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10 September 2020

MEMORANDUM

TO: Gretchen Brunner, Project Manager

FROM: Dave Nazy, EA Hydrogeologist

SUBJECT: 47° North SEIS
Water Supply Assessment
Cle Elum, WA

Introduction

The Bullfrog Flats property is an approximately 1,000-acre area located in the western portion of Cle Elum, Washington in an area of the city known as the Urban Growth Area (UGA). The property is generally bounded to the north and west by Bullfrog Road, to the south by Interstate 90, and to the east by SR903 and the Laurel Hill Memorial Cemetery (generally referred to herein as the Bullfrog Flats UGA).

In 2002, Trendwest Properties, who owned the property at that time, completed a Master Plan for the development of the Bullfrog Flats UGA property. The Master Plan consisted of a mixed residential, commercial, recreational, and public facilities development. An Environmental Impact Statement (EIS) was prepared for the project in 2002 and the City of Cle Elum approved the Master Plan, a Subarea Plan, and a Development Agreement for the project; the property was annexed to the City that same year. The property is currently owned by New Suncadia, LLC (Suncadia). Sun Communities is in the process of acquiring 824 acres of the property from Suncadia and is proposing revisions to the Approved Master Plan; the new project is known as 47° North.

The methodology for this water supply assessment included obtaining and reviewing information regarding current water management conditions in the Upper Kittitas Basin and determining if adequate water rights/supply are present for proposed amendments to the Approved Bullfrog Flats UGA Master Plan. When the FEIS was completed in 2002 Trendwest did not have adequate water rights and mitigation in place to serve the proposed development of the property. Shortly thereafter, Trendwest secured the necessary water right use authorizations for the Bullfrog Flats UGA property.

Since the EIS, the Yakima Basin Adjudication has continued and is nearing completion; the Yakima Basin Integrated Plan has been established and is being implemented; Chapter 173-539A WAC, the Upper Kittitas Groundwater Rule was adopted by the Department of Ecology;

and water rights have been acquired to serve the project, provide mitigation, and establish water banks to supply water to third-party users.

Background

The Master Plan approved for the Bullfrog Flats UGA property in 2002 provided for the construction of 1,334 dwelling units, including 810 single family units and 524 multi-family units, as well as a 75-acre business park, and 7.5 acre area for the construction of 50 affordable housing units. In accordance with the provisions of the Development Agreement, 12 acres of the Bullfrog Flats UGA property were dedicated to the City in 2002 for the water treatment plant, 35 acres were dedicated to the Cle Elum School District in 2003, and 175 acres were dedicated to the City in 2008 to establish the Washington State Horse Park. No other significant development activities have occurred on the property to date.

The Bullfrog Flats UGA Development Agreement between the City and Suncadia was amended in 2017 to extend the termination date by 10 years to 2027. Recently, Suncadia informed the City that they had entered into an agreement to potentially sell approximately 824 acres of the property to Sun Communities. Sun Communities intends to submit an application to the City proposing amendments to the approved Master Plan for a project known as 47° North that would maintain the total number of dwelling units at 1,334, but would reduce the number of single family residences to 527 units, reduce the number of multi-family dwelling units to 180, and would add a Recreational Vehicle (RV) resort with 627 RV sites. These changes would reduce the amount of water needed to supply development of the Bullfrog Flats UGA (including the 47° North site).

Yakima Basin Adjudication

In 1977, the Department of Ecology filed an action in the Yakima County Superior Court to determine the legality of more than 4,000 claims for use of surface water in the Yakima River Basin. Water use must have been established prior to 1917 for a claim to be valid. The court case, Ecology v. James J. Acquavella, et al, included a thorough examination of each claim by Ecology, the court, and other parties. Claims ranged from small individual uses to major claims for irrigation districts and cities, and for federally based water rights such as Indian tribes and the U.S. Forest Service.

Starting in 1989, the court issued a series of Conditional Final Orders as water rights assessment work was completed in one of the 31 Yakima subbasins. Superior Court Judge F. James Gavin entered the Final Decree in the case on May 9, 2019. This Final Decree defines the relative priorities of about 2,300 surface water rights in the Yakima Basin under Washington State's water law. It also integrates all the Conditional Final Orders entered in the case, other orders governing administration of the waters of the Yakima Basin, and the Final Schedule of Rights. The Final Decree includes Adjudicated Water Rights, with priority dates ranging from 1884 to 1893, that are now owned by Suncadia and approved for use in the Bullfrog Flats UGA.

Yakima Basin Integrated Plan

Following a severe drought in 1977, Congress directed the Bureau of Reclamation to work with the State of Washington to study and develop a plan to provide water for irrigation, treaty rights, aquatic life and fish habitat. This project was entitled the Yakima River Basin Water Enhancement Program (YRBWEP). Fish passage issues were identified early on as a limiting factor for salmonids in the basin. The Hoover Power Plant Act of 1984 authorized fish passage facilities throughout the Yakima Basin, partially funded by the Bonneville Power Administration.

Conservation and instream flow projects became the focus following drought in the early 1990's with funding provided by the Bureau of Reclamation and the State of Washington. Increasing demand for water combined with loss of snowpack due to climate change, continuing pressure on salmonids, and another drought in 2005 prompted the Bureau of Reclamation and Ecology to create a stakeholder workgroup to address other elements of the water supply and fisheries issues. In 2009, this group began developing the Yakima Basin Integrated Plan (YBIP), a watershed-scale approach to sustainable water supply for both instream and out-of-stream uses.

The YBIP is a 30-year, 3-billion-dollar plan consisting of a package of actions within 7 elements. These include fish passage, structural and operational changes to existing infrastructure, increased surface storage, groundwater storage, habitat enhancement, conservation and market allocation of water rights. Although implementation of the YBIP is not likely to influence development of the Bullfrog Flats UGA (including the 47° North site), water rights acquired for the project, mitigation actions, and water banks operated by Suncadia are consistent with the objectives of the YBIP.

Chapter 173-539A WAC, the Upper Kittitas Groundwater Rule

In response to a petition requesting the unconditional withdrawal of all unappropriated groundwater in Kittitas County until enough is known about potential effects on senior water rights and stream flows from the development of new groundwater uses, the Department of Ecology adopted the Upper Kittitas groundwater rule, effective January 22, 2011. Because it is known that groundwater withdrawals will capture water that would contribute to flows in the Yakima River, the rule requires mitigation to offset consumptive use from any new groundwater withdrawals within the rule area, including withdrawals from permit-exempt wells. Surface water was excluded from the rule because it has been previously determined that surface water has been fully appropriated and is not available for new consumptive uses.

The rule places limits on the amount of water that can be used for domestic uses and requires all new uses to be "water budget neutral". To be considered water budget neutral, a new user must mitigate their project's new consumptive use with an interest in a senior water right. Senior water rights are those that have been transferred to the State Trust Water Right Program and remain instream to be used to mitigate for new uses. By mitigating a new use

with a senior water right, or “water banking”, a new user is considered “water budget neutral” and authorized to establish a new use of water under the rule.

Prior to adoption of the rule, Suncadia acquired water rights from the Yakima River, Teanaway River, Big Creek, First Creek and Swauk Creek that were previously used for irrigation. These rights, totaling 2,454.32 acre-feet of *consumptive use* are used by Suncadia to supply water to development of the Master Plan Resort and Bullfrog Flats UGA (including the 47° North site); mitigate consumptive use by induced offsite development caused by Suncadia’s development; mitigate consumptive use resulting from development of the fallowed land formally irrigated; and placing water in Ecology’s Trust Water Rights Program for instream flow purposes and for purchase for new development by third parties within certain portions of the rule area.

Suncadia operates 4 of the 19 water banks in the Yakima Basin, one of which has been fully allocated to purchases by third parties. Since 2010, transactions through Suncadia’s water banks have provided water for more than 400 parcels in the Upper Kittitas Basin.

Suncadia’s Water Rights and Water Use

As noted above, Suncadia acquired water rights for the Suncadia Resort, Bullfrog Flats UGA and mitigation purposes. Based on modeling, a total of 1,270 acre-feet of consumptive water was required for full buildout of the Suncadia Resort and development of the Bullfrog Flats UGA under FEIS Preferred Alternative in 2002 and consistent with the Development Agreement. There are five water rights that serve the Suncadia Resort and three other water rights that are authorized to serve the Bullfrog Flats UGA. The five water rights that serve the Suncadia Resort are owned by the Suncadia Water Company, LLC. The remaining rights are used for mitigation for water consumed by induced offsite development, development of fallowed land formally irrigated by the Suncadia’s water rights, and instream flows, held in Ecology’s Trust Water Rights Program.

Trendwest and the City of Cle Elum signed an agreement relating to the Water Supply for the Bullfrog Flats UGA on June 19, 2001. At that time Trendwest agreed to transfer the rights, title and interest to water rights needed for development of the Bullfrog Flats UGA property, consistent with the Water Supply Agreement and Development Agreement, by one or more Statutory Warranty Deeds and the City of Cle Elum agreed to serve the Bullfrog Flats UGA. In 2003, Ecology approved the use of three water rights for the Bullfrog Flats UGA property (including the 47° North site). Specifically, Certificate Nos. S4-84110-J, S4-84111-J, and S4-85228-J (referred to herein as the Bullfrog Flats UGA Water Rights). The three water rights are authorized for municipal water supply purposes for the Bullfrog Flats UGA property consistent with the FEIS Preferred Alternative, Development Agreement and other agreements.

Proposed amendments to the approved Master Plan by Sun Communities include changes incorporated into to SEIS Alternative 6 for development of the 47° North site and adjacent 25-ac. property in the Bullfrog Flats UGA. In terms of water supply and consumption, the primary difference is a reduction in the number of single and multi-family residential units and an

equivalent increase in the number of RV sites proposed in the UGA. In addition, the commercial development under SEIS Alternative 6 includes 25 acres whereas Alternative 5 in the FEIS included 75 acres of commercial development.

These changes will reduce the amount of water used and consumed in the UGA compared to the Preferred Alternative in the 2002 FEIS. This reduction is likely to be used for instream flow and potentially sold to third-party users through water bank transactions. Comparison of domestic residential uses in the 2002 FEIS and 2020 SEIS are shown in the following table.

Alternative	Type	# of Units	People/Unit	Occupancy	People/Day	Total People/Day
FEIS Alternative 5	Residential Unit	1,334	2.4	92%	2945	2945
SEIS Alternative 5	Residential Unit	1334	2.34	90%	2809	2809
SEIS Alternative 6	Residential Unit	707	2.34	90%	1489	2429
SEIS Alternative 6	RV Unit	627	3	50%	941	

Residential units include both single family and multi-family units. FEIS Alternative 5 included 810 single-family units and 524 multi-family units. SEIS Alternative 6 includes 527 single-family units and 180 multi-family units.

Indoor daily water use for the residential units is assumed to be 100 gallons per day per capita (gpdpc). Assuming 20% consumption of indoor water use equates to a daily consumptive value of approximately 46.8 gpd per residential unit ($2.34 \times 100 \times 0.20 = 46.8$). Therefore, total indoor consumption for domestic use for SEIS Alternative 5 would be 56,188 gpd ($46.8 \times 1334 \times 0.90 = 56,188$). Total indoor daily water use for an RV is assumed to be approximately 150 gpd (EMS, 2020). Assuming 20% consumption equates to a daily consumptive value of 30 gpd per RV unit. Therefore, total indoor consumption for domestic use for SEIS Alternative 6 would be 39,184 gpd ($46.8 \times 707 \times 0.90 + (30 \times 627 \times 0.50) = 39,184$). The difference between SEIS Alternative 5 and SEIS Alternative 6 is 17,004 gpd which is equivalent to 19.05 acre-feet per year.

Furthermore, single-family residential units are likely to include some outdoor water use which is estimated by Ecology to be 90% consumptive. Because there are 383 fewer single-family residential units in the Preferred Alternative in the SEIS versus the FEIS, consumption of outdoor water use is likely to be less in the proposed amendment to the approved Master Plan.

Conclusions

The water supply and consumptive use analysis was performed to determine whether there are adequate water rights under the Bullfrog Flats UGA Water Rights available to supply the amended Master Plan for the 47°North Site under SEIS Alternatives 5 and 6, and if additional mitigation actions would be required. This analysis indicates that the Bullfrog Flats UGA Water Rights are adequate water rights to supply the proposed use on the 47° North site and other actions on the Bullfrog Flats UGA property consistent with the Development Agreement under either of the SEIS alternatives. The proposed changes under SEIS Alternative 6 indicate that less water would be consumed for the current proposal than under FEIS Alternative 5 or SEIS

Alternative 5. Because of this, SEIS Alternative 6 is likely to have less of an impact on instream flows.

The proposed SEIS Alternative 6 – 47° North development consumptive water use is less than FEIS Alternative 5 and SEIS Alternative 5 because the proposed RV use and commercial development footprint generate less demand and consume less water than the uses previously contemplated. Therefore, no significant impacts are anticipated, and no mitigation is proposed other than what is already required by current water rights and agreements.

Attachments

1. Water Supply System Project Development Agreement between the City of Cle Elum, the Town of South Cle Elum, and Trendwest, dated June 19, 2001.
2. Agreement Relating to Water Supply for Bullfrog Flats UGA between the City of Cle Elum and Trendwest, dated June 19, 2001.
3. Chapter 173-539A WAC, The Upper Kittitas Groundwater Rule.
4. FAQ Upper Kittitas Groundwater Rule.
5. Master Trust Water Agreement between the Washington State Department of Ecology and New Suncadia, LLC, dated December 30, 2015.
6. Description of the current use of water rights for the Suncadia Resort, Bullfrog Flats UGA and other water rights owned by New Suncadia, LLC.

49° North SEIS Water Supply Assessment Attachments

1. Water Supply System Project Development Agreement between the City of Cle Elum, the Town of South Cle Elum, and Trendwest, dated June 19, 2001.
2. Agreement Relating to Water Supply for Bullfrog Flats UGA between the City of Cle Elum and Trendwest, dated June 19, 2001.
3. Chapter 173-539A WAC, The Upper Kittitas Groundwater Rule.
4. FAQ Upper Kittitas Groundwater Rule.
5. Master Trust Water Agreement between the Washington State Department of Ecology and New Suncadia, LLC, dated December 30, 2015.
6. Suncadia Reboot – Description of Suncadia’s current use of water rights.

Attachment 1

Water Supply System Project Development Agreement between the City of Cle Elum, the Town of South Cle Elum, and Trendwest, dated June 19, 2001.

**WATER SUPPLY SYSTEM PROJECT
DEVELOPMENT AGREEMENT**

BETWEEN

**CITY OF CLE ELUM, TOWN OF SOUTH CLE ELUM,
TRENDWEST INVESTMENTS, INC., TRENDWEST
RESORTS, INC. AND TRENDWEST PROPERTIES, INC.**

THIS Agreement ("Agreement") is entered into on this 19th day of JUNE, 2001, by and between the City of Cle Elum, Washington ("Cle Elum"), a second class municipal corporation organized under the laws of the state of Washington, the Town of South Cle Elum ("South Cle Elum"), a fourth class municipal corporation organized under the laws of the state of Washington, Trendwest Investments, Inc., a Washington corporation ("Trendwest Investments"), Trendwest Resorts, Inc., an Oregon corporation registered to conduct business in the state of Washington ("Trendwest Resorts"), and Trendwest Properties, Inc., a Washington corporation ("Trendwest Properties"). For purposes of this Agreement, Cle Elum and South Cle Elum are sometimes collectively referred to as "the Communities," and Trendwest Investments, Trendwest Resorts and Trendwest Properties are sometimes collectively referred to as "Trendwest."

RECITALS

WHEREAS, Cle Elum owns and operates an existing water treatment facility and associated diversion works for the purposes of supplying treated water to customers within the City's water service area. The Communities, with the guidance and encouragement of the Washington State Department of Ecology ("Ecology") and the Washington State Department of Health ("Health"), are in the process of developing a regional public water supply system that is designed to provide water to users within the City and the Town as well as users on lands in the vicinity of the City and the Town; and

WHEREAS, on June 23, 1998, the Cle Elum City Council established, pursuant to City of Cle Elum resolution No. 6/23/98-1, an Urban Growth Areas ("UGA") of the City of Cle Elum, which includes the Bull Frog Flats area immediately west of the City; and

WHEREAS, on December 22, 1998, the Kittitas County Board of Commissioners adopted Ordinance No. 98-24 amending the County Comprehensive Plan to establish the Bull Frog Flats area immediately west of the Cle Elum city limits as Cle Elum's UGA. This decision is final and was not appealed; and

WHEREAS Trendwest Investments, Inc., a Washington corporation licensed to do business in the State of Washington, is the owner of approximately 1,120 acres located in the Bull Frog Flats area of Kittitas County, which lies wholly within the Urban Growth Area of the City of Cle Elum, and which property is currently being considered for annexation into the City of Cle Elum (the "Trendwest's UGA Properties"). Trendwest's UGA Properties are described more fully in Exhibit A hereto; and

WHEREAS Trendwest has submitted a notice of intention to commence annexation petition ("10% Petition") to the City of Cle Elum, pursuant to RCW 35.13.125, requesting that the Trendwest UGA Property be annexed to the City of Cle Elum; and

WHEREAS on June 27, 2000, the City of Cle Elum by motion voted to accept Trendwest's 10% Petition and further agreed that the City would review and adopt preannexation zoning and planning to take effect immediately upon annexation pursuant to RCW 35.13.177 and 35.13.178; and

WHEREAS the Eastern Washington Growth Management Hearings Board decision in *Ridge v. Kittitas County*, EWGMHB No. 96-1-0017 (Final Decision, 4/16/1998) and the Growth Management Act, RCW 36.70A.360, allow for Master Planned Resorts ("MPR") outside of UGAs and further authorize cities, special purpose districts and purveyors to provide capital facilities, utilities, and urban services to MPRs; and

WHEREAS, Trendwest Investments owns additional property adjacent to the Cle Elum UGA, which is described more fully in Exhibit B hereto ("Trendwest's MPR Properties"). On October 10, 2000, Kittitas County approved Trendwest Investments' proposal to develop its property described in Exhibit B as an MPR; and

WHEREAS, Trendwest Resorts, Inc. is an Oregon corporation licensed to do business in the State of Washington and is the parent company to Trendwest Investments, Inc., and Trendwest Properties, Inc. By the signatures appearing below, Trendwest Resorts expressly approves the commitments entered into hereby by Trendwest; and

WHEREAS, in 1997 Trendwest approached Cle Elum with a request to provide water to Trendwest's UGA Properties and Trendwest's MPR Properties, relying on the aforementioned City's proposed regional water supply system. The Communities expect to expand their water service areas to include Trendwest's UGA Properties. Cle Elum further expects, based on appropriate changes to Trendwest owned water rights, to deliver treated and untreated water to Trendwest's MPR Properties; and

WHEREAS, on July 26, 2000, Trendwest entered into a Pre-annexation Agreement with Cle Elum ("Pre-annexation Agreement") in which Trendwest has agreed to enter into a cost sharing agreement whereby Trendwest will pay for all costs associated with water system improvements that would not otherwise be required to address existing deficiencies, but for the proposed development of Trendwest's UGA and MPR Properties. A true and correct copy of the Pre-annexation Agreement is attached hereto as Exhibit C and incorporated herein by this reference. The Pre-annexation Agreement also specifies the general development standards that are applicable to the proposed development of Trendwest's UGA and MPR properties. Trendwest and Cle Elum have also agreed in the Pre-annexation Agreement that Trendwest's expenditures for utility extension and capital improvements for the City to serve the UGA are eligible for partial reimbursement by other property owners or by other new development that specifically benefit from such

improvements, through various legal reimbursement mechanisms such as a Local Improvement District, a Latecomer's Agreement, hookup charges, impact fees, or such other legally appropriate mechanisms for reimbursement; and

WHEREAS, RCW 35.92.025 authorizes Cle Elum to charge property owners seeking to connect to the City's water supply system a reasonable connection charge as the Cle Elum City Council determines proper so that property owners bear their equitable share of the cost of the water supply system; and

WHEREAS, RCW 36.70B.170 authorizes Cle Elum to enter into a development agreement that obligates Trendwest to fund or provide services, infrastructure, or other facilities and that includes provisions whereby Trendwest is reimbursed over time for financing such public facilities; and

WHEREAS, pursuant to RCW 36.70B.200, a duly noticed public hearing was conducted on this Agreement on May 8, 2001; and

WHEREAS, Cle Elum is presently subject to a Washington State Department of Health ("DOH") order and compliance schedule to design and construct improvements to its water supply facility; and

WHEREAS, Trendwest and Cle Elum have entered into a Water Supply Agreement wherein Cle Elum has agreed, under conditions specified in that Agreement, to supply water to Trendwest's UGA Properties. A copy of the Water Supply Agreement is attached hereto as Exhibit D; and

WHEREAS, Trendwest and Cle Elum have entered into a Water Delivery Agreement, wherein Cle Elum has agreed, under conditions specified in the Agreement, to deliver water to Trendwest's MPR Properties. A copy of the Water Delivery Agreement is attached hereto as Exhibit E; and

WHEREAS, on April 7, 1999, Cle Elum, Trendwest and Huibregtse, Louman Associates, Inc., entered into a Design, Engineering, and Surveying Services Agreement ("Design Agreement") for the new water supply system, a copy of which is attached hereto as Exhibit F, for design, engineering and surveying services related to Cle Elum's water supply system. That Agreement thereafter was amended on October 10, 2000 to cover the costs of engineering, design and construction of certain in-river improvements in the vicinity of Cle Elum's Yakima River diversion; and

WHEREAS, on January 18, 2001, Cle Elum issued a Mitigated Determination of Non-Significance ("MDNS") under the State Environmental Policy Act, 43.21C RCW, for the water supply system that is the subject of this Agreement, including the Yakima and Cle Elum River diversion works, the new transmission mains and the new treatment plant. The MDNS is now final and was not appealed; and

WHEREAS, if the Communities did not construct the regional facility contemplated in this Agreement, the Communities would have upgraded their existing water supply system to comply with Department of Health regulations and compliance orders and to provide capacity for the Communities' 20-year projected growth. Such upgraded facilities, which would not have included improvements to Cle Elum's Cle Elum River diversion works and transmission lines, would have cost an estimated \$4,268,823; and

WHEREAS, the new water supply system that is the subject of this Agreement will not preclude the capacity assignments agreed to between Cle Elum and South Cle Elum, and it is intended that this Agreement be consistent with and not supersede any agreement between Cle Elum and South Cle Elum relating to water treatment and delivery.

NOW, THEREFORE, the following AGREEMENT is made upon the basis of the foregoing recitals, and in consideration of the mutual promises and covenants herein, and the mutual benefits to be derived by the Parties therefrom.

AGREEMENT

1. Regional Water Supply System ("WSS").

- 1.1. The City of Cle Elum shall construct the Regional Water Supply System ("WSS") identified in Exhibit G, commencing as soon as practicable after the execution of this Agreement and agency approval of the plans and specifications for that WSS. The City of Cle Elum shall also use its best efforts to obtain all permits necessary for the construction and operation of the WSS.
- 1.2. Trendwest officials shall be given an opportunity to review and comment upon plans for construction of the WSS. Nothing in this provision shall be construed as granting to Trendwest any right to approve or reject any plans for construction of the WSS.
- 1.3. All facilities, improvements, permits, supplies, materials, equipment, fixtures, and other property of whatsoever kind or nature that is included in the WSS, whether or not incorporated therein, shall be owned and controlled by Cle Elum. Nothing in this Agreement shall be construed as granting Trendwest or any other party any ownership or possessory rights in the WSS.
- 1.4. Trendwest shall be responsible for the construction of the infrastructure necessary to transport treated and untreated water from the WSS to Trendwest's MPR Properties ("MPR Transmission Facilities"). Pursuant to the MPR Water Delivery Agreement attached hereto as Exhibit E, the City will not deliver water to the MPR unless and until the Washington State Department of Health approves the MPR Transmission Facilities.

- 1.5. Trendwest shall also be responsible for the construction of the infrastructure necessary to transport treated and untreated water from the WSS to Trendwest's UGA Properties ("UGA Transmission Facilities"). The UGA Transmission Facilities shall be the subject of a future Developer Extension Agreement between Trendwest and Cle Elum. The City agrees to consider partial reimbursement for Trendwest's expenditures on the UGA Transmission Facilities by other property owners or other new development that specifically benefits from those facilities, through either a Local Improvement District or a Latecomers' Agreement.

2. Funding the WSS.

2.1. Cost Allocation

2.1.1. The costs for the design, permitting, engineering and construction of the WSS ("WSS Costs") shall include, but are not limited to: costs for design of the WSS; costs for construction of the WSS, including construction/improvement of the diversion works on the Yakima and Cle Elum Rivers, construction/improvement of the facilities necessary to convey untreated water from those diversion works to the treatment plant, construction of the regional treatment plant, construction of facilities necessary to convey treated water from the treatment plant to Cle Elum's existing water system, and construction of a new water storage reservoir for Cle Elum pressure Zone 2; all expenses paid by the Communities for the WSS, including without limitation, plan review, shop drawing review, and construction and oversight by the City's engineers and consultants; all other work, fees, services, plans and improvements required for project construction and maintenance; and all other costs associated with permits and environmental review of the WSS, including, without limitation, any required changes to Cle Elum's Comprehensive Plan or Development Regulations.

2.1.2. WSS Costs shall not include the costs associated with the Transmission Facilities addressed in Sections 1.4 and 1.5 of this Agreement. WSS Costs shall also not include the costs of any of the pipes, pumps, pump station, basins, or other equipment or structures required to provide untreated irrigation water to Trendwest's Properties ("Irrigation Facilities"), although some of the Irrigation Facilities may be constructed by the City, at Trendwest's sole cost, simultaneous with the construction of the initial WSS. The City shall own those portions of the Irrigation Facilities located at the City's Yakima and/or Cle Elum River diversions as well as the Irrigation Facilities located between those diversions and the property boundary of the new water treatment plant site. The City shall also own all Irrigation Facilities within the property boundaries of the new water treatment plant site. Trendwest shall own those portions of the Irrigation Facilities from the property boundary of the new water treatment plant site

to Trendwest's MPR Properties. The ownership of the Irrigation Facilities from the property boundary of the new water treatment plant site to Trendwest's UGA Properties shall be addressed in the Developer Extension Agreement referenced in Paragraph 1.5, above.

- 2.1.3. The estimated WSS Costs total \$13,556,000. The WSS Costs shall be funded as follows: The Communities will provide a maximum of \$4,268,823, and Trendwest shall fund the remainder, subject to the provisions of paragraph 2.1.5, below.
- 2.1.4. The Parties further acknowledge that any contribution the Communities receive from the County and/or utility providers for the in river improvements that were constructed in the bed of the Yakima River will be reimbursed to Trendwest in recognition of Trendwest's funding of those improvements.
- 2.1.5. After public bids are received and reviewed, but prior to commencement of construction, the Parties shall review the total estimates for WSS Costs. If it is apparent at that point that the WSS (not including the Phased Elements discussed in Section 2.2, below) cannot be designed, engineered and constructed for at or less than a total cost of \$12,392,950, the Parties agree to make all reasonable efforts to renegotiate the terms of this Agreement to address the increased WSS Costs. If the Parties are unable to reach agreement on that issue, this Agreement shall be null and void. If this Agreement is nullified pursuant to this provision, Trendwest shall be responsible for all costs associated with the redesign of the City's water treatment plant or the WSS to a facility capable of providing capacity for the City and Town's 20-year growth projection. In the event of nullification under this section, any and all real property interests conveyed to the City by Trendwest shall remain in City ownership, provided that any property conveyed to the City for siting of the WSS that is no longer needed for the City's redesigned facility shall be reconveyed to Trendwest. The Parties hereby agree that Trendwest's obligation as discussed in this Paragraph is necessary to restore the City to its "pre-Trendwest fiscal condition," as that term is used in Section 7 of the Pre-annexation Agreement, in the event this Agreement is nullified pursuant to this Paragraph. The Parties also agree that the lien provisions contained in Section 7 of the Pre-annexation Agreement apply to Trendwest's obligations discussed in this paragraph.
- 2.1.6. The Communities entire \$4,268,823 funding obligation is currently derived from and committed to by the United States Department of Agriculture Rural Development loan and grant funds and Community Development Block Grant funds. If some portion of those funds becomes unavailable in the future, Trendwest agrees to advance the unfunded balance of the Communities' share of WSS Costs subject to

reimbursement through the capital reimbursement charge discussed in Section 2.3, below, or, at the Communities' discretion, through a rate increase, bond issue or some similar mechanism.

2.2. Project Phasing

2.2.1. The new customers to be served by the WSS will connect to that system over a period of time, as the City, Town, UGA and MPR are built out. The Parties acknowledge that, because of this delay in the actual use of capacity of the WSS, some of the components of the WSS will not be needed at the outset of the WSS's service. The following components of the WSS may therefore be constructed over time, as further specified herein: 2.0 MGD of the 6 MGD capacity of the Yakima River pump station pump and piping facilities; 2.0 MGD of the 6.0 MGD capacity of the water treatment plant filter units, pumps, and piping facilities; and 0.5 MGD of the 1.0 MGD capacity of the Zone 2 water storage reservoir. These items shall be referred to herein as the "Phased Elements."

2.2.2. The initial capacity of the WSS (*i.e.* without the Phased Elements) will be 4.0 MGD, all of which is allocated to the Communities, in accordance with Paragraph 3.1, below, to accommodate the Communities' 20-year projected growth. The Communities' water supply demands will be less than 4.0 MGD at the time of initial construction of the WSS. In light of this fact, and because an immediate increase of capacity through the completion of the Phased Elements would not improve the operation of the WSS, the Communities shall temporarily provide Trendwest potable water from the 4.0 MGD initial WSS capacity. Trendwest's capacity shall be added by the City's construction of the Phased Elements at Trendwest's sole cost when either of the following conditions have been met: 1) potable water production from the initial 4.0 MGD WSS has reached 2.0 MGD for three (3) or more days within a 12-month consecutive period; or 2) Trendwest has added 1334 new residential water service connections or their equivalent in the UGA and/or MPR.

2.3. Payment of WSS Costs

2.3.1. To fund Trendwest's portion of the WSS Costs, Trendwest shall establish and fund a "Trendwest WSS Improvement Account." The Trendwest WSS Improvement Account shall be an interest-bearing account against which the City is authorized to draw funds to pay Trendwest's portion of all WSS Costs. The Account shall be established after the City's opening of bids for the WSS contemplated in this Agreement but prior to awarding a contract, unless this Agreement is nullified pursuant to Paragraph 2.1.5, above.

- 2.3.1.1. To determine the amount of Trendwest's funding for the Account during 2001, the City shall estimate monthly project costs for calendar year 2001. Trendwest shall initially fund the Trendwest WSS Improvement Account with funds sufficient to pay 50% of the total WSS Costs for the two months that the City estimates will represent the largest estimated project costs for 2001 ("2001 Baseline Balance"). As the City draws against the Trendwest WSS Improvement Account to pay invoices for WSS Project Cost, Trendwest shall make monthly contributions to the Trendwest WSS Improvement Account to insure that the 2001 Baseline Balance is maintained in the Account on a monthly basis.
- 2.3.1.2. Commencing January 1, 2002, Trendwest shall fund the Trendwest WSS Improvement Account with funds sufficient to pay 50% of the total WSS Costs for the two months that the City estimates will represent the largest estimated project costs for 2002 ("2002 Baseline Balance"). The 2001 Baseline Balance shall be applied to the 2002 Baseline Balance. After January 1, 2002, as the City draws against the Trendwest WSS Improvement Account to pay invoices for WSS Project Cost, Trendwest shall make monthly contributions to the Trendwest WSS Improvement Account to insure that the 2002 Baseline Balance is maintained in the Account on a monthly basis.
- 2.3.2. The Parties acknowledge that Trendwest has already funded portions of the WSS Costs, including those items covered by the April 7, 1999 Design Agreement, as amended on October 10, 2000. In addition, the Phased Elements will not be constructed until after initial construction, as specified in Paragraph 2.2.2, above. To account for those funds already expended by Trendwest and Trendwest's sole funding of the Phased Elements, all invoices for WSS Costs shall be divided evenly between the City and Trendwest, so that the City is responsible for 50% of said invoices (up to a total contribution of \$4,268,823), and the remaining 50% of said invoices shall be paid through draws against the Trendwest WSS Improvement Account. If WSS Costs continue to be incurred after the City has contributed \$4,268,823, invoices for such continuing WSS Costs will be paid fully from the Trendwest WSS Improvement Account. Half (50%) of any construction contract retainage shall be comprised of community funds until final acceptance of the completed construction contract by the Communities.
- 2.3.3. As additional security for its obligations discussed in Paragraphs 2.3.1 and 2.3.2, above, Trendwest shall provide, at the commencement of initial project construction, a bond, readily actionable by the Communities and subject to the Communities' approval, in the full amount of its funding obligations herein.

- 2.3.4. As to Phased Elements, Trendwest shall be solely responsible for the costs of those items, as discussed in Paragraph 2.2.2, above. Upon commencement of construction of the Phased Elements pursuant to Paragraph 2.2.2, above, Trendwest shall establish and fund a "WSS Phase 2 Account." The Trendwest WSS Phase 2 Account shall be an interest-bearing account against which the City is authorized to draw funds to pay the costs of the Phased Elements. The Account shall be established after the City's opening of bids for the WSS contemplated in this Agreement but prior to awarding a contract. Trendwest shall fund the WSS Phase 2 Account with sufficient funds to pay all estimated costs of the Phased Elements.
- 2.3.5. In the alternative to the WSS Phase 2 Account funding discussed in the preceding section, Trendwest may, at its discretion, fund the Trendwest WSS Improvement Account with funds sufficient to pay 50% of the total WSS Costs for the two months that the City estimates will represent the largest estimated project costs for the Phased Elements ("Phased Elements Baseline Balance"). As the City draws against the WSS Phase 2 Account to pay invoices for the Phased Elements, Trendwest shall make monthly contributions to the WSS Phase 2 Account to insure that the Phased Elements Baseline Balance is maintained in the Account on a monthly basis. If Trendwest decides to avail itself of the optional funding discussed in this Paragraph, Trendwest shall also provide, at the commencement of Phased Elements, a bond, readily actionable by the Communities and subject to the Communities' approval, in the full amount of its Phased Elements funding obligations.
- 2.3.6. Funds shall be disbursed by the City from the Trendwest WSS Improvement Account and the WSS Phase 2 Account only for payment of invoices for WSS Costs. The City's engineering consultant, Huibregtse, Louman Associates, Inc., shall recommend to the City Council for approval all invoices prior to payment. If Trendwest objects to all or a part of any invoice for WSS Costs, Trendwest shall immediately commence discussions among the City, the contractor, and Trendwest to attempt to resolve the disputed charge or charges. In no event shall any such dispute modify Trendwest's obligation to replenish the Trendwest WSS Improvement Account and WSS Phase 2 Account in accordance with Paragraphs 2.3.1, 2.3.1.1, 2.3.1.2, 2.3.4 and 2.3.5, above. If any such dispute remains unresolved, Trendwest reserves any claim for a refund it may have under applicable law.
- 2.3.7. In the event this Agreement is terminated or breached by Trendwest prior to completion of the WSS, for reasons other than those discussed in Paragraph 2.1.5, above, Trendwest shall continue to be responsible for the WSS Costs as discussed herein. The Parties hereby agree that Trendwest's continued obligation to fund such remaining WSS Costs, in the event of

termination of this Agreement, is necessary to restore the City to its "pre-Trendwest fiscal condition," as that term is used in Section 7 of the Pre-annexation Agreement. The Parties also agree that the lien provisions contained in Section 7 of the Pre-annexation Agreement apply to Trendwest's obligations discussed in this Paragraph.

2.4. Capital Reimbursement Charge

- 2.4.1. The Communities will partially reimburse Trendwest for the WSS Costs Trendwest actually pays through a capital reimbursement charge to be paid at hookup (1) by new connections in the UGA and (2) by new connections in the existing City and Town for lots that were platted after January 1, 2001 and that have not paid a water connection fee at the time this Agreement is executed.
- 2.4.2. While existing, platted lots within the City and Town that are not currently connected to the City's water system will be exempt from the capital reimbursement charge discussed in Paragraph 2.4.1, above, that exemption will only be for a single Equivalent Residential Unit ("ERU") connection. Additional ERU connections (for example, for construction of a condominium or duplex) will be subject to the capital reimbursement charge discussed in Paragraph 2.4.1, above.
- 2.4.3. The capital reimbursement charge will be calculated as follows:
 - 2.4.3.1. The total amount of the WSS Costs (including estimated costs for the Phased Elements) (currently estimated at \$13,556,000) will be reduced by the Communities' contribution to WSS Costs (\$4,268,823) and further by any contributions received pursuant to Paragraph 2.1.4, above.
 - 2.4.3.2. Twenty and one half percent (20.5%) of the amount remaining after the calculation in Paragraph 2.4.3.1, above, (numerator) will then be divided by the total number of projected new connections in both the UGA and the existing City and Town that will be served by the 6 MGD WSS, less those connections required: 1) to serve existing customers in the City and Town and 2) to provide a single ERU connection to existing buildable, platted lots in the City and Town that are not currently connected to the City's existing water treatment facility (denominator). The resulting figure will be the capital reimbursement charge that will be assessed on all new connections in the UGA, connections to newly platted lots in the City and Town, and connections in addition to the one ERU exempt connection on existing platted lots in the City and Town that are not currently connected to the City's existing water treatment plant.

A sample of the capital reimbursement charge calculation is attached hereto as Exhibit H. The capital reimbursement payments collected by the Communities will be reimbursed to Trendwest over time until such time as Trendwest has been reimbursed 20.5% for its expenditure on WSS Costs. At such time as Trendwest has been reimbursed 20.5% for its expenditure on WSS Costs, any capital reimbursement payments will be retained by the Communities. The capital reimbursement charge will be in addition to the then current general connection fee specified by Cle Elum ordinance for connections to the City's water supply system. Trendwest expressly acknowledges that this provision in no way warrants that all additional capacity created by the WSS will be utilized or that Trendwest will be fully reimbursed for the entirety of the funds it expends for WSS Costs.

- 2.4.4 The 20.5% figure included in the Paragraph 2.4.3 is based on the percentage of Trendwest's total (MPR and UGA) treated water demand that is currently attributable to the UGA. If the maximum number of units allowed in the MPR is decreased through regulatory action or in settlement of pending litigation, the percentage in Paragraph 2.4.3 shall be recalculated to reflect the actual percentage of Trendwest's total (MPR and UGA) treated water demand that is attributable to the UGA.

3. Allocation of WSS Capacity.

- 3.1. The WSS will provide 6 MGD of capacity, with the capability of adding facilities to provide an additional 2 MGD of capacity in the future. Of the initial 6 MGD of capacity, 3 MGD shall be allocated to the Communities, 2 MGD to Trendwest, and 1 MGD for redundancy for both the Communities' and Trendwest's capacity.

4. Regulatory Approvals.

- 4.1. The Communities and Trendwest acknowledge the important role of the Washington State Department of Health and the United States Department of Agriculture, Rural Development, in the WSS contemplated by this Agreement. As a result, Trendwest shall actively assist the Communities in their efforts to secure:
- 4.1.1. United States Department of Agriculture, Rural Development approval of this Agreement;
 - 4.1.2. Department of Health review and approval of all facilities plans, design and engineering reports, and plans and specifications for WSS;
 - 4.1.3. Any modifications to Department of Health compliance schedules necessary to accomplish the projects contemplated by this Agreement; and

4.1.4. Any regulatory approvals required before the City can supply water to Trendwest's UGA Properties or deliver water to Trendwest's MPR Properties.

4.2. In the event the Department of Health, or any other regulatory agency, at any time requires through directive, compliance order, or otherwise that Cle Elum or South Cle Elum revise, modify, or abandon in whole or in part any portion of the WSS and/or implement additional design requirements, this Agreement shall be modified to address such requirements. If such directive, compliance order, or other mandate results in a decrease in the total capacity created by the WSS, the allocation of capacity discussed in Section 3, above, shall be adjusted accordingly. If such directive, compliance order or other mandate relates to the Transmission Facilities, Trendwest alone shall bear the costs of compliance with the agency directive, compliance order or other mandate.

5. Miscellaneous Provisions.

5.1. The Parties hereto intend and acknowledge that this Agreement is a voluntary contract binding upon the Parties hereto, as well as their successors and assigns. The Parties recognize that the financial obligations undertaken by Trendwest are voluntary, and Trendwest acknowledges that it is fully aware that the Communities have relied on Trendwest's recitals and commitments made above and further herein, and that it understands that the Communities have relied upon said recitals in making the decision to commit to the WSS. Trendwest acknowledges that it is entering into this Agreement knowingly and voluntarily in consideration of the benefits to be derived therefrom.

5.2. Except as otherwise provided herein, Trendwest agrees to defend, indemnify and hold harmless the City and all of its elected officials and its employees from all liability, claims and costs arising in connection with the construction of the Transmission Facilities, except to the extent resulting from any negligence or intentional act or omission of the City, its officers, agents or employees in relation to the Transmission Facilities.

5.3. All notices under this Agreement shall be in writing, and shall be delivered or mailed by certified mail, return receipt requested, and shall be effective as of the date of delivery, on the date of receipt as shown on the return receipt, or three days after the postmark date if there is no return receipt. Notices shall be addressed to the following addresses or to such other address as the Party may specify in writing:

TO CLE ELUM:

City of Cle Elum
119 W. 1st Street
Cle Elum, WA 98922

With a copy to:
Erin L. Anderson
Cone, Gilreath, Ellis, Cole &
Anderson
P. O. Box 499
Ellensburg, WA 98926

TO SOUTH CLE ELUM:

Town of South Cle Elum
P.O. Box 160
South Cle Elum, WA 98943

With a copy to:
Erin L. Anderson
Cone, Gilreath, Ellis, Cole &
Anderson
P. O. Box 499
Ellensburg, WA 98926

TO TRENDWEST:

Trendwest Properties, Inc.
P.O. Box 887
109 S. 1st Street
Roslyn, WA 98941

With a copy to:
Richard M. Peterson
Hillis, Clark, Martin & Peterson
1221 Second Avenue, Suite 500
Seattle, WA 98101-1090

- 5.4. The Parties expressly intend that this Agreement does not supersede that Memorandum of Understanding executed by the Parties on April 13, 1999, until and unless the same is revised or terminated, recognizing that the Mediation and Arbitration Agreement dated and executed by the parties on December 7, 1999, does supersede Section IX, Dispute Resolution, as contained in the April 13, 1999, Memorandum of Understanding between the Parties.
- 5.5. Venue and jurisdiction to enforce all obligations under this Agreement, except those subject to mediation or arbitration, shall lie in the Kittitas County Superior Court. The obligations of the Parties hereunder may not have an adequate remedy by way of an action for damages, and may be enforced by an action for specific performance.
- 5.6. This Agreement is entered into under the laws of the State of Washington, and the Parties intend that Washington law shall apply to the interpretation hereof.
- 5.7. This Agreement may not be modified, supplemented or otherwise amended, except by written instrument duly executed by all Parties and approved by the Cle Elum and South Cle Elum Councils.
- 5.8. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs, successors and assigns.

5.9. In the event any Party commences proceedings in Superior Court to enforce this Agreement, the prevailing party or parties shall be entitled to an award of attorneys' fees and costs and disbursements, including expert witness fees, reasonably incurred or made in such proceedings, including appellate proceedings.

5.10. This Agreement shall become effective on the date first appearing above.

CITY OF CLE ELUM

Witnesseth:


By 
Its Mayor


DeLiela Bannister, Cle Elum City
Clerk

Date: 6/15/01

TOWN OF SOUTH CLE ELUM

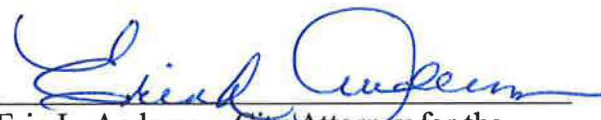
Witnesseth:

By 
Its 6/18/01 Mayor


Sally Nelson, City Clerk for South
Cle Elum

Date: 6/18/01

Approved as to form:


Erin L. Anderson, City Attorney for the
City of Cle Elum and the Town of South
Cle Elum

TRENDWEST INVESTMENTS, INC.

By W. F. Peare
WILLIAM F. PEARE, President

Date: 6/19/01

TRENDWEST RESORTS, INC.

By W. F. Peare
WILLIAM F. PEARE, President

Date: 6/19/01

TRENDWEST PROPERTIES, INC.

By W. F. Peare
WILLIAM F. PEARE, President

Date: 6/19/01

Exhibits:

- A. UGA Legal Description
- B. MPR Legal Description
- C. Pre-Annexation Agreement
- D. UGA Water Supply Agreement
- E. MPR Water Delivery Agreement
- F. Design Services Agreement, as amended
- G. Description of WSS
- H. Sample Capital Reimbursement Charge Calculation

EXHIBIT H

SAMPLE CALCULATION OF CAPITAL REIMBURSEMENT CHARGE

ASSUMPTIONS:

- ◆ TOTAL PROJECT COST: \$13,500,000
- ◆ TOTAL TREATMENT PLANT CONNECTIONS THAT WILL BE PROVIDED TO CLE ELUM, SOUTH CLE ELUM AND THE TRENDWEST UGA: 2700
- ◆ TOTAL NUMBER OF EXISTING CONNECTIONS AND BUILDABLE PLATTED LOTS NOT CURRENTLY CONNECTED TO CITY OR TOWN WATER SYSTEMS: 1000

CALCULATION:

$$\$13,500,000 - \$4,268,823 = \$9,231,177$$

$$20.5\% \text{ of } \$9,231,177 = \$1,892,391$$

$$2700 - 1000 = 1700$$

$$\$1,892,391 / 1700 = \$1113 \text{ per connection capital reimbursement charge}$$

Attachment 2

Agreement Relating to Water Supply for Bullfrog Flats UGA between the City of Cle Elum and Trendwest, dated June 19, 2001.

**AGREEMENT RELATING TO
WATER SUPPLY FOR
BULLFROG FLATS UGA
between
THE CITY OF CLE ELUM
and
TRENDWEST INVESTMENTS, INC.,
TRENDWEST RESORTS, INC., and
TRENDWEST PROPERTIES, INC.**

THIS AGREEMENT is entered into this 19th day of JUNE, 2001, between the City of Cle Elum, Washington (hereafter "City"), Trendwest Investments, Inc., a Washington corporation, Trendwest Resorts, Inc., an Oregon corporation registered to conduct business in the State of Washington, and Trendwest Properties, Inc., a Washington corporation (hereafter collectively "Trendwest").

RECITALS:

1. The City is a second-class city organized under the laws of the State of Washington, located in Kittitas County, Washington.

2. The City, in cooperation with the Town of South Cle Elum (hereafter "Town") and with the guidance and encouragement of the Washington State Department of Ecology (hereafter "Ecology") and the Washington State Department of Health (hereafter "Health"), is in the process of developing a regional public water supply system (hereafter "WSS") that is designed to provide water to users within the City and the Town as well as other users on lands located nearby.

3. Trendwest is the owner of approximately 1,120 acres located in the Bull Frog Flats area of Kittitas County, legally described in Exhibit A hereto, which lies wholly within an Urban Growth Area established by the City on June 23, 1998, pursuant to City Resolution No. 6/23/98-1. On December 22, 1998, the Kittitas County Board of Commissioners adopted Ordinance 98-24 amending the County Comprehensive Plan to establish the Bull Frog Flats Property (hereafter referred to as the "UGA Property") as within the City's Urban Growth Area. The UGA Property currently is being processed for annexation into the City, consistent with the desire and intent of both the City and Trendwest.

4. Trendwest conducts residential, commercial, and recreational development activities upon real property. As to the UGA Property, Trendwest is

proposing a community consisting of, among other elements: residential; business park; a park and playfields; community center; lands for public schools, water treatment plant, and cemetery expansion; a potential golf course and horse park; and open space. Exhibit B hereto sets forth on a map the UGA Property.

5. Trendwest needs water to accomplish its development and in 1997 approached the City with a request to obtain a water supply from the City, relying on the City's new WSS (now in its implementation stage), for use within the UGA Property.

6. In response to the water supply request of Trendwest, the City conducted a series of public meetings (before both a Committee of the City Council and the City Council) during 1998 and 1999, related to the establishment of a City policy pertaining to water use within the UGA Property, and on November 23, 1999, the City adopted Resolution No. 11/23/99-1. The foundation City policy set forth in the Resolution states that "no existing water rights or supplies presently owned by the City shall provide the base for supply water to the UGA." The Resolution further provides, among its elements, (1) that the City will not provide water to the UGA Property until a water supply agreement consistent with the policy and requirements of the Resolution is executed by the City and Trendwest, and (2) that the City will work with Trendwest in pursuit of the expeditious processing of any water right change applications designed to comply with the foundation City policy.

7. Trendwest has acquired water rights from the Yakima River known as the Pautzke Bait Co, Inc., water rights, recommended for confirmation under Claim No. 01724 by the Second Supplemental Report of Referee Re: Subbasin No. 7 (Reecer Creek), Washington v. Acquavella, Yakima County Superior Court No. 77-2-01484-5 (January 17, 2001). Trendwest has filed applications pursuant to the state water code for changes in point of diversion, place of use, and purpose of use of a portion of these water rights as a condition to the City serving approved uses in the UGA, provided that the City has agreed that water supplies for public school expansion, new public community center, cemetery expansion, and new business park uses within the UGA shall be based on water rights or supplies other than those provided by Trendwest.

8. Trendwest's desire is for the City to provide water sufficient to satisfy the water supply needs of the UGA Property, consistent with the City's foundation water policy, by obtaining appropriate changes (under the state water codes) to the water rights described in Recital 7, and transferring to the City as much water rights as is necessary to serve approved uses in the UGA, as also described in Recital 7.

9. The City is willing to provide water to the UGA Property consistent with Resolution 11/23/99-1.

10. It is the purpose of this Agreement to satisfy the requirement of Paragraph 3 of the aforementioned City's water right/supply policy, Resolution 11/23/99-1, that a water supply agreement be executed between the parties before water is supplied to the UGA Property by the City.

AGREEMENTS:

On the basis of Recitals 1 through 10, supra, the City and Trendwest agree as follows:

11. **Water Supply to UGA Property.** Subject to the satisfaction of the conditions of Paragraph 12 and following hereof, the City agrees to supply water to the UGA Property.

12. **Water Rates.** The City shall charge water customers in the UGA Property on a monthly basis in accordance with the City's adopted rate schedule applicable to the various water uses within the City, including the UGA Property. If necessary, a rate schedule shall be established by the City for water uses applicable to golf courses such as the potential golf course under consideration for the UGA Property.

13. **Conditions of Water Supply to UGA Property.** Water supplied by the City to the UGA Property is subject to the following:

- a. Water supplied to the UGA Property shall not exceed the amount, both in acre-feet yearly and instantaneous, approved for change to the point(s) of diversion of the WSS, to the place of use of the City's water supply service area, and to the purpose of use as year-round municipal in relation to the water rights described in Recital 7 (or other water rights not described in said Recital with a priority date prior to 1905 and exercisable without limitation other than priority, that have been transferred to the City as described in Recital 8); said amounts being the amount approved less conveyance and treatment losses associated with supplying the UGA Property. No water shall be supplied to the UGA except on the basis of rights transferred to the City as described in Recital 8.

- b. Except as provided in subsection b(4) of this Paragraph 13, no water shall be supplied to the UGA Property:
- (1) Prior to the title of the water rights, changed to a condition as provided in subsection a of this Paragraph 13, being transferred to and owned by the City as provided in Paragraph 14;
 - (2) Prior to any approvals by the Washington State Department of Health and any other governmental agency required in order for the City to provide domestic water service to the UGA Property;
 - (3) Prior to the completion of the WSS, including water diversion, conveyance, and treatment facilities, in an approved operating condition to the extent required to supply water to the various uses on the UGA Property, provided that nonpotable water may be delivered before treatment facilities are completed;
 - (4) Water will be supplied on an interim basis by the City to the UGA Property from its existing facilities prior to the satisfaction of Paragraph 13.b(3), to the extent and in an amount as determined solely by the City if (a) existing City facilities are physically capable of providing water to the UGA Property, (b) title has been transferred as provided in Paragraph 13.b(1), or other supplies have been secured as provided in Paragraph 13.e(2), and (c) approval has been obtained as provided in Paragraph 13.b(2).
- c. The amount of water supplied to the UGA Property for domestic use shall be limited to the number of hook-ups eligible for water based on the amount of water required per Equivalent Residential Unit ("ERU"), as established by the City Council after taking into account the City's Water Comprehensive Plan as approved by the Washington State Department of Health. The City's Water Comprehensive Plan currently identifies average daily demand as 610 gpd/ERU. No later than three years after the execution of this agreement, the City shall initiate examination of this demand estimate as the new WSS is put into operation and, with the expectation that average daily demand per ERU will be reduced,

the City agrees to modify the ERU requirement consistent with the first sentence of this subsection c.

- d. As to water supplied to the UGA Property for potential golf course use, the following water use methods and facilities shall be used:
 - (1) Computerized control of irrigation;
 - (2) Central weather station;
 - (3) Significant use of high-efficiency irrigation heads;
 - (4) Automatic shut down ability; and
 - (5) Shrubbery and plants as provided for in the City's "water-wise" water use program existing on the effective date of this Agreement or as hereafter adopted by the City.
- e. In times of shortage of water available to the City to supply all of the City's customers:
 - (1) Water shall be first reduced or terminated as to golf course uses (other than for greens, tees, and internal clubhouse uses) and horse park uses (other than for stockwatering) consistent with City-wide policies associated with recreational uses. If the water supply shortage requires further reduction in the supply of water after termination as above-described, any further reduction of the water supply shall be in accordance with the rules established by the City for recreational, open space and other uses of water within the City's service area.
 - (2) Notwithstanding the mandate of the first sentence of Paragraph 13.e(1), the City will supply water to satisfy uses reduced or terminated under said subsection in an amount equivalent to the amount of supplemental water (less conveyance and treatment losses) which is provided by Trendwest, on an interim basis solely during times of shortage, to a diversion work of Cle Elum's WSS located on either the Cle Elum or Yakima Rivers.

- (3) Nothing herein shall preclude Trendwest from providing water to satisfy uses reduced or terminated under the first sentence of subsection 13.e(1) through diversion and delivery facilities other than the City's facilities, on an interim basis solely during times of such shortage.

14. **Transfer of Water Rights.** Trendwest shall transfer to the City the water rights necessary to serve approved uses in the UGA, as described in Recital 7. Trendwest may transfer the water rights to the City in phases, and shall convey the rights, title and interest to these rights by one or more Statutory Warranty Deeds.

15. **Indemnification.** Trendwest hereby agrees to indemnify and hold harmless the City, its elected and appointed officials, employees, and agents, and their successors and assigns, from any and all claims arising under or related to implementation of this Agreement, (a) except to the extent the claims are resulting from any negligence or intentional act or omission of the City, or (b) except for claims arising from the adoption of water rates, water comprehensive plans, water conservation policies, or other actions of city-wide applicability. This indemnity shall survive cancellation of the Agreement.

16. **Notices.** All notices under this Agreement shall be in writing, and shall be delivered or mailed by certified mail, return receipt requested, and shall be effective as of the date of delivery, on the date of receipt as shown on the return receipt, or three days after the postmark date if there is no return receipt. Notices shall be addressed to the following addresses or to such other address as the Party may specify in writing:

TO CLE ELUM:

City of Cle Elum
119 W. 1st Street
Cle Elum, WA 98922

With a copy to:

Erin L. Anderson
Cone, Gilreath, Ellis, Cole &
Anderson
P. O. Box 499
Ellensburg, WA 98926

TO TRENDWEST:

Trendwest Properties, Inc.
P.O. Box 887
109 S. 1st Street
Roslyn, WA 98941

With a copy to:

Richard M. Peterson
Hillis, Clark, Martin & Peterson
1221 Second Avenue, Suite 500
Seattle, WA 98101-1090

17. **Reimbursement of Other City Costs.** Trendwest shall reimburse the City for all costs incurred by the City (a) in defending the validity or exercisability of

all water rights transferred to the City under this agreement pertaining to Acquavella, supra, or in any "non-general adjudication" of water rights litigation or with regard to any governmental action or process which may affect the legal status and/or the ability to make beneficial use of the water rights; (b) while participating in any federal, state, or local water planning process, including among others, habitat conservation planning relating to Federal Endangered Species Act species listings; or (c) in defending the validity of this Agreement, other than for procedural errors by the City made during the course of the approval by the City of this Agreement.

18. **Binding Effect.** 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.


19. **Entire Agreement; Relationship to Other Agreements.** This document contains the entire agreement between the parties with respect to the subject matter of the Agreement. There are no agreements, promises, assurances, representations, warranties, undertakings, or understandings, either written or oral, between Trendwest and the City concerning the subject matter of the Agreement other than those set forth in this document. Any amendment of this Agreement must be in writing and signed by both the City and by Trendwest. The parties have previously executed other agreements concerning Trendwest's anticipated projects, some of which deal with the subject of water and including, but not limited to, the Agreement for Payment of Professional/Staff/Consultant Services, the Pre-Annexation Agreement, and the Water Supply System Project Development Agreement. This Agreement does not amend or supersede any other agreement between the parties. This Agreement is intended to be consistent with the terms of such other agreements, but to the extent of any conflict with those other agreements, the terms of this Agreement shall control as to issues relating to the supply of water to the UGA Property.

20. **Severability.** No provision of this Agreement is severable from other provisions of this Agreement. Should any provision or provisions of this Agreement be unenforceable for any reason, the party finding itself unable to enforce said provision(s) may, at its sole discretion, declare this entire Agreement to be null and void.

21. **Applicable Law; Venue.** This Agreement shall be governed and enforced under the laws of the State of Washington. Venue for any action arising under or related to this Agreement shall lie in Kittitas County, Washington.

CITY OF CLE ELUM

Witnesseth:

By 
Gary Berndt
Mayor



DeLiela Bannister
Cle Elum City Clerk

Date: 6/15/01

Approved as to form:


Erin Anderson
City Attorney

TRENDWEST INVESTMENTS, INC.

By 
William F. Peare
President

Date: 6/19/01

TRENDWEST RESORTS, INC.

By 
William F. Peare
President

Date: 6/19/01

TRENDWEST PROPERTIES, INC.

By W. F. Pearce
William F. Pearce
President

Date: 6/13/01

Exhibits:

- A. Legal Description of Bullfrog Flats/UGA Property
- B. Map of Bullfrog Flats/UGA Property

Attachment 3

Chapter 173-539A WAC, The Upper Kittitas Groundwater Rule.

**Chapter 173-539A WAC
UPPER KITTITAS GROUNDWATER RULE**

Last Update: 12/22/10

WAC

173-539A-010	Purpose.
173-539A-020	Authority.
173-539A-025	Applicability.
173-539A-027	Advisory.
173-539A-030	Definitions.
173-539A-040	Withdrawal of unappropriated water in upper Kittitas County.
173-539A-050	Water budget neutral projects.
173-539A-060	Expedited processing of trust water applications, and new water right applications or requests for a determination of water budget neutrality associated with trust water rights.
173-539A-070	Measuring and reporting water use.
173-539A-080	Educational information, technical assistance and enforcement.
173-539A-090	Appeals.
173-539A-990	Appendix 1—Map of upper Kittitas County boundaries.

WAC 173-539A-010 Purpose. The purpose of this rule is to withdraw from appropriation all unappropriated groundwater within upper Kittitas County pending completion of a groundwater study. New groundwater withdrawals will be limited to those that are water budget neutral, as defined in this rule.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. WSR 11-01-163 (Order 08-12), § 173-539A-010, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-020 Authority. RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water management. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for permit-exempt wells where needed.

In 1999, ecology imposed an administrative moratorium on issuing any groundwater permits for new consumptive uses in the Yakima basin, which includes Kittitas County. That moratorium did not apply to permit-exempt withdrawals. In 2007, ecology received a petition seeking unconditional withdrawal of all unappropriated groundwater in Kittitas County until enough is known about potential effects from new permit-exempt wells on senior water rights and stream flows. Ecology consulted with standing committees of the Washington state legislature on the petition and proposed withdrawal. Ecology rejected the proposed unconditional withdrawal, and instead signed a memorandum of agreement (MOA) with Kittitas County. Ecology proposed a rule in January 2009 and Kittitas County questioned ecology's authority for the proposed rule. Ecology later invoked the dispute resolution process under the MOA and the MOA was later terminated.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. WSR 11-01-163 (Order 08-12), § 173-539A-020, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-025 Applicability. This rule applies to new uses of groundwater relying on the authority of the exemption from permitting found at RCW 90.44.050, as defined in WAC 173-539A-030, and to

any new permit authorizing the withdrawal of public groundwater within the upper Kittitas area boundaries issued on or after July 16, 2009.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. WSR 11-01-163 (Order 08-12), § 173-539A-025, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-027 Advisory. All unmitigated withdrawals that began after May 10, 1905, may be subject to future curtailment due to conflicts with senior water rights. All unmitigated users are advised to obtain mitigation through senior trust water rights to avoid such curtailment.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. WSR 11-01-163 (Order 08-12), § 173-539A-027, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-030 Definitions. The definitions provided below apply only to this chapter.

"Applicant" includes the owner(s) of parcels that are the subject of a land use application, a person making a request for water budget neutral determination, or a person requesting a permit to appropriate public groundwater.

"Common ownership" means any type or degree of legal or equitable property interest held by an applicant in any proximate parcel. Common ownership also includes a joint development arrangement between an applicant and any owner of a proximate parcel. A joint development arrangement is defined as involving significant voluntary joint activity and cooperation between the applicant and the owner(s) of one or more proximate parcels with respect to the development of parcels in question. Joint activity and cooperation that is customary or required by land use or other legal requirements does not itself constitute a joint development arrangement. A joint development arrangement may be evidenced by, but is not limited to, agreements for coordinated development and shared use of services or materials for permitting, design, engineering, architecture, plat or legal documents, financing, marketing, environmental review, clearing or preparing land, or construction (including road construction); covenants; agreements for common use of building materials, equipment, structures, facilities, lands, water, sewer, or other infrastructure.

"Consumptive use" of a proposed withdrawal is the total depletion that the withdrawal has on any affected surface water bodies.

"Ecology" means the department of ecology.

"Exemption" or **"groundwater exemption"** means the exemption from the permit requirement for a withdrawal of groundwater provided under RCW 90.44.050.

"Existing use of the groundwater exemption" means a use of groundwater under the authority of the exemption from permitting where water was:

(a) First regularly and beneficially used prior to July 16, 2009; and

(b) The water right is perfected within the five years following the first regular beneficial use for that purpose. Water to serve a parcel that is part of a group use begun within five years of the date water was first regularly and beneficially used on one or more parcels

in the group is an existing use if the group use remains within the limit of the permit exemption.

"Group use" means use of the groundwater exemption for two or more parcels. A group use includes use of the exemption for all parcels of a proposed development. It further includes use of the exemption for all parcels that are proximate and held in common ownership with a proposed new development. If a parcel that is part of a group use is later divided into multiple parcels more than five years following the first use, the new uses of the exemption on the resulting multiple parcels will be considered a separate group use distinct from the original group.

"Land use application" means an application to Kittitas County requesting a:

- Subdivision;
- Short subdivision;
- Large lot subdivision;
- Administrative or exempt segregation;
- Binding site plan; or
- Performance based cluster plat.

"New use of the groundwater exemption" means a valid permit-exempt use of groundwater begun on or after July 16, 2009. When an existing group use is expanded to serve a parcel in the future, the expanded use is a new use if it begins more than five years after the date water was first regularly and beneficially used for that purpose on any parcel in the group.

"Parcel" means any parcel, land, lot, tract or other unit of land.

"Proximate" means all parcels that have at least one of the following attributes:

- Share any common boundary; or
- Are separated only by roads, easements, or parcels in common ownership; or
- Are within five hundred feet of each other at the nearest point.

"Proximate shortplat" means a shortplat that would be considered a group use with another subdivision or shortplat.

"Regular beneficial use" means a use of water under the groundwater permit exemption that is recurring or functioning at fixed, uniform, or normal intervals and is done in conformity with established usages, rules, or discipline.

"Total water supply available" means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.

"Upper Kittitas County" is the area of Kittitas County delineated in WAC 173-539A-990.

"Water budget neutral project" means an appropriation or project where withdrawals of public groundwater are proposed in exchange for placement of other water rights into the trust water right program that are at least equivalent to the amount of consumptive use.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. WSR 11-01-163 (Order 08-12), § 173-539A-030, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-040 Withdrawal of unappropriated water in upper Kittitas County. (1) Beginning on the effective date of this rule, all public groundwaters within the upper Kittitas County are withdrawn from appropriation. No new appropriation or withdrawal of groundwater may occur, including those exempt from permitting, except:

(a) Uses of groundwater for a structure for which a building permit is granted and the building permit application vested prior to July 16, 2009; and

(b) Uses determined to be water budget neutral under WAC 173-539A-050.

(2) The exception for water used at structures provided in subsection (1)(a) of this section shall not apply or shall cease to apply if the structure is not completed and a water system that uses the new appropriation is not operable within the time allowed under the building permit. This shall not in any case exceed three years from the date the permit application vested. The exception is to avoid potential hardship and does not reflect ecology's view on when the priority date for a permit-exempt water right is established.

(3) Water to serve a parcel that is part of an existing group use is not a new appropriation or withdrawal if the water use to serve such parcel began within five years of the date water was first beneficially used on any parcel in the group, if the first use was prior to July 16, 2009, and the group use remains within the limit of the permit exemption.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. WSR 11-01-163 (Order 08-12), § 173-539A-040, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-050 Water budget neutral projects. (1) Persons proposing a new use of groundwater shall apply to ecology for a permit to appropriate public groundwater or, if seeking to rely on the groundwater permit-exemption, shall submit to ecology a request for determination that the proposed permit-exempt use would be water budget neutral.

(2) As part of a permit application to appropriate public groundwater or a request for a determination of water budget neutrality, applicants or requestors shall include the following information:

(a) Identification of one or more water rights that would be placed into the trust water right program to offset the consumptive use (as calculated pursuant to subsection (3) of this section) associated with the proposed new use of groundwater;

(b) A site map;

(c) The area to be irrigated (in acres);

(d) A soil report, if proposed discharge is to a septic system and the applicant or requestor proposes to deviate from the values in subsection (3) of this section;

(e) A property covenant that prohibits trees or shrubs over the septic drain field; and

(f) A copy of the sewer utility agreement, if the proposed wastewater discharge is to a sanitary sewer system.

(3) Consumptive use will be calculated using the following assumptions: Thirty percent of domestic in-house use on a septic system is consumptively used; ninety percent of outdoor use is consumptively used; twenty percent of domestic in-house use treated through a waste-

water treatment plant which discharges to surface water is consumptively used.

(4) Applications for public groundwater or requests for a determination of water budget neutrality will be processed concurrent with trust water right applications necessary to achieve water budget neutrality, unless:

(a) A suitable trust water right is already held by the state in the trust water right program; and

(b) The applicant or requestor has executed an agreement to designate a portion of the trust water right for mitigation of the applicant's proposed use.

(5) Applications to appropriate public groundwater or requests for determination of water budget neutrality that do not include the information listed in subsection (2) of this section will be rejected and returned to the applicant.

(6) To the extent that ecology determines that the mitigation offered would not reliably mitigate to be water budget neutral, ecology may deny the request or limit its approval to a lesser amount.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. WSR 11-01-163 (Order 08-12), § 173-539A-050, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-060 Expedited processing of trust water applications, and new water right applications or requests for a determination of water budget neutrality associated with trust water rights.

(1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.

(2) Ecology may expedite the processing of an application for a new water right or a request for a determination of water budget neutrality under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:

(a) The application or request must identify an existing trust water right or pending application to place a water right in trust, and such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.

(b) The proposed use on the new application or request must be for domestic, group domestic, lawn or noncommercial garden, municipal water supply, stock watering, or industrial purposes within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water right.

(3) If an application for a new water right or a request for a determination of water budget neutrality is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.

(4) Upon determining that the application or request is eligible for expedited processing, ecology will do the following:

(a) Review the application or request to withdraw groundwater to ensure that groundwater is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.

(b) Condition the permit or determination to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant or requestor also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit or determination.

(c) Condition each permit or determination to ensure that the tie to the trust water right is clear, and to accurately reflect any limitations or constraints in the trust water right.

(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. WSR 11-01-163 (Order 08-12), § 173-539A-060, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-070 Measuring and reporting water use. (1) For residential uses (domestic use and irrigation of not more than 1/2 acre of noncommercial lawn and garden) of groundwater within upper Kittitas County that begin after July 8, 2008, a meter must be installed for each residential connection or each source well that serves multiple residential connections in compliance with the requirements of WAC 173-173-100.

(2) For all other uses within upper Kittitas County that begin after November 25, 2009, including permit-exempt uses, a meter must be installed for each source well in compliance with such requirements as prescribed in WAC 173-173-100.

(3) Water users must collect metering data for each recording period. The following table shows the five recording periods during each water year (October 1 through September 30):

Recording Period	
October 1	March 31 -
April 1	June 30 -
July 1	July 31 -
August 1	August 31 -
September 1	September 30 -

(4) Water users must report their measurement data as follows:

Recording and Reporting Requirements			
Average diversion rate in gallons per minute	< 10 gpm	10-49 gpm	> 50 gpm
Recording frequency	Monthly	Biweekly	Weekly
Volume or rate to report	Maximum rate of diversion	Maximum rate of diversion	Maximum rate of diversion
	Annual total volume	Annual total volume	Annual total volume
Date data must be reported to department	By Jan. 31 of the following calendar year	By Jan. 31 of the following calendar year	By Jan. 31 of the following calendar year
Monthly means calendar month			
Weekly means Monday 12:01 a.m. to Sunday 12:00 p.m.			
Biweekly means once every two weeks			
Daily means 12:01 a.m. to 12:00 p.m.			
1 gallon per minute is equivalent to .002 cubic feet per second			

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. WSR 11-01-163 (Order 08-12), § 173-539A-070, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-080 Educational information, technical assistance and enforcement. (1) To help the public comply with this chapter, ecology may prepare and distribute technical and educational information on the scope and requirements of this chapter.

(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.

(3) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.

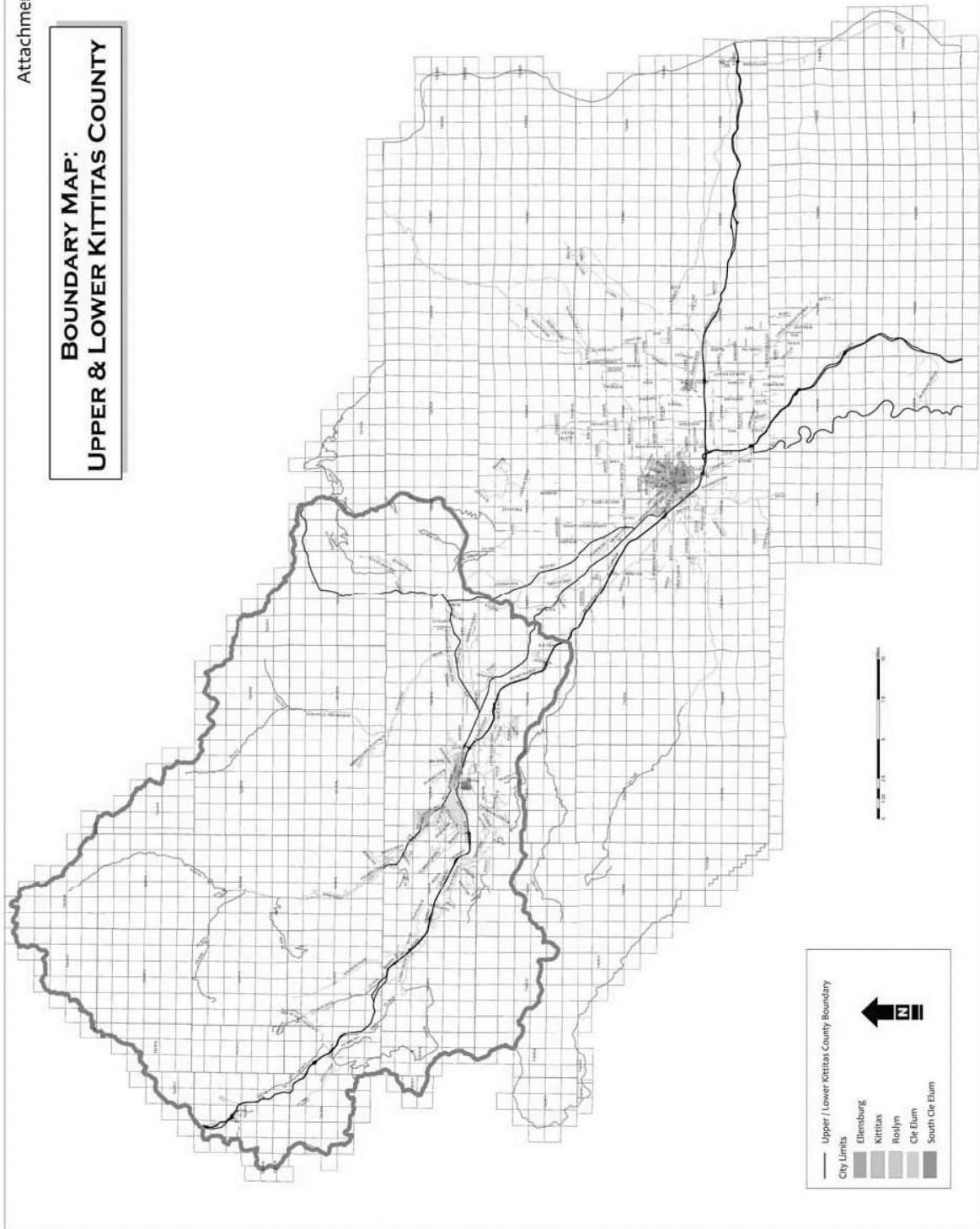
[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. WSR 11-01-163 (Order 08-12), § 173-539A-080, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-090 Appeals. All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. WSR 11-01-163 (Order 08-12), § 173-539A-090, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-990 Appendix 1—Map of upper Kittitas County boundaries.

**BOUNDARY MAP:
UPPER & LOWER KITTITAS COUNTY**



[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. WSR 11-01-163 (Order 08-12), § 173-539A-990, filed 12/22/10, effective 1/22/11.]

Attachment 4

FAQ Upper Kittitas Groundwater Rule.

Upper Kittitas Ground Water Rule

The Department of Ecology (Ecology) adopted a rule for managing groundwater resources in Upper Kittitas County, effective January 22, 2011. The formal adoption process included a public hearing and other opportunities for public comments. (See map on page 7 for area of Upper Kittitas County served by the rule.)

Q: Why are new groundwater withdrawals a concern in Upper Kittitas County?

A: Currently, new unmitigated groundwater withdrawals are halted until more is known about the aquifers in the upper county and how they interact with surface water tributaries and the Yakima River.

Groundwater aquifers feed the Yakima River and its tributaries year round. Pumping from those aquifers diminishes stream flows relied upon by senior surface water-right users, and reduces legally required flows for fish. Groundwater withdrawals in Upper Kittitas County may intercept these water supplies and prevent the water from reaching users downstream that rely on this water for their livelihoods.

Information is lacking about groundwater resources in the upper areas of the county where development relying on permit-exempt wells (defined in text box on page 5) is occurring. This lack of data hampers Ecology's ability to make sound water management decisions. A study of these aquifers is underway to help provide information needed to make informed groundwater management decisions in the area.

Mitigation required for all new groundwater uses

Allowing new unmitigated withdrawals that likely deplete an already over-committed water supply is unfair to senior water right holders, harmful to the water-dependent economy and fish runs, and bad public policy. Protecting these resources preserves the \$1.5 billion agricultural economy in Kittitas, Yakima and Benton counties (information at: http://agr.wa.gov/AgInWA/Crop_Maps.aspx, Washington Department of Agriculture). It also protects those who have a first right to the water (senior water rights).

If you are not in an area currently serviced by a water purveyor, the best assurance for securing a new year-round water use is to obtain coverage under a senior water right, commonly referred to here as *mitigation*. Development may proceed where new water withdrawals are mitigated, and granted approval by Ecology in the form of a "water-budget-neutral" (WBN) certificate (discussed on pages 2+3).

MORE INFORMATION

The Upper Kittitas Ground Water Rule (Chapter 173-539A WAC) became effective in January 2011. Implementation of the rule is intended to prevent further depletion of groundwater resources. However, the effectiveness of the rule may not be known with certainty for some time.

Mitigation is a way to prevent impacts to existing water rights and stream flows and still allow for new uses. This is typically done by obtaining coverage under a senior water right.

Contact information

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stuart.luttrell@ecy.wa.gov

For more information on water resources in Washington, visit our website at:
<http://www.ecy.wa.gov/programs/wr/wrhome.html>

Rule text:
<https://fortress.wa.gov/ecy/publications/publications/173539a.pdf>

Special accommodations

To ask about the availability of this document in a version for the visually impaired, call the Water Resources Program at 360-407-6872.

Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

Water supplies approved by this process will remain intact during years of drought when unmitigated water uses may be limited or completely curtailed. New developments whose water use are supported by mitigation and a WBN certificate will be of much greater value than those without.

Kittitas County and Yakima River basin stakeholders are pursuing ideas for alternative approaches to provide domestic water supplies. These approaches will take time to develop and will ultimately need approval from Yakima River basin stakeholders to be operational.

Q: How may the rule apply to me?

A: The rule closes portions of Upper Kittitas County (see map on page 7) to all new groundwater withdrawals pending results of a groundwater study. The study is on schedule to be completed in 2013. There are three exceptions to the rule, described in WAC 173-539A-040 (refer to rule for exact text). The exceptions are:

- Uses determined to be Water Budget Neutral (WBN). WBN is a determination by Ecology that the mitigation amount (from senior water rights) is equal to or greater than the consumptive¹ amount of the proposed new use of groundwater. The senior water right(s) is placed into the state's Trust Water Rights Program.
- Uses for a structure for which a building permit was vested prior to July 16, 2009.
- Uses for a parcel that is part of an existing group use which began prior to July 16, 2009. (This exception is limited to groups that utilize the permit-exemption under RCW 90.44.050, and to a time frame of "five years of the date water was first beneficially used on any parcel in the group.")

Q: How can I protect my investment and develop my property under this rule?

A: The simplest thing is to connect up to an existing water purveyor, which will provide water for new year-round uses. If this is not possible, then the best insurance policy for new water users is to obtain mitigation under a senior water right (pre-May 10, 1905) to offset your proposed use.

Additionally, a Water Budget Neutral (WBN) certificate from Ecology is required to confirm that the mitigation is adequate. Most requests for new uses will fall under the groundwater permit-exemption (defined in text box on page 5), in which case you must submit an application for WBN directly to Ecology.

You can obtain mitigation under a senior water right in two ways: through a water bank, or on your own.

Water banks: You may obtain a share of a permanent senior water right from one of several water banks serving Upper Kittitas County, and apply for a certificate of "water-budget neutrality" with Ecology (see next page). Water rights obtained through water banking programs are put into trust and the water remains

¹ A consumptive water use is one that reduces the amount of water in the water source. You can estimate the consumptive portion of your proposed water use by using our on-line "Consumptive Water Use Calculator" at the bottom of our Upper Kittitas Water Exchange webpage: <http://www.ecy.wa.gov/programs/wr/cro/ukwtrxchng.html>

in the stream to offset any groundwater pumping associated with your property. (For available water banks and other water bank information, see: <http://www.ecy.wa.gov/programs/wr/cro/wtrxchng.html>)

On your own: You also may change and transfer the use of an existing water right to a new property through an application process with Ecology or the local Kittitas County Conservancy Board. Once you have found a senior water right(s), then apply to Ecology for a WBN determination.

A *water-budget neutral determination* certifies your withdrawal will not harm the “Total Water Supply Available” for basin irrigators, senior water users including cities and communities, the Yakama Nation fisheries enhancements, and stream flows. Obtaining a senior water right with a priority date (effective date) that predates May 10, 1905 for mitigation, supported by a water-budget-neutral determination by Ecology, protects your groundwater withdrawals from curtailment in times of water shortage. This adds tremendous value to your property and protects you from court orders and potential litigation from more senior water users. Unmitigated groundwater users are at risk of both expensive litigation and curtailment of their water use.

To track each water bank’s performance: http://www.ecy.wa.gov/programs/wr/cro/wb_trac.html

To follow WBN decisions: http://www.ecy.wa.gov/programs/wr/cro/kittitas_wbn.html

Q: What is the status of the groundwater study in the Upper County?

A: The United States Geological Survey (USGS) and Ecology signed an agreement on November 29, 2010 to study groundwater in the aquifers of Upper Kittitas County. The goals of the study are to:

- (1) Define the hydrogeology of the study area.
- (2) Provide information on groundwater occurrence and availability.
- (3) Describe the potential extent of groundwater and surface water continuity.
- (4) Determine the potential for impairment resulting from groundwater withdrawals.

As of July 2013, the study is on schedule to be completed by the end of the year. Some key elements – many of which are completed -- are to:

- Determine streamflow gains and losses at 44 locations. (Published in the 2011 Annual Water Data Report at <http://wdr.water.usgs.gov/wy2011/search.jsp>).
- Measure water-levels and inventory 196 wells, and establish a monthly water-level monitoring network. (Published in "Groundwater levels for selected wells in Upper Kittitas County" <http://pubs.usgs.gov/ds/649/>).
- Sample and analyze 196 wells and 40 stream locations for geochemical signatures to learn more about groundwater pathways and time-of-travel. (Published in “[Chemical and isotopic data collected from groundwater, surface-water, and atmospheric precipitation sites in Upper Kittitas County, Washington, 2010–12](#)” U.S. Geological Survey Data Series 751.)
- Develop methods to estimate permit-exempt well water use.
- Construct cross sections that depict the subsurface geologic units and groundwater aquifers.

Q: What is the legal basis for Ecology's rule halting new groundwater appropriations?

A: The agency has the authority to halt new appropriations of groundwater, including withdrawals under the permit exemption, when it lacks adequate information to support sound water management decisions. The withdrawal of new appropriations may remain in place until sufficient information is available; refer to RCW 90.54.050 (2).

Ecology has halted new groundwater withdrawals that aren't offset, or mitigated, by an existing senior water right because of:

- Increased development of new groundwater uses in Upper Kittitas County.
- Concerns related to total water supply and drought in the Yakima Basin.
- Uncertainty about groundwater aquifers in the upper county.

Q: Why is the rule limited to Upper Kittitas County?

A: Ecology's rule seeks to address a specific and immediate situation where intense land use development is occurring high in the watershed. From 2003-2007, Kittitas County created thousands of lots in subdivisions on former railroad and forest land that historically didn't carry water rights. Development of these lands impacts the headwaters of the Yakima River, sensitive areas with critical habitat for resident and anadromous fish. Flow reductions in many streams may harm fish and fish habitat, and affect downstream senior water right users.

When considering land-use applications, the county is required to perform an environmental review under the State Environmental Policy Act (SEPA) and make sure water is available to support new developments under the state's Land Use Subdivision law and the Growth Management Act (GMA).

As part of that SEPA review, Ecology submitted comments to the county raising concerns about the potential environmental impacts to the watershed from new, unmitigated water uses. Ecology has consistently advised the county that large developments were not eligible to rely on the permit exemption to establish new groundwater uses, pointing to the state's Ground Water Code (RCW 90.44.050) and a 2002 State Supreme Court decision (*Campbell & Gwinn*) that interpreted the permit-exemption for group domestic uses. In the 2011 decision from *Kittitas County v. Eastern Washington Growth Management Hearings Board*, the Supreme Court reaffirmed that counties must follow GMA requirements to protect water quality and water quantity when making land use decisions.

Q: What initially prompted the agency to implement a rule?

A: In 2007, Ecology received a petition seeking the unconditional withdrawal from further use of all unappropriated (that is, not in use through a water right) groundwater in Kittitas County until enough is known about potential effects on senior water rights and stream flows from the development of new groundwater uses. Ecology consulted with the appropriate legislative committees on the petition and proposed its withdrawal.

Ecology proposed a rule in January 2009 that would have allowed for the development of some limited new groundwater uses. Subsequently, an opinion from the Attorney General's office concluded that Ecology lacked the legal authority to allow some limited new groundwater uses. However, the opinion confirmed Ecology's legal authority to withdraw a water source from all new water uses unless the use was mitigated. Given Ecology's concern about the pressure on the system from the development of new water uses, particularly at the headwaters of the basin, Ecology exercised its authority to withdraw Upper Kittitas groundwater from all new withdrawals unless mitigated. An emergency rule was filed in July 2009, and the final rule became effective in January 2011. For information on the rule making process: http://www.ecy.wa.gov/programs/wr/cro/kittitas_wp.html

Q: How does the groundwater permit exemption fit into Ecology's action?

A: Ecology's current rule regulates all new uses of groundwater, permitted and permit-exempt. However, because new development of groundwater in recent years has occurred primarily under the legal authority of the permit exemption, the "on the ground" effect of the withdrawal is to curtail such development unless backed, or mitigated, by senior water rights.

Where a basin can no longer support new water uses, Ecology is authorized to ban the development of new permitted and permit-exempt groundwater uses.

Groundwater permit exemption (RCW 90.44.050): Under state law, groundwater pumping is allowed for certain uses without first obtaining a water permit. These "permit-exempt" uses are limited to a maximum of 5,000 gallons per day for single or group domestic use; 5,000 gallons per day for industrial use; up to ½ acre of non-commercial lawn and garden watering; and for stock watering.

New permit-exempt groundwater uses are still subject to the doctrine of prior appropriation – first in time has first in right. A court or senior right holder may take action to restrict a junior use if water is being taken out of turn. Mitigation and a WBN determination protects your water use from being interrupted.

Q: Isn't groundwater a concern in the entire Yakima Basin?

A: Because groundwater and surface water resources are interconnected, water managers are concerned about both surface water and groundwater supplies for the entire Yakima Basin.

New groundwater-right permits haven't been issued in the basin in nearly 20 years. In the early 1990s, the Yakama Nation challenged the issuance of new groundwater permits to a number of orchardists in the Moxee Valley. The case established the threat groundwater pumping may have on surface water supplies. In the wake of this case, the State, U.S. Bureau of Reclamation and the Yakama Nation agreed to manage water resources conservatively in the Yakima River Basin. In 1999, Ecology imposed an administrative moratorium on issuing groundwater permits for new consumptive uses. The moratorium did not apply to permit-exempt wells.

At the same time, the parties contracted with USGS to conduct an extensive Yakima Basin groundwater study and develop a model demonstrating how groundwater moves from aquifer to aquifer and how it interacts with the Yakima River. The model will continue to provide a mechanism for determining when, where and how much groundwater pumping impacts surface water. This important tool is now available to make scientific water management decisions in the Yakima Basin.

Q: What do the results of the Yakima Basin groundwater study say?

A: The final comprehensive report and computer model were released in 2011 with major conclusions that groundwater and surface water in the Yakima Basin are directly connected. It also concludes that the Yakima Basin water is over-appropriated (that is, more water has been distributed on paper in the form of water rights than actually exists in the river). The report, Numerical simulation of groundwater flow for the Yakima River basin aquifer system, Washington (U.S. Geological Survey Scientific Investigations Report 2011-5155), and multiple supporting documents are available online at:

<http://wa.water.usgs.gov/projects/yakimagw/publications.htm>.

The results of the comprehensive groundwater study confirm a substantial amount of water is lost to the river because of groundwater pumping and use, and in most places there is no more water available for consumptive use. The report estimates, on average, groundwater pumping reduces flows by 200 cubic feet per second (cfs) by the time the Yakima River drains into the Columbia River. The impacts are significant when compared to federally-mandated target stream flows at Sunnyside and Prosser dams, which range from 300 to 600 cfs depending on the amount of runoff the Yakima basin generates each year.

Q: What does the future look like?

A: The sobering numbers have prompted water managers throughout the basin to add groundwater to the mix of issues to be addressed in a greater basin-wide effort. Recent legislation provides the authorization and funding to begin work on the Yakima Basin Integrated Water Resource Management Plan (YBIP) to solve the basin's water problems. Additional storage to supplement existing surface water shortfalls and to account for current and future growth in the basin is a key component of the YBIP. Information on the effort is available online at: http://www.ecy.wa.gov/programs/wr/cwp/cr_yak_storage.html.

Until additional water storage is available, the simplest way to get water for a new use is to connect to an existing water purveyor. If this is not possible, then the best insurance policy is for water users to obtain mitigation under a senior water right to offset the proposed use. This can be achieved by participating in a water banking program or transferring a senior existing water right to a new project, and then securing a WBN determination from Ecology. These steps will provide assurance that your water supplies will remain intact during years of drought when water may be rationed or curtailed to other users, hence adding immeasurable value to your property.

Q: What is the back story on water in the Yakima River basin?

A: To put all this in context, it is important to understand the history of water in the Yakima River Basin and the basic tenet of Western Water Law, where "the first in time has first rights."

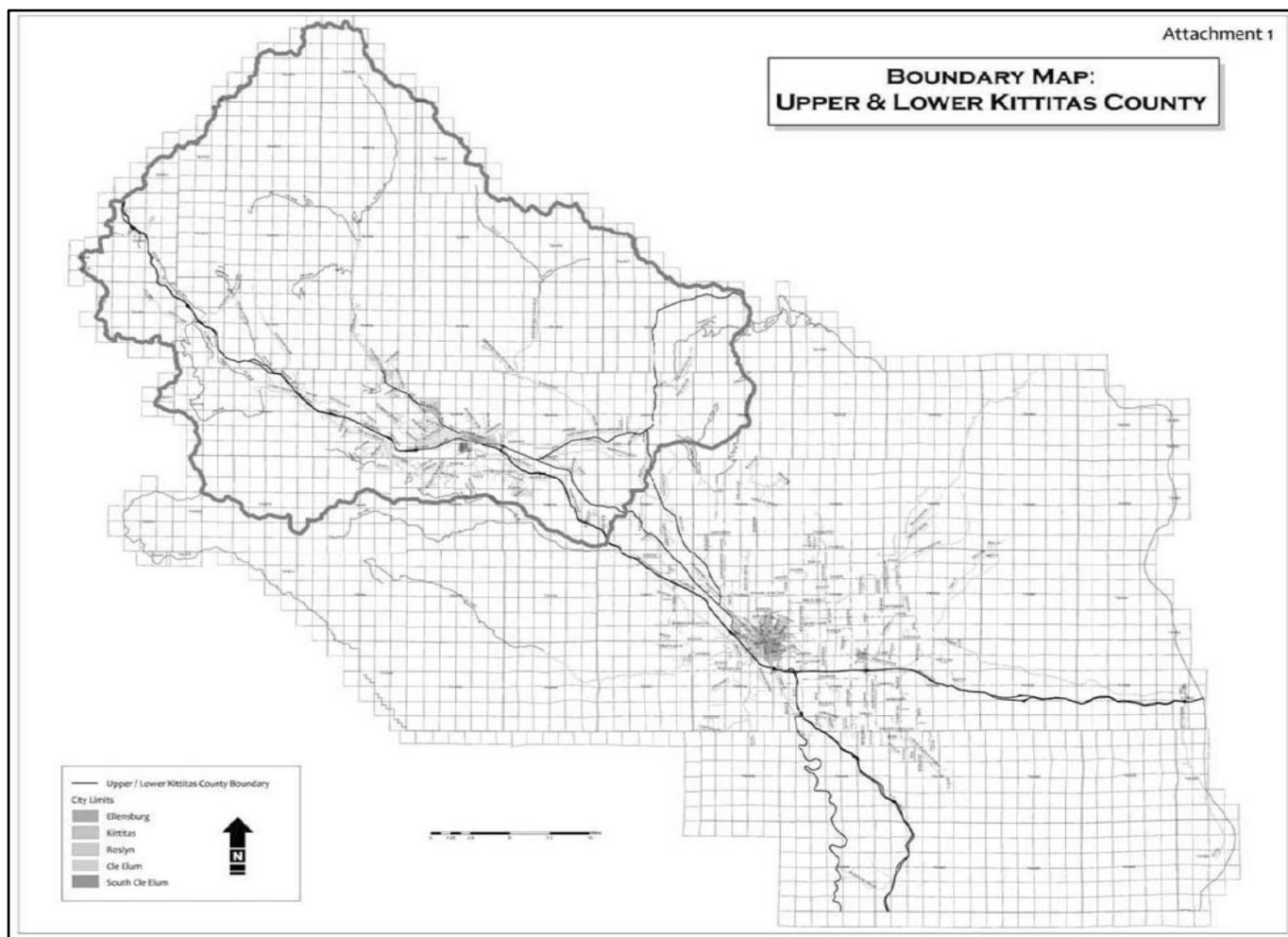
Surface water not fully appropriated by May 10, 1905 was claimed by the U.S. Bureau of Reclamation to support its Yakima Basin agricultural irrigation project, authorized by Congress. The Yakima Basin Project relies on surface water stored in five Reclamation reservoirs and the recharge from snowmelt and groundwater to supply water to its thousands of irrigation customers. This water supply supports the \$1.5 billion agricultural industry encompassing Kittitas, Yakima and Benton counties. The economic benefits of these farms are threatened when water supplies run short.

In addition, the Yakama Nation has time immemorial rights connected to their usual and accustomed hunting and fishing grounds, and rights related to stream flows supporting those fisheries. Stream flows must be maintained at a level to support fish, as ordered by state and federal courts and as mandated by Congressional act.

The Yakima River basin rights have been adjudicated and confirmed in Superior Court under the priority system: those with the oldest water rights, predating 1905, are considered senior water rights. Those dating after 1905 are junior and may be limited or curtailed in low water years or during drought. Junior water users include all exempt-well uses started after May 10, 1905.

Q: What is the area covered by the rule?

A: Refer to the map below. The Upper Kittitas County rule boundaries are outlined with a dark line.



Attachment 5

Master Trust Water Agreement between the Washington State Department of Ecology and New Suncadia, LLC, dated December 30, 2015.



Master Trust Water Agreement

This Agreement is made and entered into this 30th day of December, 2015, by and between the Washington State Department of Ecology (Ecology), and New Suncadia, LLC (Suncadia) (collectively, the "Parties").

RECITALS

A. Ecology administers the Yakima River Basin Trust Water Rights Program, as authorized under Chapter 90.38 RCW and Chapter 90.42 RCW (Trust Water Rights Program).

B. Suncadia is the owner and developer of real property in Kittitas County referred to in this Agreement as the "MPR and Bullfrog UGA properties" and generally depicted on a map attached hereto and incorporated by reference as Exhibit A.

C. Suncadia is the owner of certain water rights in the mainstem of the Yakima River referred to in this Agreement as the "Pautzke Water Rights," as more particularly described in Exhibit B, attached hereto and incorporated by reference.

D. Suncadia retains beneficial interest in certain water rights in the mainstem of the Yakima River referred to in this Agreement as the "Lamb and Anderson Water Rights," as more particularly described in Exhibit C, attached hereto and incorporated by reference.

E. Suncadia is the owner of certain water rights in certain tributaries of the Yakima River referred to in this Agreement as the "Tributary Water Rights," as more particularly described in Exhibit D, attached hereto and incorporated by reference.

F. Suncadia uses the Pautzke Water Rights as the primary water supply for the Suncadia MPR and Bullfrog UGA properties.

G. In Ecology's March 28, 2003, letter modifying the Kittitas County Water Conservancy Board's Records of Decision approving transfer of Suncadia's Pautzke Water Rights (Ecology's 2003 Modification Letter) Ecology incorporated several conditions to ensure that instantaneous diversion or withdrawal rates and annual consumptive amounts were consistent with analyses presented in the Cle Elum Urban Growth Area Environmental Impact Statement (Cle Elum UGA EIS). Annual consumptive amounts were estimated for the prospective water uses associated with the Master Planned Resort, the Cle Elum Urban Growth area, the potential future uses of the lands where Suncadia water rights were formerly appurtenant, and offsite development induced by economic activity expected to result from construction and operation of the resort.

H. Ecology approved the transfer of Suncadia's Tributary Water Rights to instream flows conditioned on offsetting the projected consumptive use for the prospective development of the properties where Suncadia's tributary water rights were formerly appurtenant. The estimates presented in the Cle Elum UGA EIS were included in each Report of Examination for the tributary water rights.

I. After Ecology approved the transfer of the Pautzke Water Rights for Suncadia's MPR and Bullfrog UGA properties, it entered into a water storage contract (Exchange Contract) with the United States Bureau of Reclamation (Reclamation) dated January 29, 2009, that allows Ecology to store trust water rights into Reclamation's Yakima Project in accordance with certain terms and conditions set forth in the Exchange Contract.

J. Suncadia transferred the Lamb and Anderson Water Rights to the Trust Water Rights Program. Ecology administers Suncadia's Lamb and Anderson Water Rights pursuant to a Trust Water Right Agreement between Ecology and Suncadia executed on February 11, 2010, attached hereto as Exhibit E, and incorporated by reference. The Agreement provides that the Lamb and Anderson Water Rights are used to mitigate for conditions included in Ecology's 2003 Modification Letter approving the Pautzke Water Rights changes.

K. Suncadia and Ecology have evaluated the new uses of water from induced offsite development and development of formerly appurtenant properties and concluded it is significantly less than estimated in the Cle Elum UGA EIS. Consequently, this Trust Water Right Agreement reflects the intent of the Parties to account for the amount of water rights needed for the MPR and Bullfrog UGA properties, mitigation obligations for the MPR and Bullfrog UGA properties and the amount remaining for potential third-party use. Furthermore, this Agreement reflects the Parties' intent for Suncadia to primarily rely on its Pautzke Water Rights, Lamb and Anderson Water Rights and a portion of its Big Creek Water Rights for the MPR and Bullfrog UGA properties.

L. Suncadia and Ecology desire to facilitate use of the Tributary Water Rights as mitigation for existing third-party domestic water users and some new domestic water use, to include outdoor irrigation as otherwise allowed, so long as that new use is consistent with the water right change authorizations for the MPR and with the baseline environmental conditions in each tributary as described in the Cle Elum UGA EIS.

M. Suncadia is willing to transfer its Tributary Water Rights to the Trust Water Rights Program, to be used and available for use as provided in this Agreement.

N. Ecology is willing and authorized to hold the water rights in the Trust Water Rights Program for use as provided in this Agreement.

AGREEMENT

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, the Parties hereto hereby agree as follows:

1. Suncadia's Mitigation Responsibilities – Suncadia and Ecology agree that the estimated annual consumptive amount in Ecology's 2003 Modification Letter over-estimated the consumptive quantity needed to offset the induced offsite development identified in the Cle Elum UGA EIS and on the properties the Pautzke Water Rights and Tributary Water Rights were formerly appurtenant to.

1.1 Induced Offsite Development – Suncadia and Ecology agree that the Cle Elum UGA EIS overestimated the consumptive use associated with the offset induced offsite development. The Cle Elum UGA EIS' analysis estimated that each new residence would require approximately 1.0 acre-feet (AF) of consumptive use annually for a total of 476 AF. Since adoption of WAC 173-539A, mitigation certificates sold by several water banks for approximately 725 residences have typically provided a consumptive quantity of 0.137 AF to offset an average annual use of 350 gpd per household, including outdoor irrigation for domestic purposes as otherwise allowed. Relying on the same assumptions and requirements as WAC 173-539A, a total of 41.49 AF of consumptive use is sufficient to offset the consumptive use associated with 302.9 residences.

1.1.1 Ecology and Suncadia agree to continue relying on the Cle Elum UGA EIS's estimate of 302.9 new households in the surrounding area to estimate induced offsite

development caused by the construction of the MPR and Bullfrog UGA properties. Ecology and Suncadia agree that Suncadia's obligation is to mitigate for 41.49 AF of water rights annually.

1.1.2 Suncadia has transferred or pledged to transfer the beneficial interest in approximately 64.08 AF of consumptively used water rights annually to mitigate for induced offsite development from its Lamb and Anderson Water Rights through operation of Suncadia's Water Bank. Ecology agrees to accept such transfers as full satisfaction of Suncadia's induced offsite development mitigation responsibilities described above.

1.2 *Fallowed Land Mitigation for the Pautzke Water Rights*— As of March 28, 2003, the legal authority for the City of Ellensburg to irrigate 81 acres projected to consume 216 acre-ft was not settled. To ensure such use would not be adverse to the Yakima River's Total Water Supply Available (TWSA), Ecology's 2003 Modification Letter provided that until the tributary water rights were transferred to the Trust Water Right Program, 216 acre-feet associated with the prospective Pautzke property would be held back from full use at the MPR and Bullfrog UGA properties. Upon execution of this Agreement, Ecology recognizes that the City of Ellensburg's water right under Court Claim 02085, draft Certificate Number S4-83580-J in *Ecology v. Acquavella*, Yakima County Superior Court Cause No. 77-2-01484-5 is adequate to serve the projected water use at the Pautzke property and not reduce TWSA. Suncadia and Ecology agree that Suncadia will no longer be required to hold back 216 AF to offset the consumptive use associated with development served by the City of Ellensburg at the property the Pautzke water rights were formerly appurtenant.

1.3 *Fallowed Land Mitigation for Suncadia's Tributary Water Rights* – Suncadia and Ecology examined the actual development on each of the formerly appurtenant properties and concluded it was significantly less than anticipated. The actual development of the formerly appurtenant property as of the date of this Agreement is attached hereto as Exhibit F.

1.3.1 Ecology will deem Suncadia's mitigation responsibility to offset development on the land formerly appurtenant to Suncadia's Tributary Water Rights satisfied with the transfer of Suncadia's Tributary Water Rights to the State Trust Water Right Program and the assignment of a total of 25.24 AF of Suncadia's Tributary Water Rights to be held in the State Trust Water Right Program for such property as follows:

1.3.1.1 Big Creek: 3.34 AF annually;

1.3.1.2 Teanaway River: 8.16 AF annually;

1.3.1.3 Swauk Creek: 12.49 AF annually; and

1.3.1.4 First Creek: 1.25 AF annually.

2. Suncadia MPR and Bullfrog UGA Properties Water Rights

2.1 Suncadia will use its Pautzke Water Rights on the MPR and Bullfrog UGA Properties, as provided in Ecology's 2003 Modification Letter and the associated changed Court Claims described in the Pre-Trial Order #17 Notices filed with Yakima County Superior Court.

2.2 Suncadia will use the unobligated portions of the Lamb and Anderson Water Rights as mitigation to offset additional consumptive use on the MPR and Bullfrog UGA Properties, as provided in Provision Number 5 of Ecology's 2003 Modification Letter.

2.2.1 Suncadia and Ecology agree that this agreement will replace the current Trust Water Right Agreement for the Lamb and Anderson Water Rights, dated February 11, 2010.

2.2.2 Ecology will accept unobligated portions of Suncadia's Lamb and Anderson Water Rights as mitigation to offset additional consumptive use on the MPR and Bullfrog UGA Properties. Ecology agrees to amend the Lamb and Anderson Water Rights Trust Water Right Agreement to be consistent with this Agreement, a draft amendment attached hereto as Exhibit G.

2.2.3 Suncadia will submit to Ecology change of use applications for its Pautzke Water Rights to reflect the over-estimated the consumptive quantity needed to offset the induced offsite development identified in the Cle Elum UGA EIS and on the properties the Pautzke Water Rights and Tributary Water Rights were formerly appurtenant to. Ecology will complete its accounting of the mitigation uses associated with the 2003 Modification Letter consistent with this Agreement and will issue superseding water right permits for the Pautzke Water Rights to reflect current consumptive use estimates associated with induced offsite development, as provided in this Agreement. Suncadia will work with one of the Cost Reimbursement Consultants under Ecology's Master contract to provide a draft Report of Examination for Ecology's review.

2.3 Ecology will timely process new mitigated water right permit applications for the MPR and UGA properties relying on the unobligated Lamb and Anderson Water Rights held in the Trust Water Right Program (estimated to be 351.51 acre-feet (AF)) and a portion of Suncadia's Big Creek Water Rights (estimated to be 59.49 AF) (referred to herein as the "New Mitigated Water Right Permit"), draft applications for the New Mitigated Water Right Permit are attached hereto as Exhibit H.

2.4 Except as provided herein, Suncadia's annual Monitoring and Management Plan will be reduced to reporting compliance with the Court's Order Requiring Metering, Measuring and Reporting in *Ecology v. Acquavella*, RCW 90.03.360 and Chapter 173-173 WAC.

3. Suncadia Tributary Water Rights

3.1 Suncadia and Ecology intend to execute additional trust water agreements under which Suncadia will transfer its Tributary Water Rights into the Trust Water Program. Suncadia and Ecology intend to enter into a trust water right agreement for the Big Creek Water Rights relied upon as mitigation for the New Mitigated Water Right Permit, a draft attached hereto as Exhibit I. Suncadia and Ecology intend to enter into a trust water right agreement for the Teanaway River, Swauk Creek and First Creek water rights, a draft attached hereto as Exhibit J. Suncadia and Ecology desire to facilitate use of the tributary water rights as mitigation for existing third-party water users and some new water use so long as that new use is consistent with the water right change authorizations for the MPR and with the baseline environmental conditions in each tributary as described in the Cle Elum UGA EIS. The Parties will continue to work in good faith to specify the suitability of each of the water rights prior to finalizing the trust water right agreement.

3.2 Suncadia and Ecology agree that the use of the Tributary Water Rights will require the installation and maintenance of gaging stations to measure instream flows during low flow periods. Suncadia will fund the installation, maintenance, operation and measurement costs for gaging stations needed on the tributary stream(s) used to mitigate for the New Mitigated Water Right Permit. Suncadia and Ecology agree that the use of the Tributary Water Rights will require the installation and maintenance of gaging stations or otherwise measuring flows during the low flow period. Suncadia may assign the obligation of installing and maintaining gaging stations or measuring instream flows to third parties to the extent the beneficial interest of its Tributary Water Rights are assigned.

4. Bureau of Reclamation Exchange Contract

4.1 Ecology may assign Suncadia's portions of the Trust Water Rights to the USBR-Ecology Exchange Contract to address flow-related impacts caused by Suncadia's use of the Pautzke, Lamb and Anderson Water Rights as provided in this Agreement. Suncadia will pay Ecology the fees charged under the Exchange Contract.

4.2 Ecology will deduct from the amount of water transferred by Suncadia into the trust water program the amount of water necessary to address fish enhancement requirements as outlined in the Bureau of Reclamation Exchange Contract.

5. Implementation

5.1 Suncadia will file any applications necessary to implement this Agreement.

5.2 Suncadia may continue to sell mitigation credits from the Lamb and Anderson Water Rights until full implementation of this Agreement pursuant to the terms of Trust Water Right Agreement for the Lamb and Anderson Water Rights.

6. Ecology's Management of Trust Water Rights

6.1 Ecology agrees to hold Suncadia's Lamb and Anderson Water Rights in trust for Suncadia, consistent with the terms of the Trust Water Right Agreement signed between the Parties on February 11, 2010, as amended.

6.2 Ecology agrees to hold Suncadia's Tributary Water Rights in trust for Suncadia, or any third parties for which the Water Rights are assigned, consistent with the Trust Water Right Agreements signed by the Parties.

7. General Provisions

7.1 This Agreement may be assigned by Suncadia upon giving 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 and other successors in interest.

7.2 In the event of a conflict between this Agreement between Ecology and Suncadia and any other existing agreements between Ecology and Suncadia, and except as explicitly provided herein, this Agreement shall control. The Trust Water Right Agreement between the Parties signed on March 13, 2013, as amended, for Suncadia's First Creek and Big Creek water rights currently used for water banking purposes remains in effect to the extent the Agreement is consistent with this Agreement.

7.3 Except as provided in this Section, if any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect. If a provision hereof is determined to be void or unenforceable by a court of competent jurisdiction and such provision was an essential part of the consideration given to support this Agreement, then this Agreement shall either be reformed by such court to ensure fulfillment of the Parties' purposes herein or be rescinded in its entirety and equity done.

7.4 In no event shall the termination of this Agreement alter or affect any water previously allocated for mitigation through permits granted to new applications.

7.5 The Parties agree to defend the terms of this Agreement, including any measures taken for its implementation.

7.6 Any notice or communication required by this Agreement between the Parties shall be given to the addresses set forth below:

To Ecology: Water Resources Section Manager
Washington Department of Ecology
Central Regional Office
1250 West Alder Street
Union Gap, WA 98903-0009

To New Suncadia, LLC: New Suncadia, LLC
770 Suncadia Trail
Cle Elum, WA 98922


7.7 Amendments to this Agreement must be in writing and signed by an authorized representative of each party.

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

7.9 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 effective as of the date first above written.

WASHINGTON DEPARTMENT OF ECOLOGY

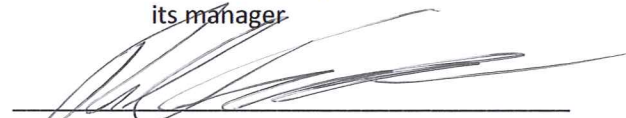


Thomas Perkow,
Acting Section Manager
Water Resources Program, Central Regional Office
Date: 12/31/15

NEW SUNCADIA, LLC

By: Suncadia Operating Member, LLC,
a Delaware limited liability company,
its managing member

By: LDD Suncadia Manager, Inc.,
a Delaware corporation,
its manager



Paul Eisenberg, Senior Vice President
Date: 12-30-2015



Gary Kittleson, Vice President
Date: 12/30/15

EXHIBIT A – MPR and Bullfrog UGA Properties

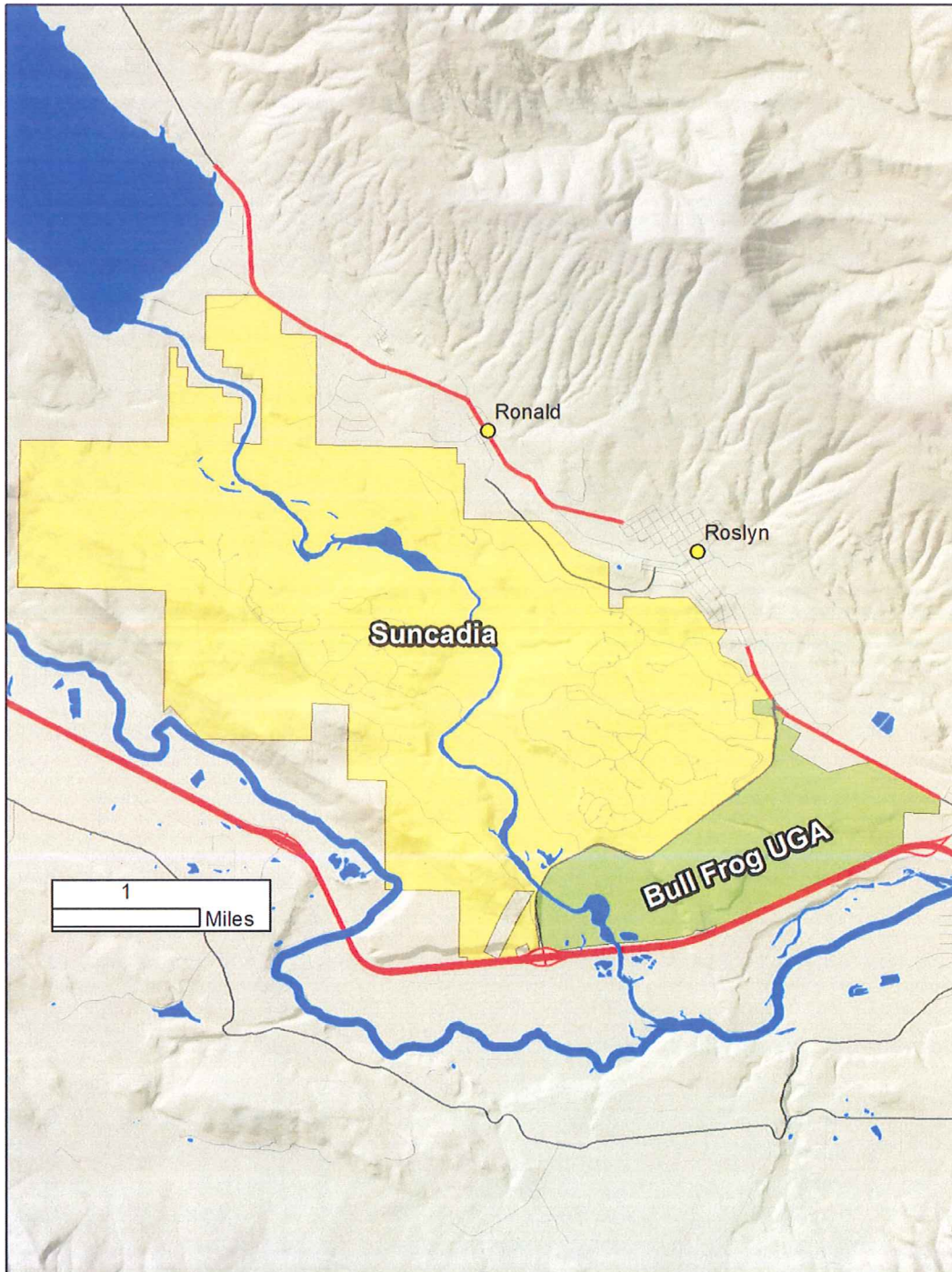


EXHIBIT B – Pautzke Water Rights

Water Rights for MPR

<i>Use Authorization</i>	<i>Qa (acre-feet)</i>	<i>Qa (CU) (acre-feet)</i>
CS4-YRB07CC01724@1/@4	1005.98	392.29
CS4-YRB07CC01724@2/@5	536.3	165.93
CS4-YRB07CC001724@3/@6	929.62	194.49
	2,471.9	750.71

Water Rights for Bullfrog UGA Property

<i>Use Authorization</i>	<i>Qa (acre-feet)</i>	<i>Qa (CU) (acre-feet)</i>
CS4-01724(A)CTCL	283.92	67.51
CS4-01724(B)CTCL ¹	88.94	23.83
CS4-01724(C)CTCL ²	87.98	27.65
	460.84	118.99

¹ CS4-01724(B) was originally authorized for 0.58 cfs, 33.13 AF/CU, 123.64 AF. CS4-01724(B)CTCL@2 resulted in the transfer of 0.09 cfs, 9.3 AF/CU, 34.7 AF to the City of Roslyn, leaving the balance available for Suncadia's use.

² CS4-01724(C)CTCL was originally authorized for 0.50 cfs, 28.56 AF/CU, 90.25 AF during the irrigation season, 0.13 cfs, 2.29 AF outside the irrigation season. Suncadia conveyed 0.029 cfs, 0.91 AF/CU, 4.56 AF of this right to the City of Cle Elum in 2008. The conveyance was a year round conveyance, so it is reflected in total from the Qi in both seasons. For this table, the Qa was distributed evenly over the year, resulting in a 2.47 AF deduction during the irrigation season, and a 2.09 AF deduction outside of the irrigation season.

EXHIBIT C – Mainstem Water Rights

<i>Use Authorization</i>	<i>Qa (acre-feet)</i>	<i>Qa (CU) (acre-feet)</i>
Court Claim 05259: CS4-05259CTCL@2sb7	195	0.627 ³
Court Claim 00626: CS4-00626CTCL@2sb7	392	122.7 ³
Court Claim 00908: CS4-00908CTCL@3sb7	868	228.18
	1,455	351.51

Suncadia Environmental Company, LLC, owns use authorization G4-35630(A) and (B) which relies on CS4-05259CTCL@2sb7 (including the right to use up to an additional 1.918 acre-feet of that right).

³ CS4-05259CTCL@2sb7 was originally authorized for 64.57 AF of consumptive use. 63.943 AF of that water right was sold to third-parties through the water banking process. CS4-00626CTCL@2sb7 has 2.87 AF pledged.

EXHIBIT D – Tributary Water Rights

Tributary Water Rights

	<i>Ecology Tracking No.</i>	<i>Court Claim No.</i>	<i>Priority Date</i>	<i>Qa (AF/yr)</i>	<i>Qa (AF/yr) (CU)</i>
Big Creek	CS4-00755(A)CTCL	755	June 30, 1887	124.42	42.41
	CS4-YRB02CC00755@2	755	June 30, 1887	248.85	84.81
				373.27	127.22
Teanaway River	CS4-02255(A)CTCL	2255	June 30, 1883	113.73	40.60
	CS4-YRB03CC02255	2255	June 30, 1883	227.47	81.19
	CS4-02255(B)CTCL	2255	June 30, 1883	126.33	45.09
	CS4-YRB03CC02255@1	2255	June 30, 1883	252.67	90.18
	CS4-02255(C)CTCL	2255	June 30, 1883	7.20	2.57
	CS4-YRB03CC02255@2	2255	June 30, 1883	14.40	5.14
	CS4-02255(D)CTCL	2255	June 30, 1890	61.20	21.90
	CS4-YRB03CC02255@3	2255	June 30, 1890	122.40	43.81
	CS4-02255(E)CTCL	2255	June 30, 1898	23.04	8.26
	CS4-YRB03CC02255@4	2255	June 30, 1898	46.08	16.49
	CS4-02255(F)CTCL	2255	June 30, 1898	7.20	2.58
	CS4-YRB03CC02255@5	2255	June 30, 1898	14.40	5.14
				1016.12	362.95
First Creek	CS4-00648(A)CTCL	648	November 2, 1877	241.97	69.43
	CS4-YRB04CC00648	648	November 2, 1877	517.83	148.58
	CS4-00648(B)CTCL	648	June 1, 1881	273.43	78.43
	CS4-YRB04CC00648@1	648	June 1, 1881	531.77	152.54
				1,565.00	448.98
Swauk Creek	CS4-01685(C)CTCL	1685	June 30, 1878	50.00	15.94
	CS4-YRB04CC01685@1	1685	June 30, 1878	100.00	31.88
	CS4-01685(D)CTCL	1685	September 20, 1889	187.50	59.78
	CS4-YRB04CC01685	1685	September 20, 1889	375.00	119.54
				712.50	227.14

EXHIBIT E – Trust Water Right Agreement (Lamb and Anderson Water Rights)

Trust Water Right Agreement

This Trust Water Right Agreement is made and entered into as of the 11th day of February, 2010, by and between the Washington State Department of Ecology, State Trust Water Right Program ("Ecology") and Suncadia, LLC. ("**Suncadia**").

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

Whereas, **Suncadia** is the owner of certain water rights in the mainstem of the Yakima River as more particularly described and quantified in Exhibit A (the "Water") and presently appurtenant to the land legally described in Exhibit B (the "Land"), each such exhibit being attached hereto and incorporated herein; and

Whereas, **Suncadia** submitted Trust Water Right Applications to Ecology, WRTS File Nos. CS4-05259CTCL@2sb7, CS4-00626CTCL@2sb7, and CS4-00908CTCL@3sb7 (the "Applications"), to place the Water into the Trust for the purpose of enhancing in-stream flows and providing mitigation water to offset and allow for new water uses within the Yakima River basin in Kittitas County; and

Whereas, Ecology has accepted the Applications, has completed its examination of the extent and validity of the Water and is prepared to issue its Trust Water Right Report of Examination concerning the extent and validity of the Water (the "ROE") and its trust water certificate (the "Certificate"). The ROE and Certificate document that determination, including quantification of the consumptive quantity associated with the right, and are attached hereto as Exhibit C and incorporated by reference; and

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

1.1 This Agreement and the Lamb and Anderson rights described in Exhibit C constitute equivalent mitigation relative to Suncadia's mitigation obligations under the transfer of the Pautzke water rights so long as the Agreement remains in effect and to the extent it is implemented. Ecology and Suncadia

will reflect that equivalence within the Monitoring and Management Plan by making a one acre-foot upward adjustment to the MPR water supply for each acre-foot of water designated by Suncadia and approved by Ecology through permits or water budget neutral determinations to mitigate for off-site induced development under this agreement. The substitution process will be described in the ROEs for the Lamb and Anderson water rights.

2. This Agreement shall be effective upon its mutual execution, and the Trust shall commence upon the close of an escrow established by the parties 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 upon the mutual execution of this Agreement and its deposit with the Escrow Agent.

2.1 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; **Suncadia's** deposit of an executed quit claim deed in recordable form of the Water to the Trust substantially in the form of Exhibit D 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 the ROE and the Certificate, each in form and content acceptable to **Suncadia**; and the expiration of all notice, comment and appeal periods related to the full implementation of this Agreement, the ROE, and the Certificate. The parties shall execute appropriate escrow instructions to the Escrow Agent, and all escrow costs shall be shared equally by the parties.

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

3. Once this agreement is executed, **Suncadia** and Ecology may begin the process of designating parties to receive mitigation credit based upon the Water held in the Yakima Pilot Water Bank. Development activities that are eligible for mitigation under this Agreement may include commercial, single-family or multi-family residential development and incidental irrigation occurring within Kittitas County and within the area described in **Suncadia's** technical report on induced offsite development, prepared in connection with permitting for the Pautzke water right transfers¹, provided such activities occurred or were proposed on or after the date of vesting of the Suncadia Master Planned Resort project. **Suncadia** may designate a temporary beneficial use for the portion of the water in trust that is not yet assigned as mitigation credit for development activities as provided in this agreement. The process for **Suncadia** to identify recipients of mitigation credit and for Ecology to issue mitigated permits or water budget neutral determinations is as follows:

¹ March 28, 2003 Amended Modification to Kittitas County Conservancy Board Record of Decision.

3.1 **Suncadia** may propose or **Suncadia** may enter into a contract with a third party to provide a portion of the Water in Trust as mitigation on such terms consistent with this Agreement as **Suncadia** may elect. **Suncadia** or such third party shall make application to Ecology (or, if appropriate, to a water conservancy board) for a water budget neutral determination or for a permit 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" or "New Applications"). As part of the New Application or water budget neutral determination request, such third party shall include documentation, as necessary to conform to WAC 173-539A-050 and in a form prescribed by **Suncadia**, of a designation by **Suncadia** of the specific quantity of the Water in Trust as required to offset the consumptive loss associated with the uses described on the application or request.

3.2 Upon receipt of a complete New Application, Ecology, pursuant to WAC 173-539A-080, shall accept and timely process it under RCW 90.03.260-.340 and Chapter 90.44 RCW utilizing such portion of the Water in Trust as reasonably needed under the quantity allocation set out in Exhibit D 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 complete a Water Transfer Working Group ("WTWG") project description and will present it to the WTWG. Ecology, in consultation with the U.S. Bureau of Reclamation, will determine if some or all of the Water **Suncadia** designates would be assigned to the Reclamation-Ecology storage and delivery 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 or determination, as appropriate, recommending issuance or denial of a permit or determination, based on applicable policy, rules, and law. Ecology's review of New Applications and water budget neutral requests shall also include the following consideration:

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

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

Ecology costs to administer the Reclamation-Ecology Exchange Contract will also be included in the permit or water budget neutral determination.

4. In the event Ecology prepares to issue an ROE for a New Application, it will publish the draft ROE on its internet site. If the form and substance is acceptable to **Suncadia** and to the third party applicant, if any, **Suncadia** 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 **Suncadia** and the third party applicant, if any, or the deposit of any other documents required for closing. 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; **Suncadia'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 **Suncadia** 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 **Suncadia** and any third party. All escrow costs shall be shared equally between **Suncadia** and the third party. **Suncadia**, and any third party having the right to do so under an agreement with **Suncadia**, 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.

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

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

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

5.3 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;

5.4 Shall not assess or charge **Suncadia** 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; and

5.5 May, if it concludes following consultation required under section 3.5, assign some or all of a designated portion of the trust water right to the Reclamation-Ecology exchange contract.

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

6.1 **Suncadia** makes the following undertakings, representations and warranties to Ecology:

6.1.1 **Suncadia** is a Delaware 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.

6.1.2 Each individual executing this Agreement on behalf of **Suncadia** is duly authorized to execute and deliver this Agreement.

6.1.3 Upon its full execution, this Agreement is binding upon **Suncadia** in accordance with its terms.

6.1.4 **Suncadia** shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement.

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

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

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

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

6.2.4 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.

7. 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 be incapable or prevented from performing any material obligations or actions, the non-defaulting party in the event of a default or either party in any other event shall have the right to the following:

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

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

7.2.1 **Suncadia** shall identify all in-process designation agreements and inform Ecology of their status. **Suncadia** shall not make representations

regarding in-process designations and shall each instance work with Ecology to determine in whether an assignment should be completed. If Ecology agrees, the permit process will be completed promptly in accordance with applicable policies, rules, and law.

7.2.2 Ecology shall promptly convey to **Suncadia** 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 **Suncadia**.

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

7.3 Pursue any other remedy now or hereafter available.

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

8. This Agreement may be assigned by **Suncadia** 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.

9. Any notice or communication required by this Agreement between **Suncadia** 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 Suncadia, LLC: Suncadia, LLC
Attn.: Paul Eisenberg
Senior Vice President
109 S. First Street
P.O. Box 887
Roslyn, Washington 98941
Telephone: (509) 649-3000
Facsimile: (509) 649-3059

With copies to: Mentor Law Group, PLLC
Attn.: Joe Mentor, Jr.
315 Fifth Avenue S., Suite 1000

Seattle Washington 98104
Telephone: (206) 838-7650
Facsimile: (206) 838-7655

10. No provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be unenforceable for any reason outside the control of the parties and subject to the provisions of Paragraph 9.2, the party finding itself unable to enforce the provision may, at its sole discretion, declare this entire Agreement to be null and void.

11. If 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.

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

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

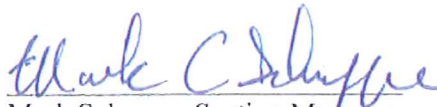
14. This Agreement will be governed and enforced under the laws of the State of Washington. Venue for any action arising under or related to this Agreement shall be in Kittitas County, Washington.

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

WASHINGTON DEPARTMENT OF
ECOLOGY

SUNCADIA LLC, a Delaware limited
liability company, by Easton Ridge
Investors, LLC, a Delaware limited liability
company, Its Managing Member

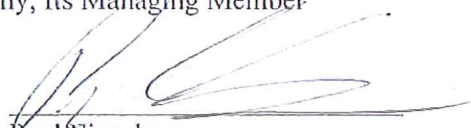
By:



Mark Schuppe, Section Manager
Water Resources Program/CRO

Date: 2/11/10

By:



Paul Eisenberg
Senior Vice President

Date: 2/11/2010

By:



Gary A. Kittleson
Vice President

Date: 2/11/10

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

Address: 4244 Bullfrog Road, Suite 1
Cle Elum, WA 98922

EXHIBIT A
(Water Rights)

Claimant Name:	Ronald T. Anderson & Robin L. Anderson (Anderson)
WATER RIGHT DESCRIPTION	
Water Right Number:	Court Claim 05259
Source:	Yakima River
Current Use:	Irrigation of 20 acres and Stock Watering
Period of Use:	April 1 through October 31
Place of Use:	That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 11 lying northeasterly of Klein-Cobble Ditch right-of- way and westerly of a slough that borders the property, in Section 11, Township 17 N., Range 18 E.W.M.
Point of Diversion:	1500 feet south and 700 feet east from the northwest corner of Section 3, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 3, Township 17 N., Range 18 E.W.M. (Klein Cobble Ditch)
Priority Date:	October 30, 1884
Annual Quantity:	195 acre-feet per year
Instantaneous Quantity:	0.50 cubic feet per second

Claimant Name: Ronald T. Anderson & Robin L. Anderson
(Anderson)

WATER RIGHT DESCRIPTION

Water Right Number: Court Claim 00626

Source: Yakima River

Current Use: Irrigation of 40 acres

Period of Use: April 1 through October 15

Place of Use: NW¼SW¼ of Section 34, Township 18 N.,
Range 18 E.W.M.

Point of Diversion: 300 feet north and 1200 feet east from the center
of Section 29, being within the SE¼SW¼NE¼
of Section 29, Township 18 N., Range 18
E.W.M. (Mill Ditch)

Priority Date: May 20, 1885

Annual Quantity: 392 acre-feet per year

Instantaneous Quantity: 1.0 cubic feet per second

Claimant Name:	Roberta D. Lamb & Estate of Harold F. Lamb Randy H. Lamb et al, Frank C. Lamb Claudia J. Lamb Lofstrom Triple L, LLC (Lamb)
WATER RIGHT DESCRIPTION	
Water Right Number:	Court Claim 00908
Source:	Yakima River
Current Use:	Irrigation of 70 acres
Period of Use:	April 1 through October 15
Place of Use:	E½E½NW¼ east of Desmond Road and the W½NE¼ of Section 33, Township 18 N., Range 18 E.W.M.
Point of Diversion:	300 feet north & 200 feet east of the center of Section 29, being within the SE¼SW¼NE¼ of Section 29, Township 18 N, Range 18 E.W.M. (Mill Ditch)
Priority Date:	May 20, 1885
Annual Quantity	868.0 acre-feet
Instantaneous Quantity	3.29 cubic feet per second

EXHIBIT B
(Legal Description of Appurtenant Properties)

Legal description of property appurtenant to Water Rights under Court Claim No. 05259:

PARCEL 1:

That portion of the Northwest Quarter of Section 11, Township 17 North, Range 18 East, W.M., in the County of Kittitas, State of Washington, described as follows:

A tract of land bounded by a line beginning at the Northwest corner of Section 11; thence South 01°11'21" East along the Westerly boundary line of the Northwest Quarter of said section a distance of 460.49 feet to the true point of beginning; thence South 81°39'21" East a distance of 625.82 feet to the center of a slough; thence South 06°13'31" West along the centerline of said slough a distance of 263.12 feet; thence South 05°25'45" East continuing along the centerline of said slough a distance of 79.58 feet to the Northwest corner of Short Plat Number S-78-12, as recorded in Volume A of Short Plat, page 36, under Auditor's File No. 426794, records of Kittitas County; thence South 08°37'01" East along the centerline of said slough and the Westerly boundary line of the said Short Plat a distance of 318.35 feet to the Southwest corner of said Short Plat; thence South 31°14'41" East continuing along the centerline of said slough a distance of 78.05 feet to the Northerly right of way boundary line of the county road known as Darnman Road; thence North 88°18'22" West along the Northerly right of way boundary line of said county road a distance of 206.50 feet; thence continuing Westerly along the Northerly right of way boundary line of said county road on a 1,939.86 foot radius curve concave to the South an arc distance of 293.54 feet to the Easterly boundary line of an irrigation canal, said chord being South 87°21'30" West a distance of 293.30 feet; thence North 31°56'44" West along the Easterly boundary line of said canal a distance of 218.49 feet; thence North 07°25'31" West, along the Easterly right of way boundary line of said canal a distance of 58.93 feet; thence North 74°30'08" West along the Easterly right of way boundary line of said canal a distance of 119.77 feet to the Westerly boundary line of the Northwest Quarter of said section; thence North 01°11'21" West along the Westerly boundary line of the Northwest quarter of said section a distance of 428.10 feet to the true point of beginning.

PARCEL 2:

That portion of the Northwest Quarter of Section 11, Township 17 North, Range 18 East, W.M., in the County of Kittitas, State of Washington, which is bounded by a line described as follows:

Beginning at the Northwest corner of said Section 11, at which point is the true point of beginning; thence South 89°29'28" East, along the North boundary of said section 693.00 feet; thence South 0°11'28" East, 148.50 feet; thence South 89°29'27" East, 111.60 feet; thence North 88°44'43" East, 51.30 feet; thence South 0°27'28" East, 180.83 feet; thence South 89°29'28" East, 89.40 feet; thence South 0°15'37" East, 220.02 feet; thence North 89°29'28" West, 319.00 feet; thence North 81°30'07" West, 628.65 feet; thence North 1°02'07" East, 460.62 feet to the true point of beginning.

EXCEPT any portion thereof lying easterly of the following described line:

Beginning at a point on the southerly boundary of said parcel which is located at the center of that certain slough described in Parcel 1 heretoforesaid, running thence northerly along the center of said slough to the northerly boundary of said parcel and the end of said described line.

Legal description of property appurtenant to Water Rights under Court Claim No. 00626:

That portion of Lot 1, as described and/or delineated on Dolarway Short Plat No. 2, City of Ellensburg Short Plat No. P-90-03, as recorded in Book C of Short Plats, page 77, under Kittitas County Auditor's File No. 535442, which lies within the Northwest Quarter of the Southwest Quarter of Section 34, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington.

Legal description of property appurtenant to Water Rights under Court Claim No. 00908:

Lots 1, 2, 3 and 4 of WEST PARK SHORT PLAT, as described and/or delineated on City of Ellensburg Short Plat No. SP-00-06, as recorded October 31, 2001, in Book F of Short Plats, pages 185 and 186, under Auditor's File No. 200110310024, records of Kittitas County, State of Washington; being a portion of the North Half of Section 33, Township 18 North, Range 18 E.W.M. in the County of Kittitas, State of Washington.

Lots 2, 3 and 4 of TRIPLE L SHORT PLAT, as described and/or delineated on City of Ellensburg Short Plat No. SP-02-01, as recorded February 13, 2002, in Book F of Short Plats, pages 223 and 224, under Auditor's File No. 200202130027, records of Kittitas County, State of Washington; being a portion of the North Half of Section 33, Township 18 North, Range 18 E.W.M. in the County of Kittitas, State of Washington.

EXHIBIT C

(Reports of Examination and trust water right certificates to be attached)

EXHIBIT D
(example of Quit Claim Deed)

Upon Recording Return to:
Mentor Law Group, PLLC
315 Fifth Avenue, Ste 1000
Seattle, Washington 98104

DOCUMENT TITLE:	WATER RIGHT QUIT CLAIM DEED
GRANTOR:	SUNCADIA, LLC
GRANTEES:	WASHINGTON DEPARTMENT OF ECOLOGY
PARTIAL LEGAL DESCRIPTION:	Water Rights appurtenant to land located in Northwest quarter section 11, Township 17 North, Range 18 East W.M.
ASSESSOR'S TAX PARCEL NOS.:	17-18-11020-0024 & 17-18-11020-0025

QUIT CLAIM DEED
(as to Water Rights)

THE GRANTOR, SUNCADIA, L.L.C., a Delaware corporation, for and in consideration of mutual promises in hand paid, conveys and quit claims to WASHINGTON DEPARTMENT OF ECOLOGY, Grantee, all rights, title and interest the Grantor may have in the following described water rights arising under or related to Claim No. 05259 as confirmed in the Conditional Final Order Subbasin No. 7 (Reecer Creek) on October 25, 2001, in State of Washington v. Acquavella, et al, Yakima County Superior Court Cause No. 77-2-01484-5, more fully described in Exhibit A attached hereto and incorporated herein by reference, which water rights are appurtenant to the real property situated in the County of Kittitas, State of Washington, legally described on Exhibit B attached hereto and incorporated herein by reference.

Dated this ____ day of _____, 2010,

SUNCADIA LLC, a Delaware limited liability company, by Easton Ridge Investors, LLC, a Delaware limited liability company, Its Managing Member

By: _____
Paul Eisenberg
Senior Vice President
Date: _____

By: _____
Gary A. Kittleson
Vice President
Date: _____

Address: 4244 Bullfrog Road, Suite 1
Cle Elum, WA 98922

STATE OF WASHINGTON)

COUNTY OF KITTITAS)

)ss.

I certify that I know or have satisfactory evidence that Paul Eisenberg is the person who appeared before me, and that person acknowledged signing this instrument, on oath stated their authority to execute the instrument as the authorized agent of Suncadia, LLC and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED and SWORN to before me this ____ day of _____, 2010.

Name:

NOTARY PUBLIC in and for the State of
Washington, residing at _____.

My Commission expires: _____

STATE OF WASHINGTON)

COUNTY OF KITTITAS)

)ss.

I certify that I know or have satisfactory evidence that Gary Kittleson is the person who appeared before me, and that person acknowledged signing this instrument, on oath stated their authority to execute the instrument as the authorized agent of Suncadia, LLC and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED and SWORN to before me this ____ day of _____, 2010.

Name:

NOTARY PUBLIC in and for the State of
Washington, residing at _____.

My Commission expires: _____

EXHIBIT A

(Water Rights)

Claimant Name:	Ronald T. Anderson & Robin L. Anderson (Anderson)
WATER RIGHT DESCRIPTION	
Water Right Number:	Court Claim 05259
Source:	Yakima River
Current Use:	Irrigation of 20 acres and Stock Watering
Period of Use:	April 1 through October 31
Place of Use:	That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 11 lying northeasterly of Klein-Cobble Ditch right-of- way and westerly of a slough that borders the property, in Section 11, Township 17 N., Range 18 E.W.M.
Point of Diversion:	1500 feet south and 700 feet east from the northwest corner of Section 3, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 3, Township 17 N., Range 18 E.W.M. (Klein Cobble Ditch)
Priority Date:	October 30, 1884
Annual Quantity:	195 acre-feet per year
Instantaneous Quantity:	0.50 cubic feet per second

EXHIBIT B

(Legal Description of Appurtenant Property)

PARCEL 1:

That portion of the Northwest Quarter of Section 11, Township 17 North, Range 18 East, W.M., in the County of Kittitas, State of Washington, described as follows:

A tract of land bounded by a line beginning at the Northwest corner of Section 11; thence South 01°11'21" East along the Westerly boundary line of the Northwest Quarter of said section a distance of 460.49 feet to the true point of beginning; thence South 81°39'21" East a distance of 625.82 feet to the center of a slough; thence South 06°13'51" West along the centerline of said slough a distance of 263.12 feet; thence South 05°25'45" East continuing along the centerline of said slough a distance of 79.58 feet to the Northwest corner of Short Plat Number S-78-12, as recorded in Volume A of Shon Plat, page 36, under Auditor's File No. 426794, records of Kittitas County; thence South 08°37'01" East along the centerline of said slough and the Westerly boundary line of the said Short Plat a distance of 318.38 feet to the Southwest corner of said Short Plat; thence South 31°14'41" East continuing along the centerline of said slough a distance of 78.05 feet to the Northerly right of way boundary line of the county road known as Dammann Road; thence North 88°18'22" West along the Northerly right of way boundary line of said county road a distance of 206.50 feet; thence continuing Westerly along the Northerly right of way boundary line of said county road on a 1,939.86 foot radius curve concave to the South an arc distance of 293.58 feet to the Easterly boundary line of an irrigation canal, said chord being South 87°21'30" West a distance of 293.30 feet; thence North 31°56'44" West along the Easterly boundary line of said canal a distance of 218.49 feet; thence North 07°25'31" West, along the Easterly right of way boundary line of said canal a distance of 98.93 feet; thence North 24°30'08" West along the Easterly right of way boundary line of said canal a distance of 119.77 feet to the Westerly boundary line of the Northwest Quarter of said section; thence North 01°11'21" West along the Westerly boundary line of the Northwest quarter of said section a distance of 428.10 feet to the true point of beginning.

PARCEL 2:

That portion of the Northwest Quarter of Section 11, Township 17 North, Range 18 East, W.M., in the County of Kittitas, State of Washington which is bounded by a line described as follows:

Beginning at the Northwest corner of said Section 11, at which point is the true point of beginning; thence South 89°29'28" East, along the North boundary of said section 623.00 feet; thence South 0°11'28" East, 141.50 feet; thence South 89°29'27" East, 111.60 feet; thence North 88°44'43" East, 51.30 feet; thence South 0°27'28" East, 180.83 feet; thence South 89°29'28" East, 69.40 feet; thence South 0°15'37" East, 220.02 feet; thence North 89°29'28" West, 319.00 feet; thence North 81°30'07" West, 628.65 feet; thence North 1°02'07" East, 460.69 feet to the true point of beginning.

EXCEPT any portion thereof lying easterly of the following described line:

Beginning at a point on the southerly boundary of said parcel which is located at the center of that certain slough described in Parcel 1 hereinafore, running thence northerly along the center of said slough to the northerly boundary of said parcel and the end of said described line.

EXHIBIT F – Tributary Water Rights Fallowed Lands Development (Detailed Analysis)

Fallowed Lands Development: Detailed Analysis

Report of Examination Assumptions				
Priority Date	Place of Use	Irrigated Acres	Developable ERUs on Appurtenant Property	Assumed per unit (AF/yr) Total Qa
June 30, 1887	That part of the W1/2E1/2 of Section 28 lying north of the Kittitas Reclamation District Canal, the NE1/4NW1/4, and NE1/4SE1/4NW1/4 of Section 28, ALL within T. 20N., R. 14 E.W.M.	81.51	4	3.34 0.835 3.34

Big Creek

Report of Examination Assumptions				
Priority Date	Place of Use	Irrigated Acres	Developable ERUs on Appurtenant Property	Assumed per unit (AF/yr) Total Qa
June 30, 1883	Those portions of the following described parcels lying south of East Masterson Road and north of State Route 970: The NE1/4SW1/4, NW1/4SE1/4, W1/2SE1/4NE1/4, and W1/2E1/2SE1/4NE1/4 of Section 26, T. 20N., R. 16 E.W.M.	63	6	6.12 1.02
June 30, 1883	That portion of the S1/2NW1/4 and N1/2SW1/4 of Section 25, T. 20 N., R. 16 E.W.M. lying southerly of East Masterson Road and northerly of State Highway 970.	70	7	7.14 1.02
June 30, 1883	That portion of the E1/2E1/2SE1/4NE1/4 of Section 26, T. 20 N., R. 16 E.W.M., lying south of East Masterson Road and northerly of State Highway 970.	4	0	0
June 30, 1890	That portion of the W1/2SW1/4 of Section 26, T. 20N., R. 16 E.W.M., lying south of the East Masterson Road and north of State Route 970.	34	3	3.06 1.02
June 30, 1898	That portion of the W1/2NE1/4SE1/4 and W1/2E1/2NE1/4SE1/4 of Section 26, T. 20 N., R. 16 E.W.M., lying south of the East Masterson Road and north of State Route 970.	12.8	1	1.02 1.02
June 30, 1898	That portion of the E1/2E1/2SE1/4NE1/4 of Section 26, T. 20 N., R. 16 E.W.M., lying south of East Masterson Road and northerly of State Highway 970.	4	0	0

Teamway River

Report of Examination Assumptions				
Priority Date	Place of Use	Irrigated Acres	Developable ERUs on Appurtenant Property	Assumed per unit (AF/yr) Total Qa
Court Claim 00648: November 2, 1877	The S1/2SE1/4SW1/4, SW1/4SW1/4, W1/2SE1/4 and the S1/2NW1/2SE1/4SW1/4, of Section 21, and the N1/2NW1/4 and NW1/4NE1/4 of Section 28, ALL in T. 19N., R. 18 E.W.M.	89.93	9	11.21 1.25
Court Claim 00648: June 1, 1881	The S1/2N1/2SE1/4SW1/4, SW1/4SW1/4, W1/2SE1/4 and the S1/2SE1/4SW1/4 of Section 21, all in T. 19 N., R. 18 E.W.M.	95.17	10	12.46 1.25
Court Claim 01685: June 30, 1878	That portion of the SW1/4NE1/4 of Section 28, T. 20 N., R. 17 E.W.M. lying southeast of the county road.	20	2	2.5 1.25
Court Claim 01685: September 20, 1889	E1/2SW1/4 and that portion of the E1/2NE1/4 lying northwest of Swauk Creek and southeast of the county road all in Section 28, T. 20N., R. 17 E.W.M.	75	8	9.99 1.25

Swauk Creek and First Creek

Actual Development		
Residences	Assumed per unit (AF/yr)	Total Qa
4	0.835	3.34
	0.835	0

Remaining: 0

Actual Development		
Residences	Assumed per unit (AF/yr)	Total Qa
3	1.02	3.06
3	1.02	3.06
0	0	0
2	1.02	2.04
0	1.02	0
0	0	0

Remaining 9.18

Actual Development		
Residences	Assumed per unit (AF/yr)	Total Qa
1	1.25	1.25
0	1.25	0.00
8	1.25	9.99
	4.99	13.74

Remaining 22.42

Total Remaining: 31.60

**EXHIBIT G – Draft First Amendment to Trust Water Right Agreement for Lamb and Anderson
Water Rights**

FIRST AMENDMENT TO TRUST WATER RIGHT AGREEMENT

That Trust Water Right Agreement ("Agreement") between the State of Washington, Department of Ecology ("Ecology") and Suncadia, LLC, later assigned to New Suncadia, LLC ("Suncadia") (collectively, the "parties") entered into on February 11, 2010, is hereby amended for a first time ("Amendment").

RECITALS

- A. On February 11, 2010, the parties entered into the Trust Water Right Agreement ("February 11, 2010, Agreement").
- B. In the Agreement, Suncadia agreed to convey its water rights under WRTS File Nos. CS4-05259CTCL@2sb7, CS4-00626CTCL@2sb7, and CS4-00908CTCL@3sb7 to the State Trust Water Right Program for the purpose of enhancing instream flows and providing mitigation water to offset and allow for new water uses within the Yakima River basin.
- C. On _____, 2015, Ecology and Suncadia entered into another Trust Water Right Agreement that supersedes in part the February 11, 2010, agreement between the parties (herein referred to as the "_____, 2015, Agreement").
- D. Pursuant to paragraph 12 of the February 11, 2010, Agreement, the parties herein agree to amend the February 11, 2010, Agreement to be consistent with the _____, 2015, Agreement between the parties.

AMENDMENT AGREEMENT

In consideration of the mutual covenants set forth herein, the Parties agree to amend the February 11, 2010, Agreement as follows:

Section 1. – *Section 1.1 is deleted and superseded by the _____, 2015, Agreement.*

Section 2. – *Section 2 is deleted and replaced as follows:*

"The parties recognize Suncadia's transfer of the Water into the Trust. The term of this Agreement shall then be for so long as any portion of the Water remains in the Trust (the "Term"). Ecology shall issue and deliver a Certificate to Suncadia."

Section 3. – *Section 3 is deleted and replaced as follows:*

"Suncadia may rely on the Water to mitigate for water use on Suncadia's properties consistent with the Trust Water Right Agreement entered into between Suncadia and Ecology on May __, 2015. Suncadia shall make an application to Ecology for a water right permit 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" or "New Applications"). The process for Ecology to review Suncadia's application is as follows:

3.1 Upon receipt of a complete New Applications, Ecology, shall accept and timely process and utilize such portion of the Water in Trust as required to offset the consumptive loss associated with the uses described in the New Applications.

3.2 Ecology will prepare a public notice and send it to Suncadia for publication in a newspaper with general circulation in the area as required by Chapter 90.03 RCW.

3.3 Suncadia will publish the notice and ensure that the newspaper transmits an affidavit of publication to Ecology.

3.4 Ecology will complete a Water Transfer Working Group ("WTWG") project description and will present it to the WTWG. Ecology, in consultation with the U.S. Bureau of Reclamation, will determine if some or all of the Water Suncadia designates will be assigned to the Reclamation-Ecology storage and delivery exchange contract. Suncadia will pay the costs of assigning a portion of the water for the New Application to the Reclamation-Ecology storage and delivery contract."

3.5 Ecology will investigate the New Applications. Ecology will issue a report of examination (ROE) with conditions consistent with the parties' ____ ____, 2015, Agreement."

Section 4. – Section 4 is deleted.

This Amendment is effective once executed by the parties.

**Washington Department of Ecology
Central Regional Office
Water Resources Program**

**New Suncadia, LLC,
a Delaware limited liability company**

By: Suncadia Operating Member, LLC,
a Delaware limited liability company,
its managing member

By: LDD Suncadia Manager, Inc.,
a Delaware corporation,
its manager

By: _____
Name: Sage Park
Its: Section Manager
Date:

By: _____
Name: Paul Eisenberg
Title: Senior Vice President
Date:

By: _____
Name: Gary Kittleson
Title: Vice President
Date:

EXHIBIT H – Draft Applications for a Water Right Permit (Surface and Groundwater)



Application for a Water Right Permit

For Ecology Use
(Date Stamp)

A NON-REFUNDABLE MINIMUM FEE OF \$50.00 MUST ACCOMPANY THIS APPLICATION FOR THE FOLLOWING:

☐ GROUND WATER ☒ SURFACE WATER ☐ PERMANENT
☐ SHORT TERM ☐ TEMPORARY

NO FEE REQUIRED FOR THE FOLLOWING:

☐ DROUGHT ☐ COST REIMBURSEMENT

Follow the attached instructions. Attach additional sheets as necessary.

Section 1. APPLICANT

☐ I have participated in a pre-application conference with Ecology.

Applicant/Business Name: New Suncadia, LLC	Phone No: 509-649-6370	Other No:
Address: 770 Suncadia Trail		
City: Cle Elum	State: WA	Zip: 98922
Email Address (if available): peisenberg@suncadia.com		

Contact Name (if different from above): Joe Mentor and Jessica Kuchan Mentor Law Group, PLLC	Phone No: 206-838-7650	Other No:
Relationship to Applicant: Attorney		
Address: 315 5 th Ave S., Ste 1000		
City: Seattle	State: WA	Zip: 98104
Email Address (if available): mentor@mentorlaw.com; kuchan@mentorlaw.com		

Legal Land Owner or Part Owner Name of the Proposed Place of Use: Same as applicant	Phone No:	Other No:
Address:		
City:	State:	Zip:
Email Address (if available):		

For Ecology Use	APPLICATION NO: _____ SEPA: Exempt/Not Exempt Fee Paid: _____ Check No: _____ ECY Coding: 001-001-WR1-0285-000011	
Date Returned _____	By _____ Priority Date _____	By _____ WRIA: _____
Pre-application interviewer:		

Section 2. STATEMENT OF INTENT

Do you own the land on which the proposed point of diversion/withdrawal is located? ☐ YES ☒ NO
If no, do you have legal authority to make this application for use of another's land? ☒ YES ☐ NO

Briefly describe the purpose of your proposed project: To rely on water rights transferred into the State Trust
Water Right Program to mitigate for a new use of water.

Anticipated length of time to complete your 20 years
project: _____

Water Use List all purposes for which water will be applied to a beneficial use and list quantity required for each.

Purpose(s) of Use	Rate (check one box only)		Acre-Feet per Year (AF/YR) (If known)	Period of Use (Continuously or Seasonal)
	<input checked="" type="checkbox"/> Cubic Feet per Second (CFS)	<input type="checkbox"/> Gallons per Minute (GPM)		
Municipal Water Supply	4.851 cfs		411	April 1 to October 15
TOTAL:	4.851 cfs		411	

Short Term/Temporary Water Use

Is this a request for a short term project (less than four months and non-recurring)? ☐ YES ☒ NO

Is this request for a temporary permit? ☐ YES ☒ NO

If yes to either question above, indicate the dates that the water will be needed:

FROM: ____/____/____ TO: ____/____/____

Section 3. POINT OF DIVERSION OR WITHDRAWAL

(Complete A or B, and C below)

A.) If Surface Water Source

B.) If Ground Water Source

<p> <input type="checkbox"/> Spring <input type="checkbox"/> Creek <input checked="" type="checkbox"/> River <input type="checkbox"/> Lake </p> <p> <input type="checkbox"/> Other: _____ </p> <p> Source Name: <u>Yakima River and Cle Elum River</u> </p> <p> Tributary to: <u>Columbia River, Yakima River and Cle Elum River</u> </p> <p> Number of proposed diversion points: <u>2</u> </p> <p> Do you have an existing diversion? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO </p>	<p> <input type="checkbox"/> Well(s) <input type="checkbox"/> Other: _____ </p> <p> Well diameter & depth: _____ </p> <p> Number of proposed points of withdrawal: _____ </p> <p> Do you have an existing well? <input type="checkbox"/> YES <input type="checkbox"/> NO </p> <p> If available, attach Water Well Report and pump test. </p> <p> Well Tag ID No. _____ </p>
--	---

C.) Point of Diversion/Withdrawal – Legal Description						
Parcel No.	¼	¼	Section	Township	Range	County
(Surface Water Diversions)	SW	SE	27	20N	15E	Kittitas
	SW	SE	30	20N	15E	
Lot(s)	Block(s)		Subdivision			
If known, enter the distances in feet from the point of diversion or withdrawal to the nearest section corner: _____ Feet (<input type="checkbox"/> North/ <input type="checkbox"/> South) and _____ feet (<input type="checkbox"/> East/ <input type="checkbox"/> West) from the (<input type="checkbox"/> NW <input type="checkbox"/> SW <input type="checkbox"/> NE <input type="checkbox"/> SE <input type="checkbox"/> _____) corner of Section_____.						
Parcel No.	¼	¼	Section	Township	Range	County
Lot(s)	Block(s)		Subdivision			
If known, enter the distances in feet from the point of diversion or withdrawal to the nearest section corner: _____ feet (<input type="checkbox"/> North/ <input type="checkbox"/> South) and _____ feet (<input type="checkbox"/> East/ <input type="checkbox"/> West) from the (<input type="checkbox"/> NW <input type="checkbox"/> SW <input type="checkbox"/> NE <input type="checkbox"/> SE <input type="checkbox"/> _____) corner of Section_____.						

NOTE: If more than two points of diversion/withdrawal attach additional information on a separate sheet of paper.

Section 4. PLACE OF USE

Attach a copy of the legal description of the property (on which the water will be used) taken from a real estate contract, property deed or title insurance policy, or copy it carefully in the space below.

Area served by New Suncadia, LLC, Suncadia Water Company, LLC and Suncadia Environmental Company, LLC, in accordance with its Comprehensive Water System Plan and any approved amendments thereto beginning:						
Sections 11, 13, 14, 15, 23, 24, and 25 of T. 20N, R. 14 E., W.M.						
Sections 18, 19, 20, 21, 28, 29, 30, and 31 of T. 20N, R. 15 E., W.M.						
¼	¼	Section	Twp.	Range	County	Parcel No.
					Kittitas	

Do you own all the lands on which the proposed place of use is located? ☒ YES ☐ NO.

If no, do you have legal authority to make this application for use of another's land? ☐ YES ☐ NO

Provide owner name(s), address, and phone number: _____

Are there any other water rights or claims associated with this property or water system? ☒ YES ☐ NO

If yes, provide the water right and/or claim numbers: CS4-YRB07CC01724@4, CS4-YRBCC01724@5, CS3-YRB07CC01724@6, also Court Claims 00648, 00755, 01685 and 02255.

Attach a map of your project showing the point of diversion/withdrawal and place of use. If platted property, be sure to include a complete copy of the plat map.

Section 5. WATER SYSTEM DESCRIPTION

Describe your proposed water system (include type and size of devices used to divert or withdraw water from source): Conveyance with be through the existing City of Cle Elum intake facilities and conveyed through the Suncadia's water system, as described in its water system plan.

See attached drawing

Section 6. DOMESTIC WATER SUPPLY SYSTEM INFORMATION

(Complete A or B, and C below)

A.) Domestic Water Systems only	B.) Municipal Water Systems only (defined under RCW 90.03.015)
Projected number of connections to be served: _____	Present population to be served water: <u><1,000</u>
Type of connections: _____ (e.g., home, recreational cabin)	Estimate future population to be served: <u>3,785</u> (20 year projection)
C.) Water System Planning	
Do you have a Water System Plan approved by the Washington State Department of Health, Drinking Water Division? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If yes, date plan was approved <u>05/28/2008</u> Water System Number: <u>AA317E</u> _____ Name of water system: <u>Suncadia Resort</u> _____ Are you within the service area of an existing water system? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, explain why you are unable to connect to the system: _____ _____ _____	

Section 7. IRRIGATION/STOCKWATER/OTHER FARM USES

Irrigation

Total number of acres requested to be irrigated under this application = 400 ACRES

NOTE: Outline the area to be irrigated on your attached map.

Stockwater

List number and kind of stock: N/A

Is the proposed project for a dairy farm? ☐ YES ☒ NO

Other Proposed Farm Uses

Describe all proposed uses: N/A

Family Farm Water Act (RCW 90.66):

Calculate the acreage in which you have a controlling interest, including only:

- Acreage irrigated under water rights acquired after December 8, 1977,
- Acreage proposed to be irrigated under this application, and
- Acreage proposed to be irrigated under other pending application(s).

Is the combined acreage under existing rights greater than 6000 acres? ☐ YES ☒ NO

Do you have a controlling interest in a Family Farm Development Permit? ☐ YES ☒ NO

If yes, enter Permit No: _____

Section 8. OTHER WATER USES

Hydropower

Indicate total feet of head N/A and proposed capacity in kilowatts: _____

Describe works: _____

Indicate all uses to which power is to be applied: _____

FERC License No: _____

Mining/Industrial Use

Describe use, method of supplying and utilizing water: N/A

Other Use

Section 9. WATER STORAGE

Will you be using a dam, dike, or other structure to retain or store water? ☐ YES ☐ NO

Are you proposing to store more than 10 acre-feet of water? ☐ YES ☐ NO

Will the water depth be 10 feet or more? ☐ YES ☐ NO

If you answered yes to any of the above questions, please describe: _____

NOTE: If you will be storing 10 acre-feet or more of water and/or if the water depth will be 10 feet or more at the deepest point and some portion of the storage will be above grade, you must also complete an Application for Permit to Construct a Reservoir and a Dam Construction Permit and Application.

Section 10. DRIVING DIRECTIONS

Provide detailed driving directions to the project site: From Interstate 90, take exit 80, turn right onto Bullfrog Road
and follow signs to Suncadia

Site Address: 770 Suncadia Trail Cle Elum, WA 98922

Section 11. REQUIRED SIGNATURES

I certify that the information provided in this application is true and accurate to the best of my knowledge. I understand that in order to process my application, I grant staff from the Department of Ecology access to the site for inspection and monitoring purposes. Even though the employees of the Department of Ecology may have assisted me in the preparation of the above application, all responsibility for the accuracy of the information rests with me, the applicant.

Print Name
(Applicant or authorized representative)

Signature

Date

Print Name
(Legal Owner or Part Owner Place of Use)

Signature

Date

Print Name
(Legal Owner or Part Owner Place of Use)

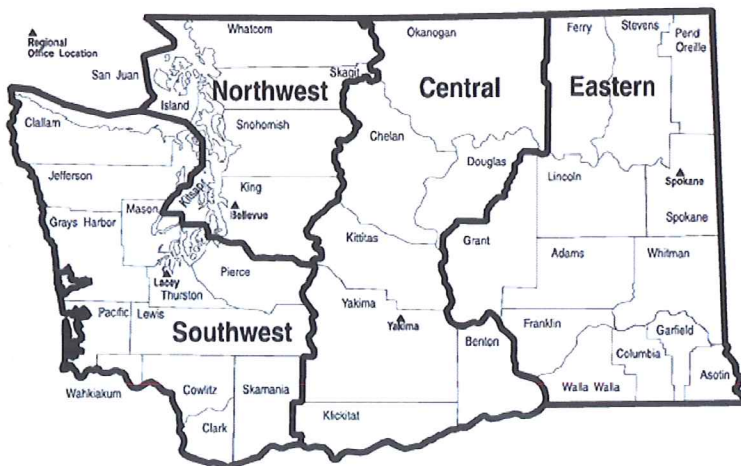
Signature

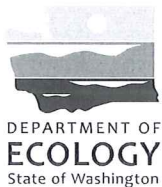
Date

Please check the region in which the project is located:

*Submit your application to: DEPARTMENT OF ECOLOGY CASHIERING SECTION PO BOX 47611 OLYMPIA, WA 98504-7611	<input checked="" type="checkbox"/> Central Regional Office 15 W Yakima Avenue, Suite 200 Yakima, WA 98902-3463 (509) 575-2490	<input type="checkbox"/> Eastern Regional Office 4601 N. Monroe Street Spokane, WA 99205-1265 (509) 329-3400
	<input type="checkbox"/> Northwest Regional Office 3190 – 160 th Avenue SE Bellevue, WA 98008-5452 (425) 649-7000	<input type="checkbox"/> Southwest Regional Office PO Box 47775 Olympia, WA 98504-7775 (360) 407-6300

If you have questions about your application, contact the Water Resources program at the regional office in which your project is located.





Application for a Water Right Permit

For Ecology Use
(Date Stamp)

A NON-REFUNDABLE MINIMUM FEE OF \$50.00 MUST ACCOMPANY THIS APPLICATION FOR THE FOLLOWING:

- ☒ GROUND WATER ☐ SURFACE WATER ☐ PERMANENT
☐ SHORT TERM ☐ TEMPORARY

NO FEE REQUIRED FOR THE FOLLOWING:

- ☐ DROUGHT ☐ COST REIMBURSEMENT

Follow the attached instructions. Attach additional sheets as necessary.

Section 1. APPLICANT

- ☐ I have participated in a pre-application conference with Ecology.

Applicant/Business Name: New Suncadia, LLC	Phone No: 509-649-6370	Other No:
Address: 770 Suncadia Trail		
City: Cle Elum	State: WA	Zip: 98922
Email Address (if available): peisenberg@suncadia.com		

Contact Name (if different from above): Joe Mentor and Jessica Kuchan Mentor Law Group, PLLC	Phone No: 206-838-7650	Other No:
Relationship to Applicant: Attorney		
Address: 315 5 th Ave S., Ste 1000		
City: Seattle	State: WA	Zip: 98104
Email Address (if available): mentor@mentorlaw.com; kuchan@mentorlaw.com		

Legal Land Owner or Part Owner Name of the Proposed Place of Use: Same as applicant	Phone No:	Other No:
Address:		
City:	State:	Zip:
Email Address (if available):		

For Ecology Use	APPLICATION NO: _____ SEPA: Exempt/Not Exempt Fee Paid: _____ Check No: _____ ECY Coding: 001-001-WR1-0285-000011
Date Returned _____ By _____ Priority Date _____ By _____ WRIA: _____	
Pre-application interviewer:	

Section 2. STATEMENT OF INTENT

Do you own the land on which the proposed point of diversion/withdrawal is located? ☐ YES ☒ NO
If no, do you have legal authority to make this application for use of another's land? ☒ YES ☐ NO

Briefly describe the purpose of your proposed project: To obtain a non-additive groundwater right to supplement surface water rights.

Anticipated length of time to complete your 20 years
project: _____

Water Use List all purposes for which water will be applied to a beneficial use and list quantity required for each.

Purpose(s) of Use	Rate (check one box only)		Acre-Feet per Year (AF/YR) (If known)	Period of Use (Continuously or Seasonal)
	<input checked="" type="checkbox"/> Cubic Feet per Second (CFS)	<input checked="" type="checkbox"/> Gallons per Minute (GPM)		
Municipal Water Supply	2,177 gpm		411	April 1 to October 15
TOTAL:	2,177 gpm		411	

Short Term/Temporary Water Use

Is this a request for a short term project (less than four months and non-recurring)? ☐ YES ☒ NO

Is this request for a temporary permit? ☐ YES ☒ NO

If yes to either question above, indicate the dates that the water will be needed:

FROM: ____/____/____ TO: ____/____/____

Section 3. POINT OF DIVERSION OR WITHDRAWAL

(Complete A or B, and C below)

A.) If Surface Water Source	B.) If Ground Water Source
<input type="checkbox"/> Spring <input type="checkbox"/> Creek <input type="checkbox"/> River <input type="checkbox"/> Lake <input type="checkbox"/> Other: _____ Source Name: _____ Tributary to: _____ Number of proposed diversion points: _____ Do you have an existing diversion? <input type="checkbox"/> YES <input type="checkbox"/> NO	<input checked="" type="checkbox"/> Well(s) <input type="checkbox"/> Other: _____ _____ Well diameter & depth: <u>TBD</u> Number of proposed points of withdrawal: <u>6</u> Do you have an existing well? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If available, attach Water Well Report and pump test. Well Tag ID No. <u>TBD</u>

C.) Point of Diversion/Withdrawal – Legal Description						
Parcel No.	¼	¼	Section	Township	Range	County
Lot(s)	Block(s)		Subdivision			
If known, enter the distances in feet from the point of diversion or withdrawal to the nearest section corner: _____ Feet (<input type="checkbox"/> North/ <input type="checkbox"/> South) and _____ feet (<input type="checkbox"/> East/ <input type="checkbox"/> West) from the (<input type="checkbox"/> NW <input type="checkbox"/> SW <input type="checkbox"/> NE <input type="checkbox"/> SE <input type="checkbox"/> _____) corner of Section _____.						
Parcel No.	¼	¼	Section	Township	Range	County
	E1/2	SW	11	20N	14E	Kittitas
	NW	NE	14	20N	14E	
Lot(s)	Block(s)		Subdivision			
If known, enter the distances in feet from the point of diversion or withdrawal to the nearest section corner: _____ feet (<input type="checkbox"/> North/ <input type="checkbox"/> South) and _____ feet (<input type="checkbox"/> East/ <input type="checkbox"/> West) from the (<input type="checkbox"/> NW <input type="checkbox"/> SW <input type="checkbox"/> NE <input type="checkbox"/> SE <input type="checkbox"/> _____) corner of Section _____.						

NOTE: If more than two points of diversion/withdrawal attach additional information on a separate sheet of paper.

Section 4. PLACE OF USE						
Attach a copy of the legal description of the property (on which the water will be used) taken from a real estate contract, property deed or title insurance policy, or copy it carefully in the space below.						
Area served by New Suncadia, LLC, Suncadia Water Company, LLC and Suncadia Environmental Company, LLC, in accordance with its Comprehensive Water System Plan and any approved amendments thereto beginning:						
Sections 11, 13, 14, 15, 23, 24, and 25 of T. 20N, R. 14 E., W.M.						
Sections 18, 19, 20, 21, 28, 29, 30, and 31 of T. 20N, R. 15 E., W.M.						
¼	¼	Section	Twp.	Range	County	Parcel No.
					Kittitas	

Do you own all the lands on which the proposed place of use is located? ☒ YES ☐ NO.

If no, do you have legal authority to make this application for use of another's land? ☐ YES ☐ NO

Provide owner name(s), address, and phone number: _____

Are there any other water rights or claims associated with this property or water system? ☒ YES ☐ NO

If yes, provide the water right and/or claim numbers: CS4-YRB07CC01724@4, CS4-YRBCC01724@5, CS3-YRB07CC01724@6, also Court Claims 00648, 00755, 01685 and 02255.

Attach a map of your project showing the point of diversion/withdrawal and place of use. If platted property, be sure to include a complete copy of the plat map.

Section 5. WATER SYSTEM DESCRIPTION

Describe your proposed water system (include type and size of devices used to divert or withdraw water from source): Conveyance with be through the Suncadia's water system, as described in its water system plan.

See attached drawing

Section 6. DOMESTIC WATER SUPPLY SYSTEM INFORMATION

(Complete A or B, and C below)

A.) Domestic Water Systems only	B.) Municipal Water Systems only (defined under RCW 90.03.015)
Projected number of connections to be served: _____	Present population to be served water: <u><1,000</u>
Type of connections: _____ (e.g., home, recreational cabin)	Estimate future population to be served: <u>3,785</u> (20 year projection)
C.) Water System Planning	
Do you have a Water System Plan approved by the Washington State Department of Health, Drinking Water Division? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If yes, date plan was approved <u>05/28/2008</u> Water System Number: <u>AA317E</u>	
Name of water system: <u>Suncadia Resort</u>	
Are you within the service area of an existing water system? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, explain why you are unable to connect to the system: _____ _____ _____	

Section 7. IRRIGATION/STOCKWATER/OTHER FARM USES

Irrigation

Total number of acres requested to be irrigated under this application = 400 ACRES

NOTE: Outline the area to be irrigated on your attached map.

Stockwater

List number and kind of stock: N/A

Is the proposed project for a dairy farm? ☐ YES ☒ NO

Other Proposed Farm Uses

Describe all proposed uses: N/A

Family Farm Water Act (RCW 90.66):

Calculate the acreage in which you have a controlling interest, including only:

- Acreage irrigated under water rights acquired after December 8, 1977,
- Acreage proposed to be irrigated under this application, and
- Acreage proposed to be irrigated under other pending application(s).

Is the combined acreage under existing rights greater than 6000 acres? ☐ YES ☒ NO

Do you have a controlling interest in a Family Farm Development Permit? ☐ YES ☒ NO

If yes, enter Permit No: _____

Section 8. OTHER WATER USES

Hydropower

Indicate total feet of head N/A and proposed capacity in kilowatts: _____

Describe works: _____

Indicate all uses to which power is to be applied: _____

FERC License No: _____

Mining/Industrial Use

Describe use, method of supplying and utilizing water: N/A

Other Use

Section 9. WATER STORAGE

Will you be using a dam, dike, or other structure to retain or store water? ☐ YES ☒ NO

Are you proposing to store more than 10 acre-feet of water? ☐ YES ☐ NO

Will the water depth be 10 feet or more? ☐ YES ☐ NO

If you answered yes to any of the above questions, please describe: _____

NOTE: If you will be storing 10 acre-feet or more of water and/or if the water depth will be 10 feet or more at the deepest point and some portion of the storage will be above grade, you must also complete an Application for Permit to Construct a Reservoir and a Dam Construction Permit and Application.

Section 10. DRIVING DIRECTIONS

Provide detailed driving directions to the project site: From Interstate 90, take exit 80, turn right onto Bullfrog Road
and follow signs to Suncadia

Site Address: 770 Suncadia Trail Cle Elum, WA 98922

Section 11. REQUIRED SIGNATURES

I certify that the information provided in this application is true and accurate to the best of my knowledge. I understand that in order to process my application, I grant staff from the Department of Ecology access to the site for inspection and monitoring purposes. Even though the employees of the Department of Ecology may have assisted me in the preparation of the above application, all responsibility for the accuracy of the information rests with me, the applicant.

Print Name
(Applicant or authorized representative)

Signature

Date

Print Name
(Legal Owner or Part Owner Place of Use)

Signature

Date

Print Name
(Legal Owner or Part Owner Place of Use)

Signature

Date

Please check the region in which the project is located:

*Submit your application to: DEPARTMENT OF ECOLOGY CASHIERING SECTION PO BOX 47611 OLYMPIA, WA 98504-7611	<input checked="" type="checkbox"/> Central Regional Office 15 W Yakima Avenue, Suite 200 Yakima, WA 98902-3463 (509) 575-2490	<input type="checkbox"/> Eastern Regional Office 4601 N. Monroe Street Spokane, WA 99205-1265 (509) 329-3400
	<input type="checkbox"/> Northwest Regional Office 3190 – 160 th Avenue SE Bellevue, WA 98008-5452 (425) 649-7000	<input type="checkbox"/> Southwest Regional Office PO Box 47775 Olympia, WA 98504-7775 (360) 407-6300

If you have questions about your application, contact the Water Resources program at the regional office in which your project is located.

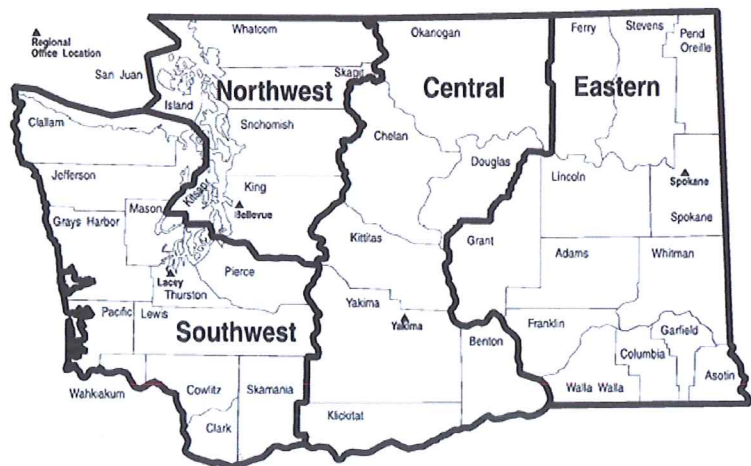


EXHIBIT I – Draft Trust Water Right Agreement
(Big Creek Water Rights for New Mitigated Water Right Permits)

**Trust Water Right Agreement
between Washington Department of Ecology
and New Suncadia, LLC**

(Big Creek)

DRAFT

This Trust Water Right Agreement is made and entered into as of the ____ day of _____, 2015, by and between the Washington State Department of Ecology, State Trust Water Right Program ("Ecology") and New Suncadia, LLC ("Suncadia").

RECITALS

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

B. Suncadia is the owner and developer of real property in Kittitas County referred to in this Agreement as the "MPR and Bullfrog UGA properties."

C. Suncadia is the owner of certain water rights from Big Creek more particularly described and quantified in Exhibit A ("Water Rights") such exhibit being attached hereto and incorporated herein.

D. Suncadia's Water Rights arise from Water Right Claim Number 00755, subject of a Conditional Final Order in Washington v. Acquavella, et al., Yakima County Superior Court Cause No. 77-2-01484-5.

E. Ecology issued reports of examination to transfer the purpose of use of the water rights to instream flows and transfer the water rights into the State Trust Water Right Program to offset the new use of water by Suncadia and third parties within the Yakima River basin.

F. Ecology and Suncadia executed a Trust Water Right Agreement, dated _____, 2015, detailing the roles and responsibilities of the parties.

G. Suncadia filed applications, Water Rights Tracking No. S4-35803 and G4-35804, for a new water right permit relying on the Water Rights, and other water rights owned by Suncadia as mitigation for the new use ("New Mitigated Water Right Permits").

H. Suncadia wishes to place its Big Creek Water Rights into the Trust Water Right Program as mitigation for the New Mitigated Water Right Permits, mitigate for water uses established on the formerly appurtenant property as specified in the _____, 2015 Trust Water Right Agreement, and mitigate for third parties.

I. Subject to the terms of this Agreement and the Application, Ecology confirms that it is willing, able and authorized to hold the Water into the Trust Water Rights Program ("Water in Trust") as provided for herein.

J. Ecology and Suncadia desire to complete the process to convey the water right described in change authorization CS4-0755(A)CTCL and CS4-YRB02CC00755@2 dated May 10, 2002 to the Trust Water right Program.

AGREEMENT

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

1. The purpose of this Agreement and the primary reason Suncadia is willing to place the Water into the Trust is to provide a senior water right as off-setting mitigation that will allow Suncadia to apply for and receive new groundwater withdrawal and surface water diversionary permits for the MPR and Bullfrog UGA properties, mitigate for water uses established on the formerly appurtenant property as specified in the ____, 2015 Trust Water Right Agreement, and mitigate for third parties. These new water rights will be mitigated by way of a permanent designation of such portion of Suncadia's beneficial interest in the Water in Trust as reasonably required to ensure no impairment to TWSA or other water right.

2. Within 30 days of the close of any appeal periods and no pending appeals, Suncadia shall grant, execute, record and deliver quit claim deeds for each of the Water Rights to Ecology. The term of this Agreement shall then be for so long as any portion of the Water remains in the Trust (the "Term").

3. Suncadia, or its assigns, shall monitor and measure streamflow for Big Creek by installing, operating and maintaining a gage.

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

4.1 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.

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

4.3 Except as provided herein or agreed to by the parties in a separate agreement, Ecology shall not assess or charge Suncadia any costs or fees for maintaining the Water in Trust.

5. 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:

5.1 Suncadia makes the following undertakings, representations and warranties to Ecology:

5.1.1 New Suncadia, LLC is a Delaware limited liability company; owner of the Water listed in Exhibit A, and duly authorized to enter into this Agreement.

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

5.1.3 Upon its full execution, this Agreement is binding upon Suncadia in accordance with its terms.

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

5.2 Ecology makes the following undertakings, representations and warranties to Suncadia:

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

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

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

5.2.4 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.

6. Except as provided in this Section, if any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect. If a provision hereof is determined to be void or unenforceable by a court of competent jurisdiction and such provision was an essential part of the consideration given to support this Agreement, then this instrument shall either be reformed by such court to ensure fulfillment of the parties' purposes herein or be rescinded in its entirety and equity done

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

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

7. This Agreement may be assigned in whole or in part by Suncadia 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.

8. Any notice or communication required by this Agreement between Suncadia 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 West Alder Street
Union Gap, WA 98903-0009

To New Suncadia, LLC 770 Suncadia Trail
Cle Elum, WA 98922

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

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

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

12. The parties agree to defend the terms of this Agreement, including any measures taken for its implementation.

13. 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.

Signatures on the following page.

WASHINGTON DEPARTMENT OF ECOLOGY

By: _____
Tom Loranger
Manager
Water Resources Program
Date: _____

NEW SUNCADIA, LLC,
a Delaware limited liability company

By: Suncadia Operating Member, LLC
a Delaware limited liability company,
its managing member

By: LDD Suncadia Manager, Inc.,
a Delaware corporation,
its manager

By: _____
Paul Eisenberg,
Senior Vice President
Date: _____

By: _____
Gary Kittleson
Vice President
Date: _____

EXHIBIT A
(Suncadia's Water Rights subject to this Agreement)

Water Right Authorization: CS4-YRB02CC00755@2
CS4-YRN02CC00755@2

Source: Big Creek

Current Use: Instream Flows for Mitigation Purposes

Period of Use: May 1 to August 31

Place of Use: Within Big Creek downstream from the existing point of diversion and Yakima River downstream of confluence with Big Creek.

Points of Diversion: Existing diversion is located 1100 feet north and 750 feet east from the south quarter corner of Section 29, within SW1/4SE1/4 of Section 29, T. 20N, R. 14 E.W.M.

Priority Date: June 30, 1887

Annual Quantity: 127.22 AF/yr
(Consumptive Use)

Instantaneous Quantity:
(Cubic feet per second)

EXHIBIT J – Draft Trust Water Right Agreement
(Big Creek, Teanaway River, Swauk Creek and First Creek Water Rights)

**Trust Water Right Agreement
between Washington Department of Ecology
and New Suncadia, LLC**

Teanaway River, Swauk Creek and First Creek Water Rights

DRAFT

This Trust Water Right Agreement is made and entered into as of the ____ day of _____, 2015, by and between the Washington State Department of Ecology, State Trust Water Right Program ("Ecology") and New Suncadia, LLC ("Suncadia").

RECITALS

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

B. Suncadia is the owner and developer of real property in Kittitas County referred to in this Agreement as the "MPR and Bullfrog UGA properties."

C. Suncadia is the owner of certain water rights from the Teanaway River, Swauk Creek and First Creek, more particularly described and quantified in Exhibit A ("Water Rights") such exhibit being attached hereto and incorporated herein.

D. Suncadia's Water Rights arise from Court Claim Numbers 02255, 01685, 00648, and are subject of a Conditional Final Order in Washington v. Acquavella, et al., Yakima County Superior Court Cause No. 77-2-01484-5.

E. Ecology issued reports of examination to transfer the purpose of use of the water rights to instream flows and ultimately transfer the water rights into the State Trust Water Right Program to offset the new use of water by Suncadia under the water management plan and third parties within the Yakima River basin.

F. Ecology and Suncadia executed a Trust Water Right Agreement, dated XXXX ____, 2015, detailing the roles and responsibilities of the parties.

G. Ecology and Suncadia desire to complete the process to convey the water rights described in Exhibit A to Ecology's Trust Water Right Program.

H. Subject to the terms of this Agreement, Ecology confirms that it is willing, able and authorized to hold the Water Rights in the Trust Water Rights Program ("Water in Trust") as provided for herein.

AGREEMENT

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

1. The purpose of this Agreement and the primary reason Suncadia is willing to place the Water into the Trust is to fulfill conditions of water right changes CS4-01724(A)CTCL, CS4-01724(B)CTCL, CS4-01724(C)CTCL, CS4-YRB07CC01724@1, CS4-YRB07CC01724@2, and CS4-YRB07CC01724@3, CS4-YRB07CC01724@4, CS4-YRB07CC01724@5, and CS4-YRB07CC01724@6 which provide MPR and Bullfrog UGA properties' base water supply.

2. Suncadia and Ecology agree the Water Rights referenced in Exhibit A can provide senior water right as off-setting mitigation for certain new or existing water uses in accordance with the uses described below. The Water Rights may be used by Suncadia or third parties for new and existing water uses. Suncadia or third parties may apply to Ecology to receive approval for new ground water withdrawal, surface water diversionary permits, or water budget neutral determinations within the Yakima River basin. If Ecology determines the Water Rights adequately offset impacts to the Yakima River's Total Water Supply Available (TWSA) as well as any local impairment concerns, Ecology will issue new water right permits or water budget neutral determinations. These new water rights will be mitigated by way of a permanent designation of such portion of Suncadia or a third party's beneficial interest in the Water in Trust as reasonably required to ensure no impairment to TWSA or other water rights; provided that any portion of such mitigation may also be provided by other means.

3. Within 30 days of executing this Agreement and the close of any appeal periods and no pending appeals, Suncadia shall grant, execute, record and deliver quit claim deeds for each of the Water Rights to Ecology therefore placing the Water in Trust. The term of this Agreement shall then be for so long as any portion of the Water Rights remain in the Trust (the "Term").

4. Following the recording of the quit claim deeds, Suncadia and Ecology may begin the process of designating parties to receive mitigation credit based upon the Water in Trust. Suncadia may designate a temporary beneficial use for the portion of the Water in Trust that is not yet assigned as mitigation credit for development activities as provided in this agreement. The process for Suncadia to identify recipients of mitigation credit and for Ecology to issue mitigated permits or water budget neutral determinations is as follows:

4.1 Suncadia may propose or Suncadia may enter into a contract with a third party to provide a portion of the Water in Trust as mitigation on such terms consistent with this Agreement as Suncadia may elect. Suncadia or such third party shall make to Ecology (or, if appropriate, to a water conservancy board) a request for determination of water budget neutrality or application for water right permit mitigated by the Water in Trust to appropriate surface or ground water at the desired location and for the intended use and quantities, together with all regularly required supporting information.

4.2 Upon receipt of a complete request for determination of water budget neutrality or application for water right permit, Ecology 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 together with any other proposed mitigation measures, shall reasonably offset the impacts of such new withdrawal.

5. Suncadia, or its assigns, shall monitor and measure streamflow for any tributary to the extent the Water in Trust from the tributary are used to mitigate for new consumptive purposes by installing, operating and maintaining gages. The obligation to monitor and measure streamflow and all of its related costs shall be fully assignable to third parties relying on Water in Trust from the tributaries.

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

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 the reports of examination referenced in Exhibit A.

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

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

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

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 Suncadia makes the following undertakings, representations and warranties to Ecology:

7.1.1 New Suncadia, LLC is a Delaware limited liability company; owner of the Water Right listed in Exhibit A, and duly authorized to enter into this Agreement.

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

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

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

7.2 Ecology makes the following undertakings, representations and warranties to Suncadia:

7.2.1 Ecology is 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. Except as provided in this Section, if any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect. If a provision hereof is determined to be void or unenforceable by a court of competent jurisdiction and such provision was an essential part of the consideration given to support this Agreement, then this instrument shall either be reformed by such court to ensure fulfillment of the parties' purposes herein or be rescinded in its entirety and equity done, including the following: 8.1 Suncadia shall identify all in-process designation agreements and inform Ecology of their status. Suncadia shall not make representations regarding in-process designations and shall in each instance work with Ecology to determine whether an assignment should be completed. If Ecology agrees, the request for determination of water budget neutrality, applications for water right permit or assignment requests will be completed promptly in accordance with applicable policies, rules, and law.

8.2 Ecology shall promptly convey to Suncadia or designee the portion of the Water in Trust not yet designated and assigned as mitigation for individual ground water and surface water permits. If any reserve has been set aside to address uncertainty 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 Suncadia.

8.3 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 in Trust previously allocated for mitigation through permits granted relative to New Applications and water budget neutral determinations.

9. This Agreement may be assigned in whole or in part by Suncadia 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 Suncadia 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 West Alder St
Union Gap, WA 98903-0009

To New Suncadia, LLC 770 Suncadia Trail
Cle Elum, WA 98922

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

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

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

13. The parties agree to defend the terms of this Agreement, including any measures taken for its implementation.

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

Signatures on the following page

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

WASHINGTON DEPARTMENT OF ECOLOGY

By: _____
Tom Loranger
Manager
Water Resources Program
Date: _____

NEW SUNCADIA, LLC,
a Delaware limited liability company By: _____

By: Suncadia Operating Member, LLC
a Delaware limited liability company,
its managing member

Paul Eisenberg,
Senior Vice President
Date: _____

By: LDD Suncadia Manager, Inc.,
a Delaware corporation,
its manager

By: _____
Gary Kittleson
Vice President
Date: _____

EXHIBIT A
(Water Rights subject to this Agreement)

Table 1 - Tributary Applications for Change								
Application No.	Court Claim No.	Claimant Name	Priority Date	Source	Qi (cfs)	Qa (AF/yr)	Irrigated Acres	Period of Use
CS4-00648(A)CTCL	00648	FCWUA	Nov 2, 1877	First Creek	0.78	112.1	23.42	April 1-Oct 15
CS4-YRB04CC00648	00648	FCWUA	Nov 2, 1877	First Creek	1.56	239.9	46.48	April 1-Oct 15
CS4-00648(B)CTCL	00648	FCWUA	June 1, 1881	First Creek	1.82	278.83	54.65	April 1-Oct 15
<u>CS4-YRB04CC00648@1</u>	00648	FCWUA	June 1, 1881	First Creek	3.64	542.27	108.45	April 1-Oct 15
First Creek Subtotal:					7.8	1,173.1	233	
CS4-01685(C)CTCL	01685	Hartman	June 30, 1878	Swauk Creek	0.28	50	6.67	April 1-Oct 15
<u>CS4-YRB04CC01685@1</u>	01685	Hartman	June 30, 1878	Swauk Creek	0.57	100	13.33	April 1-Oct 15
CS4-01685(D)CTCL	01685	Hartman	Sept 20, 1889	Swauk Creek	1.07	187.5	25	April 1-Oct 15
CS4-YRB04CC01685	01685	Hartman	Sept 20, 1889	Swauk Creek	2.13	375	50	April 1-Oct 15
Swauk Creek Subtotal:					4.05	712.5	95	
CS4-02255 (A) CTCL	02255	Walker	June 30, 1883	Teanaway River	0.42	113.73	21	May 1-Sept 15
CS4-YRB03CC02255	02255	Walker	June 30, 1883	Teanaway River	0.84	227.47	42.0	May 1-Sept 15
CS4-02255(B)CTCL	02255	Walker	June 30, 1883	Teanaway River	0.47	126.33	23.33	May 1-Sept 15
<u>CS4-YRB03CC02255@1</u>	02255	Walker	June 30, 1883	Teanaway River	0.93	252.67	46.67	May 1-Sept 15
CS4-02255(C)CTCL	02255	Walker	June 30, 1883	Teanaway River	0.03	7.2	1.33	May 1-Sept 15
<u>YRB03CC02255@2</u>	02255	Walker	June 30, 1883	Teanaway River	0.05	14.4	2.67	May 1-Sept 15
CS4-02255(D)CTCL	02255	Walker	June 30, 1890	Teanaway River	0.23	61.2	11.33	May 1-Sept 15
<u>CS4-YRB03CC02255@3</u>	02255	Walker	June 30, 1890	Teanaway River	0.45	122.4	22.67	May 1-Sept 15
CS4-02255(E)CTCL	02255	Walker	June 30, 1898	Teanaway River	0.09	23.04	4.27	May 1-Sept 15
<u>CS4-YRB03CC02255@4</u>	02255	Walker	June 30, 1898	Teanaway River	0.17	46.08	8.53	May 1-Sept 15
CS4-02255(F)CTCL	02255	Walker	June 30, 1898	Teanaway River	0.03	7.2	1.33	May 1-Sept 15
<u>CS4-YRB03CC02255@5</u>	02255	Walker	June 30, 1898	Teanaway River	0.05	14.4	2.67	May 1-Sept 15
Teanaway River Subtotal:					3.76	1,016.12	187.8	

Attachment 6

**Description of the current use of water rights for the Suncadia Resort,
Bullfrog Flats UGA and other water rights owned by New Suncadia, LLC.**

The current use of the water rights for the Suncadia Resort, Bullfrog Flats UGA and other water rights owned by New Suncadia, LLC:

<i>Water Right Source</i>	<i>Qa (CU)</i>	<i>Use</i>
Yakima River and Cle Elum River	1,161.71 AF/yr	Suncadia Resort (water rights owned by the Suncadia Water Company LLC) ¹
Yakima River and Cle Elum River	118.99 AF/yr	Bullfrog Flats UGA (in accordance with FEIS and other agreements) ²
Water Rights held for Mitigation Purposes from the Yakima River, Cle Elum River, Big Creek, Teanaway River, First Creek and Swauk Creek	1,173.62 AF/yr	Held in the State Trust Water Right Program, in accordance with the Agreement between Ecology and New Suncadia (2015) for mitigation as provided therein, and agreements with City of Roslyn ³

¹ Water Right Certificate Nos. S4-83611-J, S4-83612-J and S4-85226-J as well as Surface Water Permit No. S4-35803 and Groundwater Permit No. G4-35804.

² Water Right Certificate Nos. S4-84111-J, S4-84110, and S4-85228-J

³ Water Right Certificate Nos. S4-85193-J, S4-85196-J, S4-84770-J, S4-84771-J, S4-85211-J, S4-85210-J, S4-83916-J, S4-83893-J, S4-85212-J, S4-85213-J, S4-85214-J, S4-85215-J, S4-85216-J, S4-85217-J, S4-83717-J, S4-83718-J, S4-83719-J, S4-83767-J, S4-83765-J, S4-83766-J, S4-85207-J, S4-85208-J, S4-83574-J, S4-83607-J and S4-85099-J.

