STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

April 12, 2013

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

SwiftWater Ranch
Attn: David Gleason
~~6152 NE 3rd Court~~ 5402 NE 3rd St
Renton, WA 98059

RE: Reserve Fund Transfer to Kittitas Conservation Trust

Dear Mr. Gleason:

This letter is to request the Reserve Fund balance established in the September 1, 2011 Addendum to the SwiftWater Ranch Trust Water Right Agreement be transferred to the Kittitas Conservation Trust. The Addendum requires SwiftWater to deposit $500 per residential connection in an escrow (Reserve Account) or other account managed by a third party for each transaction that WA State Department of Ecology (Ecology) determines would have a nominal negative impact on the Teanaway River aquatic resources.

Ecology determined the following Water Budget Neutrality determinations will have a nominal negative impact and required the $500 deposit per residential connection:

File Number	Name	No. of residential connections
G4-35498	Bruce and Marie Von Normann	1
G4-35509	Jerry Stougard	1
G4-35506	Jason and Danica Bourne	1
G4-35526	Montey and Phyllis Moore	3
G4-35571	Rob and Dian Hill	2
G4-35572	Rob and Dian Hill	2

The Reserve Fund amount ($5,000) should be transferred to the Kittitas Conservation Trust within ten days of the date of this letter per the September 1, 2011 Addendum. If you have any questions, please contact Bob Barwin at 509-457-7140.

Thank you,

Mark Kemner, LHG
Section Manager
Water Resources Program

MK:RFB:gh/130406

ecopy: Traci Shallbetter, Shallbetter Law
Bob Barwin, Environmental Engineer, Ecology

FILE COPY

AGREEMENT CONCERNING RIPARIAN PROJECT FUNDING

THIS AGREEMENT CONCERNING RIPARIAN PROJECT FUNDING ("Agreement") is entered into as of JANUARY 24, 2012, by and between the WASHINGTON STATE DEPARTMENT OF ECOLOGY, STATE TRUST WATER RIGHT PROGRAM ("Ecology") and KITTITAS CONSERVATION TRUST, a Washington non-profit corporation ("KCT").

RECITALS

A. Ecology, as trustee of the Yakima River Basin Trust Water Rights Program (the "Trust"), has entered into or intends to enter into trust water rights agreements ("Trust Agreements") with persons or entities for the purpose of placing certain water rights in the Trust to enhance in-stream flows and provide mitigation water to offset and allow for the permitting of new water rights to be used within the Yakima River basin in Kittitas County.

B. As a part of the Trust Agreements, the owner of the subject water right may agree to contribute funds ("Mitigation Funds") into an account for the purpose of funding projects to improve flood plain function and riparian condition in basins from which new withdrawals occur that Ecology determines may or would have a nominal negative impact on late season in-stream flows despite the provision of mitigation water under the Trust Agreements

C. Grantee is recognized by the IRS as a tax-exempt nonprofit organization qualifying under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, any successor provision, and the regulations promulgated thereunder ("IRC Section 501(c) and IRC Section 170(h)"). Grantee is also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and 84.34.250, whose primary purpose is to promote the preservation of open space and critically important ecological systems primarily in Kittitas County, including the basins of the Yakima River and its tributaries within Kittitas County, for the purpose of protecting riparian areas, wetlands, forests, streams, lakes, ponds, scenic areas, ecological, historical or other natural features, working forests and agricultural areas.

D. Ecology desires for KCT to receive the Mitigation Funds and to apply the funds to Qualifying Projects (as defined below), and KCT desires to accept the funds and to apply the funds to Qualifying Projects, under the terms and conditions set forth in this Agreement.

AGREEMENT

1. Mitigation Funds Account. KCT agrees to accept Mitigation Funds directed by Ecology to be contributed by mitigation water right owners pursuant to any Trust Agreements. All Mitigation Funds shall be kept in one or more separate accounts. KCT may, but shall have no obligation to, use an interest bearing account, with any interest being added to and becoming

part of the Mitigation Funds. KCT shall retain and, upon request, provide to Ecology statements of the account for the preceding five years. Mitigation Funds shall be withdrawn only in association with a Qualifying Project, as described in Section 2 below, or upon a transfer of all funds pursuant to Section 5 below. KCT shall be permitted to combine the Mitigation Funds with other funds for the purpose of completing Qualifying Projects. KCT shall not be permitted to assign or pledge any Mitigation Funds or the accounts in which they are maintained as security for any obligation of KCT.

2. Qualifying Projects. Mitigation Funds shall be used only for Qualifying Projects, which are habitat mitigation projects identified pursuant to the following procedure:

a. Potential qualifying projects may be identified by either KCT or Ecology.

b. Once a project is identified and KCT and Ecology agree it is a potentially qualifying project, Ecology or KCT will consult the Yakama Nation and WDFW.

c. If, after consultation, Ecology, Yakama Nation, and WDFW concur on the merit of the project to secure flood plain function and riparian condition improvement, the project is a Qualifying Project.

d. Mitigation Funds may be applied to any aspect of the budget for a Qualifying Project including costs of materials and labor, incidential project costs, project performance monitoring, and KCT staff costs, as set forth in the qualitfying project budget.

e. KCT agrees to work diligently and in good faith to identify and perform Qualifying Projects as described herein, but shall have no liability, hereunder or otherwise, for any failure to do so except in the event of a violation of the express terms of this Agreement.

3. No Waiver. Nothing herein shall be deemed to alter or diminish the rights and liabilities of the parties except as otherwise expressly provided herein. Nothing in this Agreement shall be construed as quantifying, diminishing defining or altering in any way the Yakama Nation's or WDFW's rights under state or federal law, or treaty rights in the case of the Yakama Nation. Any acts or omissions of KCT under this Agreement shall in no way constitute an act or omission of any individual board member or the entity with which such individual is affiliated, and such individuals and entities shall in no event ever have any liability or responsibility hereunder.

4. Notice and Approval. Whenever notice to and approval by a party is required under this Agreement, the requesting party shall notify the other party in writing not less than thirty (30) days prior to the date the requesting party intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit the other party to make an informed judgment as to its consistency with the terms of this Agreement. Where

approval by one of the parties is required under this Agreement, such approval shall be granted or denied in writing within thirty (30) days of receipt of a written request for approval, and such approval shall not be unreasonably withheld. When such approval is not granted or denied within the time period and manner set forth in this subsection, approval of activity in question may be presumed. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either delivered personally or sent by first class certified mail, postage prepaid, addressed as follows, or to such other address as either party from time to time shall designate by written notice to the other:

To KCT: Kittitas Conservation Trust
205 Alaska Ave.
P.O. Box 428
Roslyn, WA 98941-0428

To Ecology: Section Manager, Water Resources Program
Central Regional Office
15 W Yakima Ave, Suite 200
Yakima, WA 98901

5. Assignment. This Agreement is transferable, but KCT may assign its rights and obligations under this Agreement only to an organization approved in advance by Ecology.

6. Term and Termination. This agreement shall be effective for a term of 5 years following the date hereof, provided that the term shall automatically extend for successive 5-year periods unless a party delivers written notice of termination to the other party within 90 days prior to the expiration of the then-existing term. This Agreement may be sooner terminated by either party with or without cause upon not less than 60 days advance written notice to the other party; provided, that the effective date of termination shall be extended as required for KCT to satisfy and outstanding contractual obligations related to a Qualifying Project. Prior to termination of this Agreement, KCT shall satisfy all outstanding obligations associated with pending Qualifying Projects and then transfer all remaining Mitigation Funds then existing in the account(s) described in Section 1, if any, as directed by Ecology.

7. General Provisions.

a. Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of Washington.

b. Legal Relationships. No employment, agency, partnership, joint venture or joint undertaking relationship shall be construed from this Agreement, and except as herein specifically provided, no party shall have the right to make any representation for, act on behalf of, or be liable for the debts or legal obligations of any other party. No third party is intended to be benefited by this Agreement.

c. Severability. If any provision of this Agreement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to subject matter hereof and supersedes all prior discussions, negotiations, understandings or agreements, all of which are merged into this Agreement. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment executed by both parties.

e. Counterparts. The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it.

ENTERED INTO as of the date first set forth above.

KITTITAS CONSERVATION TRUST

By:_____
Name:_____
Title:_____

WASHINGTON STATE DEPARTMENT OF ECOLOGY,
STATE TRUST WATER RIGHT PROGRAM

By: [signature]
Name: MARK KEMNER
Title: WR SECTION MANAGER