2013 (hereinafter collectively the "Trust Water Right Agreement"). The Trust Water Right Agreement and the First Amendment to Trust Water Right Agreement are attached hereto as Exhibits A and B, respectively; and

B. WHEREAS, the Trust Water Right Agreement provides the terms and conditions under which water rights conveyed by Aqua to Ecology by Deeds dated August 30, 2011 and recorded under Kittitas County Auditor's File Nos. 201108300036 and 201108300035 are used and managed for a variety of purposes, including but not limited to mitigating for domestic use of water from permit exempt groundwater wells; and

C. WHEREAS, the water rights that are in trust pursuant to the Trust Water Right Agreement consist of two water rights: the "Williams Trust Water Right," which is legally described on Exhibit A-1 of the Trust Water Right Agreement, and was conveyed to Ecology by Deed recorded under Auditor's File No. 201108300036; and the "Amerivest Trust Water Right," which is legally described on Exhibit A-2 of the Trust Water Right Agreement attached hereto and incorporated herein, and was conveyed to Ecology by Deed recorded under Auditor's File No. 201108300035 (hereinafter collectively referred to as the "Trust Water Rights"); and

D. WHEREAS, Aqua and the County have entered into an Agreement to Assign Trust Water Rights in which Aqua has agreed to assign to the County all of the consumptive use associated with the Williams trust water right, which is legally described on Exhibit A-1 of the Trust Water Right Agreement; and

E. WHEREAS, the Trust Water Rights referenced above in Recital B requires Aqua to give notice of the assignment and Aqua and the County desire to seek Ecology's consent to the assignment and Ecology desires to now consent.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto hereby agree as follows:

1. Notice of Assignment. The purpose of this Notice and Consent is for Aqua to comply with Section 9 of the Trust Water Agreement, which requires Aqua to give written notice of Aqua's intention to assign the Trust Water Rights to the County. Ecology acknowledges being notified of Aqua's assignment.

2. Ecology Consent.

Ecology hereby consents to the assignment by Aqua to the County of the trust water right agreement and the beneficial interest in the consumptive use associated with the Williams trust water right.

3. Continuing Effect.

The County, Aqua and Ecology agree that these water rights will continue to be owned by Ecology subject to the Trust Water Rights Agreement, which will remain in full force and effect until and unless amended by either the County and Ecology and/or the County and/or Aqua consistent with Section 13 of the Trust Water Right Agreement.

IN WITNESS WHEREOF the parties have signed and delivered this Notice and Consent as of the day and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY:

By: _____
Print Name: _____
Its: _____

**EXHIBIT – TO
BE SIGNED
AT CLOSING**

KITTITAS COUNTY

By: _____
Title: _____

**EXHIBIT – TO
BE SIGNED
AT CLOSING**

AQUA MITIGATION LLC:

By: Mitchell F. Williams
Its: Member

**EXHIBIT – TO
BE SIGNED
AT CLOSING**

By: Julie A. Williams
Its: Member

**EXHIBIT – TO
BE SIGNED
AT CLOSING**

EXHIBIT E
(Form of Irrevocable Partial Assignment of
the Beneficial Interest in a Trust Water Right)

TREASURER'S USE ONLY	RECORDER'S USE ONLY

After recording return to:

Kittitas County
Board of Commissioners
205 W 5th AVE STE 108
Ellensburg WA 98926-2887

DOCUMENT TITLE:	IRREVOCABLE PARTIAL ASSIGNMENT OF THE BENEFICIAL INTEREST IN A TRUST WATER RIGHT
ASSIGNOR:	AQUA MITIGATION LLC, a Washington limited liability company
ASSIGNEE:	KITTITAS COUNTY, a political subdivision of the State of Washington
LEGAL DESCRIPTION:	N/A
ASSESSOR'S TAX PARCEL NOS.:	N/A

**IRREVOCABLE PARTIAL ASSIGNMENT OF THE BENEFICIAL
INTEREST IN A TRUST WATER RIGHT**

The Assignor, AQUA MITIGATION LLC, a Washington limited liability company (hereinafter "Aqua" or "Assignor"), for and in consideration of Ten Dollars (\$10.00) and other valuable consideration in hand paid, does hereby irrevocably assign and convey to KITTITAS COUNTY, a political subdivision of the State of Washington (hereinafter the "County" or "Assignee") such portion of the retained beneficial interest of Aqua under that certain Trust Water Agreement dated August 9, 2011 between Aqua and the Washington State Department of Ecology, as amended on March 25, 2013 (the "Trust Water Rights Agreement"), a true and correct copy of which is attached hereto as Exhibit A, which placed certain water rights into the Yakima River Basin Trust Water Rights Program as authorized under Chapter 90.38 RCW to be administered by the Washington State Department of Ecology:

The quantity of water assigned subject to the Trust Water Rights Agreement is as follows:

All of the consumptive acre-feet per year of the Water Right identified in Exhibit A-1 of the Trust Water Right Agreement, attached hereto and incorporated herein by reference.

The water rights so assigned are assigned subject to the terms and conditions of the Trust Water Right Agreement.

Dated this ____ day of _____, 2014.

AQUA MITIGATION LLC
a Washington limited liability company

**EXHIBIT – TO
BE SIGNED
AT CLOSING**

By: Mitch Williams
Its: Member

STATE OF WASHINGTON)
) ss.
County of Kittitas)

On this day personally appeared before me Mitch Williams, to me known to be a Member of AQUA MITIGATION LLC, as the individual who executed the within and foregoing instrument, and acknowledged that he was authorized to sign the same as the free and voluntary act and deed, for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2014

**EXHIBIT – TO
BE SIGNED
AT CLOSING**

Printed Name: _____
Notary Public in and for the State of Washington
My appt. expires: _____

**NOTICE OF ASSIGNMENT OF TRUST WATER RIGHTS
AND
CONSENT TO ASSIGNMENT OF TRUST WATER RIGHTS**

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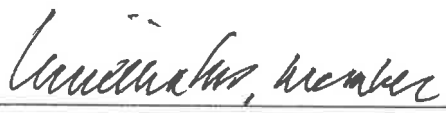
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IN WITNESS WHEREOF the parties have signed and delivered this Notice and Consent as of the day and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY:


AQUA MITIGATION LLC:

By: _____
Print Name: _____
Its: _____


By: Mitchell F. Williams
Its: Member

KITTITAS COUNTY


By: Paul J. Bell
Title: Bole Chair


By: Julie A. Williams
Its: Member

PROMISSORY NOTE

\$10,000.00

Ellensburg, Washington

_____, 2014


FOR VALUE RECEIVED, KITTITAS COUNTY, a political subdivision of the State of Washington ("Borrower"), promises to pay to the order of AQUA MITIGATION LLC, a Washington limited liability company ("Payee"), the sum of Ten Thousand Dollars (\$10,000.00) with interest thereon, from the date first written above on the terms and conditions set forth herein.

- 1) **Interest Rate.** The interest rate on the unpaid principal balance of this Promissory Note shall be zero (0%) percent per annum simple interest.
- 2) **Payment.** The Promissory Note shall be payable at closing or upon termination of the terms of the Purchase and Sale Agreement of even date.
- 3) **Default.** In the event any payment required to be paid by this Promissory Note is not paid within five (5) days after the date on which it was due, then the Maker shall be in default. If such default is not cured within five (5) business days after delivery or attempted delivery by registered mail as set forth in this Note that such payment is in default, the whole sum of both principal and interest shall become immediately due and payable at once without further notice at the option of the Holder hereof.
- 4) **Default Interest.** From the date of any default under this Note to the date of reinstatement, if any, this Note shall bear interest at the rate of twelve percent (12.0%) per annum.
- 5) **Severability.** The provisions of this Promissory Note are severable to the extent that any provision or clause of this Note which conflicts with the applicable law shall not affect other provisions of this Note, which shall be given effect without the conflicting provision.
- 6) **Attorneys' Fees.** In the event this Promissory Note is placed in the hand of an attorney for collection or if suit shall be brought to collect any of the principal or interest of this Promissory Note, Maker shall pay reasonable attorneys' fees in addition to all costs of collection and expenses of suit.
- 7) **Waiver of Presentment.** Presentation for payment, notice of dishonor, protest, and notice of protest are hereby waived.
- 8) **Nonwaiver.** Failure to exercise any right or option of Holder shall not constitute a waiver of right to exercise such right or option if Maker is in default hereunder.
- 9) **Execution as Principal.** Each Maker of this Promissory Note executes the same as a principal and not as surety.
- 10) **Applicable Law.** This Promissory Note shall be governed by and construed and enforced in accordance with the laws of the State of Washington. Venue for any action arising from or in connection with this Promissory Note shall be in the federal and state courts of Kittitas County Superior Court.
- 11) **Notices.** All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant to the terms of this Promissory Note or the Security Agreement

securing this Promissory Note shall be in writing and shall be deemed to have been properly given if sent by registered mail, postage prepaid, return receipt requested, to the addresses of the parties.

MAKER:

KITTITAS COUNTY

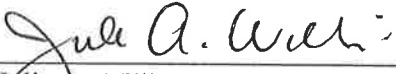

By: Paul Jewell
Title: Boat Chair

Approved this 15th day of May, 2014:

HOLDER:

AQUA MITIGATION LLC


By: Mitchell F. Williams
Its: Member


By: Julie A. Williams
Its: Member