

**DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION OF  
THE STATE OF MONTANA**

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IN THE MATTER OF Joint Application of  
Liberty Utilities Co., Liberty WWH, Inc.,  
Western Water Holdings, LLC, and  
Mountain Water Company for Approval  
of a Sale and Transfer of Stock

UTILITY DIVISION

DOCKET NO. D2014.12.99

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**CITY OF MISSOULA’S MOTION TO COMPEL UNREDACTED  
INFORMATION PRODUCED BY WESTERN WATER HOLDINGS, LLC  
AND MOUNTAIN WATER COMPANY**

The City of Missoula (“City”) respectfully moves the Montana Public Service Commission (“PSC”) to compel Western Water Holdings, LLC (“WWH”) and Mountain Water Company (“Mountain Water”) to re-produce the documents previously produced in response to the PSC’s Data Requests (dated February 17, 2015) without redaction of salary and bonus information.

**FACTUAL BACKGROUND**

WWH and the other corporate entities that form The Carlyle Group propose to sell Park Water Company to a Canadian investment firm, Liberty Utilities.<sup>1</sup> Park Water includes Missoula’s water system and the associated monopoly over the City of Missoula’s water distribution. As part of its regulatory due diligence in the above-captioned action, the PSC requested information from WWH about the compensation of executives in its corporate lineage, including at Park Water and Mountain Water.

WWH responded to the request, but redacted critical information from the documents,

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<sup>1</sup> Which itself is an entity in a corporate chain that starts with Algonquin Power and Utilities Corporation.

including the salary, bonuses, and Class B Unit Agreements of Park Water and Mountain Water's top earners. As far as Carlyle's exorbitant pay-out, as well as the necessary documents to know how distributions are paid out, WWH provided no information at all.<sup>2</sup>

To assist its determination, the PSC requested records from WWH, including information about salaries and bonuses paid to WWH executives and other top earners. WWH provided the information requested, but with key compensation figures redacted. (See **Exhibit 1**, Employment Agreement between Christopher Schilling and PWC Merger Sub, Inc., WWH000189-WWH000205; **Exhibit 2**, Amended and Restated Class B Unit Grant Agreement, dated November 27, 2012 by and between Christopher Schilling and Western Water Holdings, LLC, WWH000233-WWH00244; **Exhibit 3**, Amended and Restated Class B Unit Grant Agreement, dated November 27, 2012 by and between John Kappes and Western Water Holdings, LLC, WWH000283-  
WWH000292.) WWH blacked out salary figures and the critical details of Class B stock bonuses that would indicate just how big of a windfall Park Water and Mountain Water executives will realize if the sale goes through.

The PSC took a step in the right direction in its recent *Order In the Matter of 2013 Regulatory Annual Reports, 2/27/15* ("2/27 Order") recognizing that Missoulians have a right to know how much of their water bills are going to executive salaries and requiring Mountain Water to divulge the cumulative payroll of its top earners. The PSC should take the next step by requiring WWH to reveal how much Chris Schilling, John

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<sup>2</sup> Such documents would include WWH's Operating Agreement and enough corporate documentation to know the total number of shares issued and other corporate attributes.

Kappes, and the other executives will reap in stock payouts from the contemplated sale and their unreported compensation, including bonuses.

## ARGUMENT

As the PSC recognized in the 2/27 Order:

The public's right to know [officers' compensation] information is associated with its right to know what it is paying for through government-approved tariffs. Additionally, the public has a right to know whether employee compensation in total and, more specifically, the expense of executive and managerial employees is increasing or decreasing after a rate case.

Order, ¶ 26.

Significantly, the PSC's Order referred to *compensation* and *expense* of executive and managerial employees, not just salary. That, of course, is because compensation and expense often includes significant bonuses, particularly at the executive level. In Park Water's case, stock dividends are obviously significant—it has already paid \$10 million in dividends to Carlyle in its short time under the new owners. Roughly a third of that money has trickled up from Missoula's captive consumers.<sup>3</sup>

For executives in WWH's corporate lineage, part of their compensation comes from distributions for Class B Units of the corporate stock when the company is sold. The precise payout depends on the sale price of the company and number of shares the particular executive has been given. The PSC and the public know the price of the proposed sale of Park Water: \$250 million.<sup>4</sup> What they don't know is how those Class B shares are distributed—because WWH has literally covered it up. In the Western Water Holdings, LLC Class B Unit Grant Agreements for Chris Schilling and John Kappes,

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<sup>3</sup> Mountain Water pays approximately one-third of the Four Factor Allocation of Park Water's expenses. The dividends were drawn from Park Water's excess revenues.

<sup>4</sup> Plus the assumption of \$77 million in debt, for an effective purchase price of \$327 million.

WWH has redacted the number of shares granted as compensation to the two executives. (Exs. 2 and 3.) Thus, the PSC and the public cannot determine how much Schilling, Kappes, and the other executives stand to gain from the sale.

The PSC has already determined that the public has a right to know what they're paying for when they send in their water bill, and that information about executive compensation is a significant part of the equation. *See* 2/27 Order. For executives like Schilling and Kappes, salary is just one aspect of compensation (albeit a handsome one, *see* Park's List of \$85,000+ earners, **Exhibit 4**). The PSC – and the public – deserve to know how much more of their water bills are going to pay these top earners when, ultimately, Liberty Utilities or any other buyer attempts to recuperate its purchase price through customer bills. Un-redacted versions of the Class B stock agreements would reveal just how many shares they have. That information, combined with the WWH Operating Agreement and Merger Agreement, provide those figures. Without that information and the information about Carlyle's Class A shares, the PSC is only scratching the surface of the amounts Western Water Holdings is paying to executives, and it cannot fairly contrast their compensation with the compensation paid to water system executives in other Montana cities. *See* Water Manager Salary Table, **Exhibit 5**.

Respectfully submitted this 12<sup>th</sup> day of March, 2015.



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CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail and email upon the following counsel of record at their addresses this 12<sup>th</sup> day of March 2015:

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Kate M. Palmer

# **EXHIBIT**

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## EMPLOYMENT AGREEMENT

This **Employment Agreement** (this “**Agreement**”) is made and entered into effective as of December 21, 2010 by and between PWC Merger Sub, Inc., a California corporation (the “**Company**”), and Christopher Schilling (the “**Executive**”). The Company and the Executive are hereinafter collectively referred to as the “**Parties**”, and individually referred to as a “**Party**”.

### RECITALS

A. The Executive currently serves as the Co-Chief Executive Officer of the Company with its current Chief Executive Officer and principal shareholder, Henry H. Wheeler, Jr. (“**Wheeler**”) under an Employment Agreement with the Company, dated March 4, 2009 (the “**Original Employment Agreement**”).

B. Park Water Company, a California corporation (“**Seller**”), Western Water Holdings, LLC, a Delaware limited liability company (“**Buyer**”), the Company and certain other parties have entered into that certain Agreement and Plan of Merger, dated as of December 21, 2010 (the “**Merger Agreement**”), pursuant to which the Company will merge with and into the Seller, with the Seller surviving the merger as a wholly-owned subsidiary of Buyer (the “**Merger**”).

C. Buyer and the Company desire that Executive continue as the Company’s sole Chief Executive Officer following the closing of the Merger (the “**Closing**”).

D. The Executive and the Company intend that this Agreement will supersede and replace the Original Employment Agreement.

E. This Agreement will become effective only if the Closing occurs.

### AGREEMENT

In consideration of the foregoing Recitals and the mutual promises and covenants herein contained, and for other good and valuable consideration, the Parties, intending to be legally bound, agree as follows:

#### 1. EMPLOYMENT.

**1.1 Employment Term.** Subject only to the termination provisions set forth in Section 3 below, the term of Employee’s employment hereunder shall be for a four (4)-year period beginning upon the Effective Date (as defined below) and ending on the fourth anniversary of the Effective Date (the “**Initial Term**”), unless earlier terminated in accordance herewith, which period shall be extended and continue for additional one (1) year periods (each, an “**Extension Term**”) that begin on the fourth anniversary of the Effective Date and each succeeding anniversary thereof, unless either Party elects in writing not to so renew at least ninety (90) days prior to any such anniversary (such period, the “**Employment Period**”). For purposes of this Agreement, “**Effective Date**” will mean the “Effective Time” as defined in the Merger Agreement.

**1.2 Titles, Duties and Responsibilities.** The Executive agrees to serve the Company and the Company agrees to employ the Executive as its Chief Executive Officer. The Executive shall perform the duties requested by the Board of Directors of the Company (the "**Board**") that are consistent with his position and agrees to serve as a director of the Company during the Employment Period, if elected to the Board. At the Company's request, the Executive shall serve the Company and/or its subsidiaries and affiliates in other capacities in addition to the foregoing consistent with the Executive's role as Chief Executive Officer of the Company. If the Executive serves in any one or more of such additional capacities during the Employment Period (including without limitation, on the Board), the Executive's compensation shall not be increased beyond that specified in Section 2 hereof. The Executive shall devote all of his professional efforts on a full-time basis to the business and affairs of the Company.

**1.3 Location.** Unless the Parties otherwise agree in writing, the Executive shall perform his services pursuant to this Agreement during the Term at the Company's headquarters in Downey, California, or within a fifty (50) mile radius thereof; provided, however, the Company may from time to time require the Executive to travel temporarily to other locations in connection with the Company's business.

## **2. COMPENSATION OF THE EXECUTIVE.**

**2.1 Base Salary.** During the Employment Period, the Company shall pay the Executive an initial base salary of [REDACTED] per year (as may be increased from time to time, the "**Base Salary**"), subject to payroll deductions and all required withholdings, payable regularly in installments in accordance with the Company's normal payroll practices, but in no event less often than monthly. The Executive's base salary shall be prorated for any partial year of the Employment Period on the basis of a 365-day calendar year. During the Employment Period, the Executive shall be entitled to an annual review by the Board of his Base Salary to determine if any increase in the Base Salary is warranted, which determination shall be made by the Board in its sole discretion based on the Company's and the Executive's performance.

**2.2 Bonus.** During the Employment Period, the Executive shall be eligible to receive annual bonuses. Any such bonuses (if any), shall be determined by the Company in its sole discretion.

**2.3 Benefits.** During the Employment Period, the Executive shall be eligible to participate in the benefit plans and programs that the Company provides generally to the other senior executives of the Company and their dependents on comparable terms and conditions, including, but not limited to the following plans and programs: life insurance, disability insurance, medical, dental, long term care insurance and accidental death and dismemberment insurance, pension, post-retirement benefits and 401(k) plans. Notwithstanding the foregoing, while the Company has no present intention to terminate any benefit or retirement plan or program, the Company may amend or terminate any benefit or retirement plan or program at any time in accordance with its applicable terms and shall have no obligation to adopt or maintain any benefit plans or programs at any time or for any specified period.

**2.4 Paid-Time-Off.** During the Employment Period, the Executive shall be entitled to annual paid-time-off accruing at a rate of thirty-one (31) days per calendar year, pro-rated for any partial calendar year and otherwise in accordance with the plans, policies, programs and practices of the Company applicable to its similarly situated executives, which shall include 38.3 days of paid-time-off (306.5 hours) of paid-time-off accrued as of the date of this Agreement, to be used in accordance with applicable Company policy as in effect from time to time.

**2.5 Equity Participation Plan.** The Executive has been presented with a non-binding equity term sheet that summarizes the proposed terms of an equity incentive program to be implemented in the future, under which certain equity awards are expected to be issued to the Executive and other key members of the Company's management. As soon as reasonably practicable following the Effective Date of this Agreement, the Company and the Executive will negotiate in good faith to complete and implement an equity incentive program that is reasonably acceptable to the Parties, it being understood that this Section 2.5 shall impose no obligation on the Company to adopt any particular equity incentive program or grant any specific equity awards at any time.

**2.6 Business Expenses.** The Company shall reimburse the Executive promptly for usual and customary business expenditures incurred and substantiated in furtherance of the Company's business and in accordance with procedures established from time-to-time by the Company.

**2.7 Use of Company Car.** During the Employment Period, the Executive shall be entitled to use a Company-owned fleet car for transportation in lieu of a car allowance. The Company shall have no obligation to acquire or retain ownership of any particular vehicle at any time as a result of this provision, and the Executive shall be solely liable for any taxes (if any) arising in connection with the Executive's use of such car.

### **3. TERMINATION.**

**3.1 Termination by the Company.** The Executive's employment with the Company may be terminated at any time by either Party, with or without "Cause" or "Good Reason", as those terms are defined hereafter, in accordance with the terms of this Agreement. The obligations of the Parties upon a termination of employment are set forth hereafter.

**3.1.1 Termination by the Company for Cause.** The Company may terminate the Executive's employment under this Agreement for Cause by delivering written notice to the Executive specifying the Cause or Causes relied upon for such termination. Any notice of termination given pursuant to this Section 3.1.1 shall effect termination either as of the date of the notice, or as of such other later date as specified in the notice, subject to the thirty (30)-day cure provision provided in Section 3.6.3(i).

**3.1.2 Termination by the Company Without Cause.** The Company may terminate the Executive's employment under this Agreement without

“Cause” during the Employment Period by providing the Executive written notice of such termination, which notice shall effect termination either as of the date of the notice, or as of such other later date as specified in the notice.

**3.1.3 Termination Upon Company Non-Renewal.** The Company may terminate the Executive’s employment in connection with a non-renewal of the Initial Term or any Extension Term.

**3.2 Termination by the Executive.** The Executive may terminate his employment with the Company at any time during the Employment Period as follows:

**3.2.1 Good Reason.** The Executive may terminate his employment under this Agreement for “Good Reason” (as defined hereafter) in accordance with the procedures specified in Section 3.6.2 below.

**3.2.2 Without Good Reason or Executive Non-Renewal.** The Executive may terminate his employment under this Agreement without “Good Reason”, by providing the Company written notice of termination at least ninety (90) days prior to such termination date. The Executive may terminate his employment by electing not to renew the Employment Period at least ninety (90) days prior to the end of the Initial Term or any Extension Term in accordance with Section 1.1 above. The terminations described in this Section 3.2.2 are referred to as “*Voluntary Terminations*”.

**3.3 Termination Upon Death or Complete Disability.** The Executive’s employment with the Company shall automatically terminate effective upon the date of the Executive’s death or Complete Disability (as defined hereafter).

**3.4 Termination by Mutual Agreement of the Parties.** The Executive’s employment pursuant to this Agreement may be terminated at any time by the written agreement of the Parties. Any such termination of employment shall have the consequences, if any, specified in such agreement.

**3.5 Compensation Upon Termination of Agreement.**

**3.5.1 Death or Complete Disability.** If the Executive’s employment is terminated by his death or Complete Disability, as provided in Section 3.3, the Company shall pay to the Executive, or to the Executive’s legal representatives, heirs or estate, the following amounts (such amounts, together, the “*Accrued Obligations*”): (i) the Executive’s earned but unpaid Base Salary through the Date of Termination (as defined below), (ii) the Executive’s accrued and unused paid-time-off earned through the Date of Termination (if any), (iii) the Executive’s accrued but unpaid annual bonus(es) through the Date of Termination (if any), and (iv) any benefits or amounts in which the Executive has vested as of such termination under any Company benefit plans or programs (if any), in each case, less standard deductions and withholdings. Payments pursuant to clauses (i), (ii) and (iii) of this Section 3.5.1 shall be made in a single lump-sum payment within thirty (30) days after such termination (or such shorter period as may be required by applicable law); payments pursuant to clause (iv) of this Section 3.5.1 shall be made as and when due in accordance with the terms and conditions of the applicable plan or program.

**3.5.2 With Cause or Without Good Reason; Other Terminations.** If the Executive's employment is terminated by the Company for Cause, if the Executive terminates his employment hereunder in a Voluntary Termination or the Executive's employment with the Company terminates for any other reason not described in Section 3.5.1 above or Section 3.5.3 below, the Company shall pay the Executive the Accrued Obligations in the manner described in Section 3.5.1 above.

**3.5.3 Without Cause, for Good Reason or upon a Company Non-Renewal.** If, during the Employment Period, (i) the Executive terminates his employment for Good Reason, (ii) the Company terminates the Executive without Cause, or (iii) the Company elects not to renew the Employment Period and, at the time of such election, the Executive is willing and able to continue providing services under this Agreement on terms and conditions substantially similar to those in effect at the time of such non-renewal (a "**Company Non-Renewal**" and, together with the terminations described in clauses (i) and (ii), "**Severance Terminations**"), then the Company shall pay to the Executive the Accrued Obligations in the manner described in Section 3.5.1. In addition, if the Executive experiences a "separation from service" (within the meaning of Section 409A (as defined below)) from the Company (a "**Separation from Service**") as a result of a Severance Termination during the Employment Period (the date of any Separation from Service, the "**Date of Termination**"), subject to Section 3.7 below and the Executive's timely execution and non-revocation of a Release (as defined and provided below):

(a) *Salary Continuation.* The Executive shall be entitled to receive as a severance payment an amount equal to (I) if the Severance Termination occurs during the Initial Term, other than by reason of a Company Non-Renewal at the end of the Initial Term, two times his Base Salary in effect on the Date of Termination, and (II) if the Severance Termination occurs as the result of a Company Non-Renewal at the end of the Initial Term or by reason of any Severance Termination (including without limitation, a Company Non-Renewal) during any Extension Term, one times his Base Salary in effect on the Date of Termination. The Company shall pay the Base Salary severance payments in substantially equal installments beginning on the fifteenth (15<sup>th</sup>) day of the first month following the month in which the Date of Termination occurs (the "**Initial Payment Date**") with additional payments on the three (3) succeeding six-month anniversaries of the Initial Payment Date (or, in the case of payments under Section 3.5.3(a)(II), one additional payment on the six-month anniversary of the Initial Payment Date); provided, however, that if the Initial Payment Date occurs prior to the first payroll date occurring on or after the 30<sup>th</sup> day following the Date of Termination (the "**First Payroll Date**"), then the first installment of Base Salary severance shall instead be paid on the First Payroll Date without interest thereon; and

(b) *Healthcare Continuation.* In addition, during the period commencing on the Date of Termination and ending on the earlier to occur of (i) if a Severance Termination occurs during the Initial Term other than by reason of a Company Non-Renewal, the eighteen (18)-month anniversary of the Date of Termination, (ii) if the Severance Termination occurs as a result of a Company Non-Renewal and/or during any Extension Term (including, for the avoidance of doubt, in connection with a non-renewal of the Initial Term), the twelve (12)-month anniversary of the Date of Termination, or

(iii) in either, case, if earlier, the date on which the Executive becomes eligible to receive health benefits under the benefit plans of another employer (of which eligibility the Executive hereby agrees to give the Company prompt notice) (in any case, the “**COBRA Period**”), subject to the Executive’s valid election to continue healthcare coverage under Section 4980B of the Code and the regulations thereunder (“**COBRA**”), the Company shall continue to provide the Executive and the Executive’s eligible dependants with coverage under its group health plans at the same levels and the same cost to the Executive as would have applied if the Executive’s employment had not so terminated, based on the Executive’s elections in effect on the Date of Termination), provided, however, that (1) if any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A under Treasury Regulation Section 1.409A-1(a)(5), or (2) the Company is otherwise unable to continue to cover the Executive under its group health plans without adverse tax consequences or otherwise, then, in either case, an amount equal to each remaining Company subsidy otherwise payable on behalf of the Executive in accordance with this Section 3.5.3(b) shall thereafter be paid to the Executive as currently taxable compensation in substantially equal monthly installments over the COBRA Period (or the remaining portion thereof). For the avoidance of doubt, nothing herein shall limit the Executive’s legal rights under COBRA; however, to the extent that COBRA entitles the Executive (and his dependents, if applicable) to healthcare continuation beyond the periods specified in this Section 3.5.3(b), such healthcare continuation shall be at the Executive’s sole expense.

(c) *Pension Replacement.* If (and only if) the Executive experiences a Severance Termination prior to the date on which the Executive first vests in benefits under the Company’s Park Water Company Pension Plan, currently expected to occur on June 15, 2014, in addition to the foregoing amounts, the Company shall pay to the Executive a one-time payment of two hundred thousand dollars (\$200,000), payable on the First Payroll Date.

The payments and benefits described in Section 3.5.3(a), (b) and (c) above are referred to herein as the “**Severance**.” Notwithstanding the foregoing, it shall be a condition to the Executive’s right to receive the Severance that the Executive execute and deliver to the Company an effective release of claims in substantially the form attached hereto as Exhibit A (the “**Release**”) within twenty-one (21) days (or, to the extent required by law, forty-five (45) days) following the Date of Termination and that the Executive (or the Executive’s estate or beneficiaries, if applicable) not revoke such Release during any applicable revocation period.

**3.6 Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

**3.6.1 Complete Disability.** “**Complete Disability**” shall mean that the Executive has become disabled within the meaning of any applicable Company policy of long-term disability income insurance covering the Executive. If the Company has no policy of long-term disability income insurance covering the Executive at the relevant determination time, the term “**Complete Disability**” shall mean the inability of the Executive to perform the Executive’s duties under this Agreement, whether with or

without reasonable accommodation, by reason of any incapacity, physical or mental, which the Company's Board, based upon medical advice reasonably acceptable to the Board, determines to have incapacitated the Executive from satisfactorily performing the Executive's usual services for the Company, with or without reasonable accommodation, for a period of at least one hundred twenty (120) days during any twelve (12) month period (whether or not consecutive). Based upon such medical advice, the determination of the Board shall be final and binding and the date such determination is made shall be the date of such Complete Disability for purposes of this Agreement.

**3.6.2 Good Reason.** "*Good Reason*" for the Executive to terminate his employment hereunder shall mean the occurrence of any of the following events without the Executive's prior written consent:

- (i) a material reduction in the Executive's title, duties, authority or responsibilities with the Company, as in effect from time-to-time hereunder;
- (ii) a reduction in the Executive's Base Salary as then in effect, other than in connection with a Company-wide expense reduction;
- (iii) a change or relocation of the Executive's place of employment that constitutes a "material change in geographic location" (within the meaning of Section 409A), which, in any event, shall include only a change or relocation to a location not within a fifty (50)-mile radius of the location designated in Section 1.3;
- (iv) any other substantial material and adverse change in the Executive's conditions of employment imposed upon him by the Board without the Executive's consent; or
- (v) a material breach by the Company of any of its material contractual obligations under this Agreement.

provided, however, that termination by the Executive of his employment shall only be deemed for Good Reason pursuant to the foregoing definition if: (i) the Executive gives the Company written notice of his intent to terminate for Good Reason within sixty (60) days following the occurrence of the event(s) that the Executive believes constitutes Good Reason, which notice shall describe such event(s); (ii) the Company fails to remedy such event(s) within sixty (60) days following receipt of the written notice (the "*Company Cure Period*"); and (iii) the Executive delivers written notice of his termination of employment to the Company within thirty (30) days following the end of the Company Cure Period.

**3.6.3 Cause.** "*Cause*" for the Company to terminate the Executive's employment hereunder shall mean a termination of employment directly resulting from:

- (i) the Board's good faith determination that the Executive has willfully or repeatedly failed to substantially perform his primary or

regular duties or obligations under this Agreement or under written policies of the Company, (other than any such failure resulting from the Executive's Complete Disability), provided, that, to the extent such failure can be fully cured, the Company shall have provided the Executive with at least thirty (30) days' notice of such failure and the Executive shall not have remedied the failure within the thirty (30)-day period;

(ii) the Executive having engaged in misconduct that caused or would have caused, if the Company did not intervene, a violation by the Company or any of its affiliates of any applicable law;

(iii) the Executive having engaged in a theft of corporate funds or corporate assets or in a material act of fraud upon the Company;

(iv) an act of personal dishonesty taken by the Executive that was intended to result in personal enrichment of the Executive at the expense of the Company;

(v) the Executive's repeated failure to meet performance objectives as mutually agreed with the Board from time-to-time, *provided, however*, that the Executive shall have received two written warnings by the Board, the first of which specifies each area of Executive's failure, a time-frame and plan for correction of such failures that has been determined by the Board in consultation with the Executive, and the second of which coming after Executive's failure to accomplish such remedial measures derived after the first notice;

(vi) the Executive's use of illegal drugs;

(vii) the Executive's commission (including without limitation, as evidenced by the entry of a plea of *nolo contendere* or equivalent plea in a court of competent jurisdiction) of a felony or other crime involving dishonesty; or

(viii) a material breach by the Executive of the provisions of this Agreement.

**3.7 Full Settlement.** Except as expressly provided in this Agreement, the Company shall have no further obligations and the Executive shall have no further rights or entitlements upon or in connection with the Executive's termination of employment.

**3.8 Six Month Delay.** Notwithstanding anything to the contrary in this Agreement, no compensation or benefits, including without limitation any Severance payable under Section 3 hereof, shall be paid to the Executive during the six (6)-month period following the Executive's Separation from Service if the Company determines that paying such amounts at the time or times indicated in this Agreement would be a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code. If the payment of any such amounts is delayed as a result of the previous sentence, then on the first business day following the end of such six (6)-month period (or such earlier date upon which such amount can be paid under Section 409A without resulting in a prohibited distribution, including as a result of the Executive's death), the Company shall pay the

Executive a lump-sum amount equal to the cumulative amount that would have otherwise been payable to the Executive during such period.

**4. EXECUTIVE TERMINATION OBLIGATIONS.**

Upon termination of the Executive's employment, the Executive shall be deemed to have resigned from all offices, directorships and other employment positions then held with the Company or any of its subsidiaries or affiliates, if any (including without limitation, the Board), and shall take all actions reasonably requested by the Company to effectuate the foregoing. Following any termination of employment, the Executive shall cooperate with the Company in the winding up of pending work on behalf of the Company and the orderly transfer of work to other employees. The Executive further agrees that all property (including without limitation all equipment, tangible proprietary information, documents, records, notes, contracts and computer-generated materials) furnished to or created or prepared by the Executive incident to the Executive's employment belongs to the Company and shall be promptly returned to the Company upon termination of the Executive's employment.

**5. INDEMNITY AGREEMENTS.**

The Company hereby acknowledges, and agrees to perform, in accordance with their terms, the Company's obligations under those certain indemnity agreements between the Executive and the Company and between the Executive and Apple Valley Ranchos Water Company, both dated July 15, 2009.

**6. EFFECTIVENESS.**

This Agreement shall become effective upon Closing. Notwithstanding anything contained herein, in the event that the Closing does not occur for any reason, this Agreement shall automatically, and without notice, terminate without any obligation due to the other party and the provisions of this Agreement shall be of no force or effect.

**7. CONFIDENTIAL INFORMATION AND NON-SOLICITATION.**

The Executive hereby acknowledges that, concurrent with the execution of this Agreement, the Executive has entered into an agreement with the Company containing confidentiality, non-solicitation and other protective covenants (the “*Confidentiality Agreement*”), and that the Executive shall remain bound by the terms and conditions of the Confidentiality Agreement.

**8. REPRESENTATIONS.** The Executive hereby represents and warrants to the Company that (a) the Executive is entering into this Agreement voluntarily and that the performance of the Executive’s obligations hereunder will not violate any agreement between the Executive and any other person, firm, organization or other entity, and (b) the Executive is not bound by the terms of any agreement with any previous employer or other party to refrain from competing, directly or indirectly, with the business of such previous employer or other party that would be violated by the Executive’s entering into this Agreement and/or providing services to the Company pursuant to the terms of this Agreement.

**9. ASSIGNMENT AND BINDING EFFECT.**

This Agreement is personal to the Executive and, without the prior written consent of the Company, shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. The Company agrees that the Company shall cause the express assumption of this Agreement by any acquiring or successor entity in connection with any transaction in which this Agreement would not otherwise become the binding legal obligation of such acquiring or successor entity by operation of applicable law.

## 10. NOTICES.

All notices, demands, requests, consents, statements, satisfactions, waivers, designations, refusals, confirmations, denials and other communications that may be required or otherwise provided for or contemplated hereunder shall be in writing and shall be deemed to be properly given and received: (a) upon delivery, if delivered in person or by e-mail or facsimile transmission with receipt acknowledged, (b) one business day after having been deposited for overnight delivery with Federal Express or another comparable overnight courier service, or (c) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as provided below (or sent to such other address as one party hereto may specify to the other(s) in writing in accordance herewith):

If to the Company:

Park Water Company  
9750 Washburn Road  
Downey, CA 90241  
Facsimile: (562) 923-1186  
Attention: Chairman of the Board of Directors

If to the Executive: to the Executive's most recent address on file with the Company.

or such other addresses as either party shall have furnished to the other in writing in accordance with this Section 10. Notice and communications shall be effective when actually received by the addressee.

## 11. CHOICE OF LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to the conflict of laws principles thereof. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect.

## 12. SECTION 409A OF THE CODE.

**12.1 General.** To the extent applicable, this Agreement shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder (together, "**Section 409A**"). Notwithstanding any provision of this Agreement to the contrary, if the Company determines that any compensation or benefits payable under this Agreement may be subject to Section 409A, the Company may adopt such amendments to this Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Company determines are necessary or appropriate to avoid the imposition of taxes under Section 409A, including without limitation, actions intended to (i) exempt the compensation and benefits payable under this Agreement from Section 409A, and/or (ii) comply with the requirements of Section

409A; provided, however, that this Section 12 shall not create an obligation on the part of the Company to adopt any such amendment, policy or procedure or take any such other action, nor shall the Company have any liability for failing to do so.

**12.2 Separate Payments.** Any right to a series of installment payments pursuant to this Agreement is to be treated as a right to a series of separate payments. To the extent permitted under Section 409A, any separate payment or benefit under this Agreement or otherwise shall not be deemed “nonqualified deferred compensation” subject to Section 409A to the extent provided in the exceptions in Treasury Regulation Section 1.409A-1(b)(4), Section 1.409A-1(b)(9) or any other applicable exception or provision of Section 409A.

### **13. INTEGRATION.**

As of the Effective Date, this Agreement, together with the Confidentiality Agreement, constitutes the complete, final and exclusive agreement between the Parties with respect to the subject matter hereof, and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, by any member of the Company and its subsidiaries and affiliates, or representative thereof. The Executive agrees that the Original Employment Agreement shall be terminated and will be of no further force or effect from and after the Effective Date.

### **14. AMENDMENT.**

No amendment or modification of this Agreement shall be effective unless it is made in writing and signed by the Executive and the Company.

### **15. WAIVER.**

The Executive’s or the Company’s failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

### **16. SEVERABILITY.**

The unenforceability or invalidity of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

### **17. INTERPRETATION; CONSTRUCTION.**

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. The Parties acknowledge that each Party and its counsel has reviewed, or had an opportunity to review, this Agreement, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**18. COUNTERPARTS.**

This Agreement and any agreement referenced herein may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

*[signature page follows]*

**IN WITNESS WHEREOF**, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from the Board, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

**COMPANY:**

PWC Merger Sub, Inc.

By 

Name: Robert Dove

Title: President

**EXECUTIVE:**

\_\_\_\_\_  
Christopher Schilling

**IN WITNESS WHEREOF**, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from the Board, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

**COMPANY:**

PWC Merger Sub, Inc.

By: \_\_\_\_\_

Name: Robert Dove

Title: President

**EXECUTIVE:**



Christopher Schilling

**GENERAL RELEASE**

For valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned does hereby release and forever discharge the “Releasees” hereunder, consisting of Park Water Company, a California corporation (the “Company”) and each of its partners, subsidiaries, associates, parents, subsidiaries, affiliates, successors, heirs, assigns, agents, directors, officers, employees, representatives, lawyers, insurers, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, losses, costs, attorneys’ fees or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called “Claims”), which the undersigned now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof. The Claims released herein include, without limiting the generality of the foregoing, any Claims in any way arising out of, based upon, or related to the employment or termination of employment of the undersigned by the Releasees, or any of them; any alleged breach of any express or implied contract of employment; any alleged torts or other alleged legal restrictions on Releasees’ right to terminate the employment of the undersigned; and any alleged violation of any federal, state or local statute or ordinance including, without limitation, Title VII of the Civil Rights Act of 1964, the Age Discrimination In Employment Act, the Americans With Disabilities Act, and the California Fair Employment and Housing Act. Notwithstanding the foregoing, this general release (the “Release”) shall not operate to release any rights or claims of the undersigned (i) to payments or benefits under Section 3.5 of that certain Employment Agreement, dated as of December 21, 2010, between PWC Merger Sub, Inc. and the undersigned (the “Employment Agreement”), (ii) to accrued or vested benefits the undersigned may have, if any, as of the date hereof under any applicable plan, policy, practice, program, contract or agreement with the Company, or (iii) to any Claims, including claims for indemnification and/or advancement of expenses, arising under any indemnification agreement between the undersigned and the Company or under the bylaws, certificate of incorporation of other similar governing document of the Company.

THE UNDERSIGNED ACKNOWLEDGES THAT THE EXECUTIVE HAS BEEN ADVISED BY LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

THE UNDERSIGNED, BEING AWARE OF SAID CODE SECTION, HEREBY EXPRESSLY WAIVES ANY RIGHTS THE EXECUTIVE MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

IN ACCORDANCE WITH THE OLDER WORKERS BENEFIT PROTECTION ACT OF 1990, THE UNDERSIGNED IS HEREBY ADVISED AS FOLLOWS:

(A) THE EXECUTIVE HAS THE RIGHT TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS RELEASE;

(B) THE EXECUTIVE HAS TWENTY-ONE (21) DAYS TO CONSIDER THIS RELEASE BEFORE SIGNING IT; AND

(C) THE EXECUTIVE HAS SEVEN (7) DAYS AFTER SIGNING THIS RELEASE TO REVOKE THIS RELEASE, AND THIS RELEASE WILL BECOME EFFECTIVE UPON THE EXPIRATION OF THAT REVOCATION PERIOD.

The undersigned represents and warrants that there has been no assignment or other transfer of any interest in any Claim which the Executive may have against Releasees, or any of them, and the undersigned agrees to indemnify and hold Releasees, and each of them, harmless from any liability, Claims, demands, damages, costs, expenses and attorneys' fees incurred by Releasees, or any of them, as the result of any such assignment or transfer or any rights or Claims under any such assignment or transfer. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery by the Releasees against the undersigned under this indemnity.

The undersigned agrees that if the Executive hereafter commences any suit arising out of, based upon, or relating to any of the Claims released hereunder or in any manner asserts against Releasees, or any of them, any of the Claims released hereunder, then the undersigned agrees to pay to Releasees, and each of them, in addition to any other damages caused to Releasees thereby, all attorneys' fees incurred by Releasees in defending or otherwise responding to said suit or Claim.

The undersigned further understands and agrees that neither the payment of any sum of money nor the execution of this Release shall constitute or be construed as an admission of any liability whatsoever by the Releasees, or any of them, who have consistently taken the position that they have no liability whatsoever to the undersigned.

IN WITNESS WHEREOF, the undersigned has executed this Release this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Christopher Schilling

# **EXHIBIT**

**2**

**WESTERN WATER HOLDINGS, LLC**  
**AMENDED AND RESTATED**  
**CLASS B UNIT GRANT AGREEMENT**

THIS AMENDED AND RESTATED CLASS B UNIT GRANT AGREEMENT (as amended and restated, this "**Agreement**") is made and entered into as of November 27, 2012 (the "**Effective Date**"), by and between Christopher Schilling (together with any Permitted Transferee, "**Holder**") and Western Water Holdings, LLC, a Delaware limited liability company (the "**Company**"). Capitalized terms used herein and not defined shall have the meanings provided in that certain Second Amended and Restated Limited Liability Company Agreement of Western Water Holdings, LLC, dated as of February 28, 2012 (as amended from time to time, the "**LLC Agreement**"). This Agreement amends and restates in its entirety that certain Class B Unit Grant Agreement (the "**Prior Agreement**") by and between Christopher Schilling and the Company, dated as of February 28, 2012 (the "**Grant Date**").

In consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Class B Units; Vesting; Acknowledgement.

(a) As of the Grant Date and subject to the terms, conditions and restrictions contained in this Agreement and the LLC Agreement, the Company (a) granted to Holder [REDACTED] Class B Units of the Company, in consideration of past and/or future services provided and/or to be provided to the Company by Holder, and (b) if not then a Member, admitted Holder as a Member of the Company, on the terms and conditions set forth herein and in the LLC Agreement. In order to induce the Company to grant such Class B Units to Holder, Holder then confirmed and represented, and hereby reaffirms and represents, that each of the representations and warranties made by the Class B Members in the LLC Agreement are true and correct with respect to Holder. The Company and Holder acknowledge and agree that the Class B Units were issued to Holder for the performance of services to or for the benefit of the Company in Holder's capacity as a Member or in anticipation of Holder becoming a Member. Upon receipt of the Units, Holder was, automatically and without further action on Holder's part, deemed to be a party to, signatory of and bound by the LLC Agreement, and the Class B Units were and shall remain subject to the terms and conditions of the LLC Agreement. Notwithstanding the foregoing, at the request of the Company, Holder shall execute (to the extent not previously executed) the LLC Agreement or a joinder or counterpart signature page thereto. Subject to the terms and conditions of this Agreement and the LLC Agreement, Participant shall continue to have all the rights and obligations associated with ownership of the Class B Units, as provided under and subject to the limitations contained in the LLC Agreement, from the Grant Date and through such time as the Class B Units are disposed of or forfeited by Participant. The Class B Units shall conditionally vest, be earned and cease to be subject to forfeiture and deemed repurchase in accordance with the provisions of Section 1(b) below (each such Class B Unit which, from time to time, continues to be subject to forfeiture and deemed repurchase, an "**Unvested Class B Unit**").

(b) The Class B Units subject hereto shall conditionally vest and cease to be subject to forfeiture and deemed repurchase (but shall not yet be earned for any purposes) (i) with respect to fourteen percent (14%) of the Class B Units subject hereto on each of the first two (2) anniversaries of December 22, 2011 (the “**Vesting Commencement Date**”), (ii) with respect to twenty percent (20%) of the Class B Units subject hereto on each of the third (3rd), fourth (4th) and fifth (5th) anniversaries of the Vesting Commencement Date, and (iii) with respect to six percent (6%) of the Class B Units subject hereto on the sixth (6th) and seventh (7th) anniversaries of the Vesting Commencement Date, in each case, subject to Holder’s continued status as a Service Provider through each applicable vesting date (each such date, a “**Conditional Vesting Date**”), such that all of the Class B Units subject hereto shall be conditionally vested (but not yet earned) as of the seventh (7<sup>th</sup>) anniversary of the Vesting Commencement Date.

(c) Holder hereby acknowledges and agrees that, as of the Effective Date, 1.2 Class B Units (the “**Forfeited Units**”) granted to Holder pursuant to the Prior Agreement shall be cancelled and forfeited. From and after the Effective Date, Holder will have no further rights with respect to or in respect of the Forfeited Units and the Company shall have no obligation or liability with respect thereto or in respect thereof, and any references to the Class B Units subject hereto shall mean and refer to 7,340 Class B Units.

2. Transfer Restrictions. Subject to Section 3 below, Holder hereby agrees that Holder shall not sell, transfer, dispose of, hypothecate, assign, pledge or otherwise encumber (collectively, “**Transfer**” or “**Transferred**”) the Class B Units (a) at any time prior to Holder’s termination, provided, that, if the Board permits in its sole discretion, Holder may Transfer the Class B Units for estate planning purposes on such terms and conditions as the Board may permit, and (b) following Holder’s termination, to the extent the Class B Units vest unconditionally in connection therewith and are not forfeited, only to the extent permitted in accordance with the LLC Agreement. Any Transfer of the Class B Units which is not made in compliance with the LLC Agreement and this Agreement shall be null and void and of no force or effect. The Transfer restrictions imposed under this Section 2 are additional to the restrictions and requirements imposed upon the Class B Units pursuant to the LLC Agreement, including without limitation, Article VIII of the LLC Agreement. For the avoidance of doubt, in no event shall the provisions of this Section 2 limit in any way any affirmative requirements imposed on Holder with respect to the Class B Units under the LLC Agreement, including without limitation, pursuant to Sections 8.5, 8.6 and/or 8.7 of the LLC Agreement.

3. Initial Transfer Period; Company’s Right of First Refusal.

(a) *Initial Transfer Period.* Notwithstanding the provisions of Section 2 above or any other provisions of this Agreement to the contrary, but subject to Section 8.1 of the LLC Agreement and Section 3(b) below, during the period beginning on the Effective Date and ending at 5:00 p.m. on the thirtieth (30<sup>th</sup>) day following the Effective Date (such period, the “**Initial Transfer Period**”), Holder may Transfer any of the Class B Units subject hereto (including, for the avoidance of doubt, Class B Units that have not yet conditionally vested and ceased to be subject to forfeiture and deemed repurchase in accordance with Section 1(b) above) (such Class B Units, the “**Transferable Class B Units**”) and, upon such Transfer, the Transferable Class B Units so Transferred shall no longer be subject to the forfeiture and deemed

repurchase provisions of this Agreement in the hands of the transferee. Holder's right to Transfer any Transferable Class B Units pursuant to this Section 3 shall expire and the Transferable Class B Units shall cease to be eligible for Transfer pursuant to this Section 3: (i) if, as of the first to occur of (A) the expiration of the Initial Transfer Period or (B) the date on which Holder's continued status as a Service Provider terminates for any reason (the earlier of such events, the "**Transfer Termination Event**"), such Class B Units are not subject to a valid and timely Notice (as defined below), upon the Transfer Termination Event, and (ii) if, as of the Transfer Termination Event, such Class B Units are subject to a valid and timely Notice, upon the expiration of the applicable periods set forth in Section 3(b) below. For the avoidance of doubt, without limiting the generality of any other provision hereof, if Holder's continued status as a Service Provider terminates prior to the last date on which a Transfer of Transferable Class B Units may be validly effected pursuant to this Section 3 (based on a timely Notice provided during the Initial Transfer Period and subject to the time limits contained in Section 3(b) below), then any Transferable Class B Units that have not conditionally vested in accordance with Section 1(b) above at the time of such termination shall be forfeited in accordance with Section 4(c)(ii) below: (I) if subject to a valid and timely Notice at the time of such termination, upon the expiration of the thirty (30)-day period described in Section 3(b)(v) below (except to the extent that the Transfer of such Transferable Class B Units is consummated in accordance with this Section 3, which Transferred Class B Units shall not be forfeited), and (II) if not subject to a valid and timely Notice at the time of such termination, upon such termination.

(b) *Right of First Refusal.* Before any Transferable Class B Units held by Holder may be Transferred (including by gift or operation of law) during the Initial Transfer Period, the Company shall have a right of first refusal to purchase the Transferable Class B Units on the terms and conditions set forth in this Section 3(b) (the "**Right of First Refusal**").

(i) *Notice of Proposed Transfer.* In the event that Holder proposes to Transfer any Transferable Class B Units, Holder shall deliver to the Company a written notice (the "**Notice**") during the Initial Transfer Period stating: (A) Holder's bona fide intention to sell or otherwise Transfer such Transferable Class B Units; (B) the name of each proposed purchaser or other transferee ("**Proposed Transferee**"); (C) the number of Transferable Class B Units to be Transferred to each Proposed Transferee; and (D) the purchase price for which Holder proposes to Transfer the Transferable Class B Units as determined in accordance with subsection (iii) below, and Holder shall offer the Transferable Class B Units at the purchase price to the Company.

(ii) *Exercise of Right of First Refusal.* Within thirty (30) days after receipt of the Notice, the Company may elect in writing to purchase any or all of the Transferable Class B Units proposed to be Transferred to any one or more of the Proposed Transferees. The purchase price will be determined in accordance with subsection (iii) below.

(iii) *Purchase Price.* The purchase price (the "**Purchase Price**") for the Transferable Class B Units repurchased under this Section 3(b) shall be the Fair Market Value of the Transferable Class B Units (determined as of the date of such repurchase).

(iv) *Payment.* Payment of the Purchase Price shall be made, at the option of the Company, in cash (by check), by cancellation of all or a portion of any outstanding

indebtedness of Holder to the Company, or by any combination thereof within thirty (30) days after receipt of the Notice or in the manner and at the times set forth in the Notice.

(v) *Holder's Right to Transfer.* To the extent that any of the Transferable Class B Units proposed in the Notice to be Transferred to a given Proposed Transferee are not purchased by the Company as provided in this Section 3(b), then Holder may sell or otherwise Transfer such Transferable Class B Units to that Proposed Transferee at the Purchase Price or at a higher price, provided, that such sale or other Transfer is consummated within thirty (30) days after the expiration of the Company's right to purchase the Transferable Class B Units in accordance with Section 3(b)(ii) above and, provided further, that any such sale or other Transfer is effected in accordance with any applicable securities laws and the Proposed Transferee agrees in writing that the provisions of this Agreement (other than the forfeiture and deemed repurchase provisions hereof) shall continue to apply to the Transferable Class B Units in the hands of such Proposed Transferee. If the Transferable Class B Units described in the Notice are not Transferred to the Proposed Transferee within such period, then all Class B Units described in the Notice shall cease to be Transferable Class B Units as of the expiration of such period (and any and all other Class B Units subject hereto shall cease to be Transferable Class B Units as of the expiration of the Initial Transfer Period).

(vi) *Acknowledgements.* Holder acknowledges and agrees that the \$57.97 price per Unit set forth in the Company's independent valuation report by The BVA Group LLC, dated as of November 19, 2012, represents the current Fair Market Value of a Class B Unit.

#### 4. Forfeiture; Termination of Service.

(a) *Termination for Cause.* In the event that Holder's employment with the Company is terminated by the Company for Cause (as defined in that certain Employment Agreement between the Participant and the Company, dated December 21, 2010 (the "**Employment Agreement**"), but excluding subsection (v) of such definition of Cause)) at any time (whether before or after an applicable Conditional Vesting Date) (the date of Holder's Termination for any reason, the "**Termination Date**"), all Class B Units subject hereto shall automatically and without further action be cancelled and forfeited by Holder, shall not be earned by Holder and shall be deemed to be reacquired by the Company (without payment therefor) in accordance with Section 3.8(a) of the LLC Agreement upon such Termination Date. For the avoidance of doubt, if circumstances surrounding the Holder's termination of employment are sufficient to constitute both Cause and Company Good Reason (defined to include a termination pursuant to subsection (v) of the definition of Cause contained in the Employment Agreement), the Board shall determine, in its sole discretion, whether the Service Provider's termination is in fact a Termination for Cause or a Termination for Company Good Reason.

(b) *Termination for Company Good Reason.* In the event that Holder's employment with the Company is terminated by the Company for Company Good Reason (which, for purposes of this Agreement, shall include a termination pursuant to subsection (v) of the definition of Cause contained in the Employment Agreement) at any time, (i) fifty percent (50%) of the Class B Units in which Holder has conditionally vested prior to such Termination

shall automatically and without further action be cancelled and forfeited by Holder, shall not be earned by Holder and shall be deemed to be reacquired by the Company (without payment therefor) in accordance with Section 3.8(a) of the LLC Agreement upon such Termination Date, (ii) the remaining fifty percent (50%) of the Class B Units in which Holder has conditionally vested prior to such Termination shall fully vest and be earned immediately prior to such Termination, provided, that such vested Class B Units shall be subject to the Company's right to repurchase pursuant to Section 8.10 of the LLC Agreement, and (iii) all Class B Units in which Holder has not conditionally vested as of such Termination shall automatically and without further action be cancelled and forfeited by Holder, shall not be earned by Holder and shall be deemed to be reacquired by the Company (without payment therefor) in accordance with Section 3.8 of the LLC Agreement upon such Termination Date.

(c) *Other Terminations.* In the event that Holder experiences a Termination for any reason other than for Cause or Company Good Reason, (i) all Class B Units in which Holder has conditionally vested prior to such Termination shall fully vest and be earned immediately prior to such Termination; *provided*, that such vested Class B Units shall be subject to the Company's right to repurchase pursuant to Section 8.10 of the LLC Agreement, and (ii) all Class B Units in which Holder has not conditionally vested prior to such Termination shall automatically and without further action be cancelled and forfeited by Holder, shall not be earned by Holder and shall be deemed to be reacquired by the Company (without payment therefor) in accordance with Section 3.8 of the LLC Agreement upon such Termination Date.

5. Escrow. The Secretary of the Company, or such other escrow holder as the Company may appoint, may retain physical custody of any certificates representing the Class B Units until Holder unconditionally vests in such Class B Units; in such event, Holder shall not retain physical custody of any certificates representing Unvested Class B Units issued to Holder. Holder, by acceptance of the Award, shall be deemed to appoint, and does so appoint, the Company and each of its authorized representatives as Holder's attorney(s)-in-fact to effect any transfer of forfeited Unvested Class B Units (or Class B Units otherwise reacquired by the Company hereunder) to the Company as may be required pursuant to the LLC Agreement or this Agreement and to execute such documents as the Company or such representatives deem necessary or advisable in connection with any such transfer.

6. Rights as Unit Holder. Neither Holder nor any person claiming under or through Holder shall have any of the rights or privileges of a holder of Units in respect of any Units that may become deliverable hereunder unless and until certificates representing such Units have been issued or recording in book entry form on the records of the Company or its transfer agents or registrars, and delivered in certificate or book entry form to Holder or any person claiming under or through Holder.

7. Consent of Spouse. Holder shall, as a condition to and concurrently with this grant of Class B Units, deliver to the Company, if Holder is married, a Consent of Spouse in the form attached hereto as Exhibit A.

8. Survival of Terms. This Agreement shall apply to and bind Holder and the Company and their respective permitted assignees and transferees, heirs, legatees, executors,

administrators and legal successors.

9. Tax Representations. Holder understands that Holder may suffer adverse tax consequences as a result of Holder's acquisition or disposition of the Class B Units. Holder acknowledges and agrees that the Transferability of the Transferable Class B Units contemplated by Section 3 above may cause the Class B Units covered hereby to constitute ordinary taxable income to Holder as of the Effective Date, and that corresponding tax withholding and reporting obligations may accordingly apply as of the Effective Date. Holder represents that Holder has consulted with any tax advisors Holder deems advisable in connection with the acquisition or disposition of the Class B Units and that no action or representation by the Company shall be construed as the giving of tax advice and Holder is not relying on the Company for any tax advice. **A FORM OF ELECTION UNDER SECTION 83(b) OF THE CODE IS ATTACHED TO THE GRANT NOTICE AS EXHIBIT B. HOLDER ACKNOWLEDGES THAT, IF HOLDER ELECTS IN HOLDER'S SOLE DISCRETION TO FILE AN ELECTION UNDER SECTION 83(b), IT IS HOLDER'S SOLE RESPONSIBILITY AND NOT THE COMPANY'S TO TIMELY FILE SUCH ELECTION, EVEN IF HOLDER REQUESTS THAT THE COMPANY OR ITS REPRESENTATIVES MAKE SUCH A FILING ON HOLDER'S BEHALF.**

10. Adjustments in Capitalization.

(a) In the event of any dividend, split, combination or exchange of units, merger, consolidation, spin-off, recapitalization or other distribution (other than normal cash dividends) of Company assets to unit holders, or any other change affecting the Class B Units or the price of the Class B Units, the Board shall make proportionate adjustments to the aggregate number and kind of units (or other equity securities) that are subject to this Agreement.

(b) In the event of any transaction or event described in Section 10(a) above or any unusual or nonrecurring transactions or events affecting the Company, any Affiliate of the Company, or the financial statements of the Company or any Affiliate, or of changes in applicable laws, regulations or accounting principles, the Board, in its sole discretion and on such terms and conditions as it deems appropriate, either by the terms of this Agreement or by action taken prior to the occurrence of such transaction or event, is hereby authorized to take any one or more of the following actions whenever such action is reasonably appropriate in order to prevent dilution or enlargement of the benefits provided under this Agreement, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:

(i) To provide for either (A) termination and cancellation of the Class B Units in exchange for an amount of cash, if any, equal to the amount that would have been attained upon the disposition of the Class B Units under this Agreement as of the date of such termination, after which date no such Class B Units shall vest (and, for the avoidance of doubt, if, as of the date of the occurrence of the transaction or event described in this Section 10, the Board determines in good faith that no amount would have been attained upon the realization of Holder's rights, then the Class B Units may be terminated by the Company without payment), or (B) the replacement of such Class B Units with other rights or property of equal value selected by the Board in its sole

discretion;

(ii) To provide that the Class B Units be (A) assumed by a successor or survivor corporation, or a parent or subsidiary thereof, or (B) substituted for by a similar award covering the equity securities of a successor or survivor corporation, or a parent or subsidiary thereof, in either case, with appropriate adjustments as to the number and kind of units and prices;

(iii) To make adjustments in the number and type of Class B Units (or other securities or property); and

(iv) To provide that the Class B Units subject to this Agreement shall be fully and unconditionally vested, notwithstanding anything to the contrary in this Agreement.

11. Miscellaneous.

(a) *No Right to Continue as Service Provider.* Nothing in this Agreement shall confer upon Holder any right to continue as a Service Provider of the Company, or shall interfere with or restrict in any way the rights of the Company, which are hereby expressly reserved, to discharge Holder at any time for any reason whatsoever, with or without Cause, except to the extent expressly provided otherwise in a written agreement between Holder and the Company.

(b) *Tax Withholding.* The Company shall have the authority and the right to deduct or withhold, or to require Holder to remit to the Company, an amount sufficient to satisfy all applicable federal, state and local taxes (including any Holder employment tax obligations) required by law to be withheld with respect to any taxable event arising in connection with the Class B Units. Holder acknowledges and understands that Holder shall be required to satisfy, and shall be solely liable for, all applicable, federal, state, local and foreign tax withholding obligations associated with the Class B Units and Holder hereby agrees to pay such withholding amounts to the Company at such times and in such form as the Company shall require for purposes of timely satisfying such withholding obligations.

(c) *Section 409A.* The Class B Units are not intended to constitute or provide for "nonqualified deferred compensation" within the meaning of Code Section 409A. Nevertheless, to the extent that the Board determines that the Class B Units may not be exempt from (or compliant with) Code Section 409A, the Board may amend this Agreement in a manner intended to comply with the requirements of Code Section 409A or an exemption therefrom (including amendments with retroactive effect), or take any other actions as it deems necessary or appropriate to preserve the intended tax treatment of the benefits provided with respect to the Class B Units, including without limitation, actions intended to (a) exempt the Class B Units from Code Section 409A, or (b) comply with the requirements of Code Section 409A, provided, that this Section 11(c) does not, and shall not be construed so as to, create any obligation on the part of the Board or the Company to adopt any such amendments or to take any other such actions or create any liability on the part of the Company, the Board or any other Person for any

failure to do so. To the extent applicable, this Agreement shall be interpreted in accordance with the provisions of Code Section 409A.

(d) *Conformity to Securities Laws.* This Agreement is intended to conform to the extent necessary with all applicable federal and state securities laws and regulations, including all provisions of the Securities Act and the Securities Exchange Act of 1934, as amended and any and all regulations and rules promulgated by the Securities and Exchange Commission thereunder. Notwithstanding anything herein to the contrary, this Agreement shall be administered, and the Class B Units shall be issued, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, this Agreement and the Class B Units issued hereunder shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

(e) *Amendment.* This Agreement may only be amended, modified or terminated by a writing executed by Holder and by a duly authorized representative of the Company.

(f) *Severability.* In the event that any provision in this Agreement is held invalid, illegal or unenforceable, such provision will be severable from, and such invalidity, illegality or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement, which shall remain in full force and effect.

(g) *Notices.* Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of its Secretary or such other person as the Company may designate by notice hereunder, and any notice to be given to Holder shall be addressed to Holder at Holder's then current address on the books and records of the Company. By a notice given pursuant to this Section 11(g), either party may hereafter designate a different address for notices to be given to it or him. Any notice which is required to be given to Holder shall, if Holder is then deceased, be given to Holder's personal representative if such representative has previously informed the Company of his status and address by written notice under this Section 11(g).

(h) *Captions.* Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

(i) *Governing Law.* This Agreement (including any claim or controversy arising out of or relating to this Agreement) shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of California without reference to any choice of law provisions thereof that would result in the application of any law other than the law of the State of California.

(j) *Authority.* The Board shall have the power to interpret this Agreement and to adopt and interpret such rules for its administration, interpretation and application as are consistent with the terms hereof. All actions taken and all interpretations and determinations made by the Board in good faith will be final and binding upon Holder, the Company and any and all other interested persons. No member of the Board will be personally liable for any

action, determination or interpretation made in good faith with respect to this Agreement and, to the greatest extent allowable pursuant to applicable law, each member of the Board shall be fully indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with such administration of this Agreement.

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IN WITNESS WHEREOF, this Agreement is deemed made as of the date first set forth above.

WESTERN WATER HOLDINGS, LLC

By 

Name: Robert W. Dove

Title: Chairman of the Board

HOLDER

  
Christopher Schilling

*[Signature Page to Western Water Holdings, LLC Class B Unit Grant Agreement]*

**EXHIBIT A**

**CONSENT OF SPOUSE**

I, [REDACTED], spouse of [REDACTED], have read and approve the foregoing Amended and Restated Class B Unit Grant Agreement (the "**Agreement**"). In consideration of the issuance to my spouse of Class B Units of Western Water Holdings, LLC as set forth in the Agreement (the "**Class B Units**"), I hereby appoint my spouse as my attorney-in-fact in respect to the exercise of any rights under the Agreement and agree to be bound by the provisions of the Agreement insofar as I may have any rights therein or in or to any Class B Units under the community property laws or similar laws relating to marital property in effect in the state of our residence as of the date of the signing of the Agreement.

Dated: 27 NOVEMBER 2012

[REDACTED]  
Signature of Spouse

## EXHIBIT B

### FORM OF 83(b) ELECTION AND INSTRUCTIONS

These instructions are provided to assist you in making an election under Section 83(b) of the Internal Revenue Code, as amended, with respect to the Class B Units of Western Water Holdings, LLC transferred to you. **You should consult with your personal tax advisor as to whether an election of this nature will be in your best interests in light of your personal tax situation.**

**An executed original of the Section 83(b) election must be filed with the Internal Revenue Service not later than 30 days after the date the units are granted to you.** ~~Please Note: There is no remedy for failure to file on time.~~ The steps outlined below should be followed to ensure the election is mailed and filed correctly and in a timely manner. If you make the Section 83(b) election, the election is irrevocable.

In order to make a Section 83(b) Election:

1. Complete the Section 83(b) Election Form (attached as Attachment 1 to this Exhibit) and make four (4) copies of the signed election form. Your spouse, if any, should sign the Section 83(b) Election Form as well.
2. Prepare the cover letter to the Internal Revenue Service (sample letter attached as Attachment 2 to this Exhibit).
3. Send the cover letter with the originally executed Section 83(b) Election Form and one (1) copy via certified mail, return receipt requested to the Internal Revenue Service at the address of the Internal Revenue Service where you file your personal tax returns. We suggest that you have the package date-stamped at the post office. The post office will provide you with a white certified receipt that includes a dated postmark. Enclose a self-addressed, stamped envelope so that the Internal Revenue Service may return a date-stamped copy to you. However, your postmarked receipt is your proof of having timely filed the Section 83(b) election if, for any reason, you do not receive confirmation from the Internal Revenue Service.
4. One (1) copy of the Section 83(b) Election Form and cover letter must be sent to Western Water Holdings, LLC for its records and one (1) copy must be attached to your federal income tax return for the applicable calendar year.
5. Retain the Internal Revenue Service file stamped copy (when returned) for your records.

Please consult your personal tax advisor for the address of the office of the Internal Revenue Service to which you should mail your election form.

# **EXHIBIT**

**3**

**WESTERN WATER HOLDINGS, LLC**  
**CLASS B UNIT GRANT AGREEMENT**

THIS CLASS B UNIT GRANT AGREEMENT (this "Agreement") is made and entered into as of November 27, 2012 (the "Grant Date"), by and between John Kappes (together with any Permitted Transferee, "Holder") and Western Water Holdings, LLC, a Delaware limited liability company (the "Company"). Capitalized terms used herein and not defined shall have the meanings provided in that certain Amended and Restated Limited Liability Company Agreement of Western Water Holdings, LLC, dated as of February 28, 2012 (as amended from time to time, the "LLC Agreement"). In consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Class B Units; Vesting; Acknowledgement.

(a) As of the Grant Date and subject to the terms, conditions and restrictions contained in this Agreement and the LLC Agreement, the Company hereby (a) grants to Holder [REDACTED] Class B Units of the Company, in consideration of past and/or future services provided and/or to be provided to the Company by Holder, and (b) if not already a Member, admits Holder as a Member of the Company, on the terms and conditions set forth herein and in the LLC Agreement. In order to induce the Company to grant such Class B Units to Holder, Holder hereby confirms and represents that each of the representations and warranties made by the Class B Members in the LLC Agreement are true and correct with respect to Holder. The Company and Holder acknowledge and agree that the Class B Units are hereby issued to Holder for the performance of services to or for the benefit of the Company in Holder's capacity as a Member or in anticipation of Holder becoming a Member. Upon receipt of the Units, Holder shall, automatically and without further action on Holder's part, be deemed to be a party to, signatory of and bound by the LLC Agreement, and the Class B Units shall be subject to the terms and conditions of the LLC Agreement. Notwithstanding the foregoing, at the request of the Company, Holder shall execute the LLC Agreement or a joinder or counterpart signature page thereto. Subject to the terms and conditions of this Agreement and the LLC Agreement, Participant shall have all the rights and obligations associated with ownership of the Class B Units, as provided under and subject to the limitations contained in the LLC Agreement, from the Grant Date and through such time as the Class B Units are disposed of or forfeited by Participant. The Class B Units shall conditionally vest, be earned and cease to be subject to forfeiture and deemed repurchase in accordance with the provisions of Section 1(b) below (each such Class B Unit which, from time to time, continues to be subject to forfeiture and deemed repurchase, an "Unvested Class B Unit").

(b) The Class B Units granted hereby shall conditionally vest and cease to be subject to forfeiture and deemed repurchase (but shall not yet be earned for any purposes) (i) with respect to fourteen percent (14%) of the Class B Units subject hereto on each of the first two (2) anniversaries of December 22, 2011 (the "Vesting Commencement Date"), (ii) with respect to twenty percent (20%) of the Class B Units subject hereto on each of the third (3rd), fourth (4th) and fifth (5th) anniversaries of the Vesting Commencement Date, and (iii) with respect to six percent (6%) of the Class B Units subject hereto on the sixth (6th) and seventh

(7th) anniversaries of the Vesting Commencement Date, in each case, subject to Holder's continued status as a Service Provider through each applicable vesting date (each such date, a "Conditional Vesting Date"), such that all of the Class B Units subject hereto shall be conditionally vested (but not yet earned) as of the seventh (7<sup>th</sup>) anniversary of the Vesting Commencement Date.

(c) Holder hereby acknowledges and agrees that (i) the grant of Class B Units effected hereby is made in full and final satisfaction of the Company's obligations under that certain letter from the Company to Holder (including without limitation, any and all obligations to grant Class B Units to Holder created thereunder), dated as of August 28, 2012 (the "Class B Unit Letter"), and (ii) to the extent that the terms and conditions of this Award are inconsistent with the Class B Unit Letter (if at all), then, effective as of the Grant Date, this Agreement supersedes and replaces, in its entirety the Class B Unit Letter. From and after the Grant Date, Holder will have no further rights with respect to or in respect of the Class B Unit Letter and the Company shall have no obligation or liability with respect thereto or in respect thereof.

2. Transfer Restrictions. Holder hereby agrees that Holder shall not sell, transfer, dispose of, hypothecate, assign, pledge or otherwise encumber the Class B Units (a) at any time prior to Holder's termination, provided, that, if the Board permits in its sole discretion, Holder may make transfers of the Class B Units for estate planning purposes on such terms and conditions as the Board may permit, and (b) following Holder's termination, to the extent the Class B Units vest unconditionally in connection therewith and are not forfeited, only to the extent permitted in accordance with the LLC Agreement. Any transfer of the Class B Units which is not made in compliance with the LLC Agreement and this Agreement shall be null and void and of no force or effect. The transfer restrictions imposed under this Section 2 are additional to the restrictions and requirements imposed upon the Class B Units pursuant to the LLC Agreement, including without limitation, Article VIII of the LLC Agreement. For the avoidance of doubt, in no event shall the provisions of this Section 2 limit in any way any affirmative requirements imposed on Holder with respect to the Class B Units under the LLC Agreement, including without limitation, pursuant to Sections 8.5, 8.6 and/or 8.7 of the LLC Agreement.

3. Forfeiture; Termination of Service.

(a) *Termination for Cause.* In the event that Holder's employment with the Company is terminated by the Company for Cause (as defined below, but excluding subsection (v) of such definition of Cause) at any time (whether before or after an applicable Conditional Vesting Date) (the date of Holder's Termination for any reason, the "Termination Date"), all Class B Units granted hereunder shall automatically and without further action be cancelled and forfeited by Holder, shall not be earned by Holder and shall be deemed to be reacquired by the Company (without payment therefor) in accordance with Section 3.8(a) of the LLC Agreement upon such Termination Date. For the avoidance of doubt, if circumstances surrounding the Holder's termination of employment are sufficient to constitute both Cause and Company Good Reason (defined to include a termination pursuant to subsection (v) of the definition of Cause), the Board shall determine, in its sole discretion, whether the Service Provider's termination is in fact a Termination for Cause or a Termination for Company Good Reason.

(b) *Termination for Company Good Reason.* In the event that Holder's employment with the Company is terminated by the Company for Company Good Reason (which shall include a termination pursuant to subsection (v) of the definition of Cause) at any time, (i) fifty percent (50%) of the Class B Units in which Holder has conditionally vested prior to such Termination shall automatically and without further action be cancelled and forfeited by Holder, shall not be earned by Holder and shall be deemed to be reacquired by the Company (without payment therefor) in accordance with Section 3.8(a) of the LLC Agreement upon such Termination Date, (ii) the remaining fifty percent (50%) of the Class B Units in which Holder has conditionally vested prior to such Termination shall fully vest and be earned immediately prior to such Termination, provided, that such vested Class B Units shall be subject to the Company's right to repurchase pursuant to Section 8.10 of the LLC Agreement, and (iii) all Class B Units in which Holder has not conditionally vested as of such Termination shall automatically and without further action be cancelled and forfeited by Holder, shall not be earned by Holder and shall be deemed to be reacquired by the Company (without payment therefor) in accordance with Section 3.8 of the LLC Agreement upon such Termination Date.

(c) *Other Terminations.* In the event that Holder experiences a Termination for any reason other than for Cause or Company Good Reason, (i) all Class B Units in which Holder has conditionally vested prior to such Termination shall fully vest and be earned immediately prior to such Termination; *provided*, that such vested Class B Units shall be subject to the Company's right to repurchase pursuant to Section 8.10 of the LLC Agreement, and (ii) all Class B Units in which Holder has not conditionally vested prior to such Termination shall automatically and without further action be cancelled and forfeited by Holder, shall not be earned by Holder and shall be deemed to be reacquired by the Company (without payment therefor) in accordance with Section 3.8 of the LLC Agreement upon such Termination Date.

(d) *Cause.* For purposes of this Agreement, "**Cause**" shall mean a termination of employment directly resulting from:

(i) the Board's good faith determination that Holder has willfully or repeatedly failed to substantially perform Holder's primary or regular duties or obligations under this Agreement or under written policies of the Company (other than any such willful failure resulting from Holder's disability), and that such failure has resulted or is reasonably expected to result in material and demonstrable harm to the Company or any of its affiliates (provided, that, to the extent such failure can be fully cured, the Company shall have provided Holder with at least thirty (30) days' notice of such failure and Holder shall not have remedied the failure within the thirty (30)-day period);

(ii) except where done at the written instruction or with the written approval of the Company, Holder having engaged in misconduct that caused or, but for intervening factors, would have caused, a violation by the Company or any of its affiliates of any applicable law;

(iii) Holder having engaged in a theft of corporate funds or corporate

assets or in a material act of fraud upon the Company;

(iv) an act of personal dishonesty taken by Holder that was intended to result in personal enrichment of Holder at the expense of the Company;

(v) Holder's repeated failure to meet performance objectives as mutually agreed with the Board from time-to-time provided, however, that the Executive shall have received two written warnings by the Board, the first of which specifies each area of Holder's failure, a time-frame and plan for correction of such failures that has been determined by the Board in consultation with Holder, and the second of which coming after Holder's failure to accomplish such remedial measures derived after the first notice;

(vi) Holder's use of illegal drugs;

(vii) Holder's commission (including without limitation, as evidenced by the entry of a plea of nolo contendere or equivalent plea in a court of competent jurisdiction) of a felony or other crime involving dishonesty; or

(viii) a material breach by Holder of the provisions of this Agreement (provided, that, to the extent such failure can be fully cured, the Company shall have provided Holder with at least thirty (30) days' notice of such failure and Holder shall not have remedied the failure within the thirty (30)-day period).

4. Escrow. The Secretary of the Company, or such other escrow holder as the Company may appoint, may retain physical custody of any certificates representing the Class B Units until Holder unconditionally vests in such Class B Units; in such event, Holder shall not retain physical custody of any certificates representing Unvested Class B Units issued to Holder. Holder, by acceptance of the Award, shall be deemed to appoint, and does so appoint, the Company and each of its authorized representatives as Holder's attorney(s)-in-fact to effect any transfer of forfeited Unvested Class B Units (or Class B Units otherwise reacquired by the Company hereunder) to the Company as may be required pursuant to the LLC Agreement or this Agreement and to execute such documents as the Company or such representatives deem necessary or advisable in connection with any such transfer.

5. Rights as Unit Holder. Neither Holder nor any person claiming under or through Holder shall have any of the rights or privileges of a holder of Units in respect of any Units that may become deliverable hereunder unless and until certificates representing such Units have been issued or recording in book entry form on the records of the Company or its transfer agents or registrars, and delivered in certificate or book entry form to Holder or any person claiming under or through Holder.

6. Consent of Spouse. Holder shall, as a condition to and concurrently with this grant of Class B Units, deliver to the Company, if Holder is married, a Consent of Spouse in the form attached hereto as Exhibit A.

7. Survival of Terms. This Agreement shall apply to and bind Holder and the Company and their respective permitted assignees and transferees, heirs, legatees, executors, administrators and legal successors.

8. Tax Representations. Holder understands that Holder may suffer adverse tax consequences as a result of Holder's acquisition or disposition of the Class B Units. Holder represents that Holder has consulted with any tax advisors Holder deems advisable in connection with the acquisition or disposition of the Class B Units and that no action or representation by the Company shall be construed as the giving of tax advice and Holder is not relying on the Company for any tax advice. **A FORM OF ELECTION UNDER SECTION 83(b) OF THE CODE IS ATTACHED TO THE GRANT NOTICE AS EXHIBIT B. HOLDER ACKNOWLEDGES THAT, IF HOLDER ELECTS IN HOLDER'S SOLE DISCRETION TO FILE AN ELECTION UNDER SECTION 83(b), IT IS HOLDER'S SOLE RESPONSIBILITY AND NOT THE COMPANY'S TO TIMELY FILE SUCH ELECTION, EVEN IF HOLDER REQUESTS THAT THE COMPANY OR ITS REPRESENTATIVES MAKE SUCH A FILING ON HOLDER'S BEHALF.**

9. Adjustments in Capitalization.

(a) In the event of any dividend, split, combination or exchange of units, merger, consolidation, spin-off, recapitalization or other distribution (other than normal cash dividends) of Company assets to unit holders, or any other change affecting the Class B Units or the price of the Class B Units, the Board shall make proportionate adjustments to the aggregate number and kind of units (or other equity securities) that are subject to this Agreement.

(b) In the event of any transaction or event described in Section 9(a) above or any unusual or nonrecurring transactions or events affecting the Company, any Affiliate of the Company, or the financial statements of the Company or any Affiliate, or of changes in applicable laws, regulations or accounting principles, the Board, in its sole discretion and on such terms and conditions as it deems appropriate, either by the terms of this Agreement or by action taken prior to the occurrence of such transaction or event, is hereby authorized to take any one or more of the following actions whenever the Board determines that such action is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under this Agreement, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:

(i) To provide for either (A) termination and cancellation of the Class B Units in exchange for an amount of cash, if any, equal to the amount that would have been attained upon the disposition of the Class B Units under this Agreement as of the date of such termination, after which date no such Class B Units shall vest (and, for the avoidance of doubt, if, as of the date of the occurrence of the transaction or event described in this Section 9, the Board determines in good faith that no amount would have been attained upon the realization of Holder's rights, then the Class B Units may be terminated by the Company without payment), or (B) the replacement of such Class B Units with other rights or property of equal value selected by the Board in its sole discretion;

(ii) To provide that the Class B Units be (A) assumed by a successor or survivor corporation, or a parent or subsidiary thereof, or (B) substituted for by a similar award covering the equity securities of a successor or survivor corporation, or a parent or subsidiary thereof, in either case, with appropriate adjustments as to the number and kind of units and prices;

(iii) To make adjustments in the number and type of Class B Units (or other securities or property); and

(iv) To provide that the Class B Units subject to this Agreement shall be fully and unconditionally vested, notwithstanding anything to the contrary in this Agreement.

10. Miscellaneous.

(a) *No Right to Continue as Service Provider.* Nothing in this Agreement shall confer upon Holder any right to continue as a Service Provider of the Company, or shall interfere with or restrict in any way the rights of the Company, which are hereby expressly reserved, to discharge Holder at any time for any reason whatsoever, with or without Cause, except to the extent expressly provided otherwise in a written agreement between Holder and the Company.

(b) *Tax Withholding.* The Company shall have the authority and the right to deduct or withhold, or to require Holder to remit to the Company, an amount sufficient to satisfy all applicable federal, state and local taxes (including any Holder employment tax obligations) required by law to be withheld with respect to any taxable event arising in connection with the Class B Units. Holder acknowledges and understands that Holder shall be required to satisfy, and shall be solely liable for, all applicable, federal, state, local and foreign tax withholding obligations associated with the Class B Units and Holder hereby agrees to pay such withholding amounts to the Company at such times and in such form as the Company shall require for purposes of timely satisfying such withholding obligations.

(c) *Section 409A.* The Class B Units are not intended to constitute or provide for "nonqualified deferred compensation" within the meaning of Code Section 409A. Nevertheless, to the extent that the Board determines that the Class B Units may not be exempt from (or compliant with) Code Section 409A, the Board may amend this Agreement in a manner intended to comply with the requirements of Code Section 409A or an exemption therefrom (including amendments with retroactive effect), or take any other actions as it deems necessary or appropriate to preserve the intended tax treatment of the benefits provided with respect to the Class B Units, including without limitation, actions intended to (a) exempt the Class B Units from Code Section 409A, or (b) comply with the requirements of Code Section 409A, provided, that this Section 11(c) does not, and shall not be construed so as to, create any obligation on the part of the Board or the Company to adopt any such amendments or to take any other such actions or create any liability on the part of the Company, the Board or any other Person for any failure to do so. To the extent applicable, this Agreement shall be interpreted in accordance with

the provisions of Code Section 409A.

(d) *Conformity to Securities Laws.* This Agreement is intended to conform to the extent necessary with all applicable federal and state securities laws and regulations, including all provisions of the Securities Act and the Securities Exchange Act of 1934, as amended and any and all regulations and rules promulgated by the Securities and Exchange Commission thereunder. Notwithstanding anything herein to the contrary, this Agreement shall be administered, and the Class B Units shall be issued, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, this Agreement and the Class B Units issued hereunder shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

(e) *Amendment.* This Agreement may only be amended, modified or terminated by a writing executed by Holder and by a duly authorized representative of the Company.

(f) *Severability.* In the event that any provision in this Agreement is held invalid, illegal or unenforceable, such provision will be severable from, and such invalidity, illegality or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement, which shall remain in full force and effect.

(g) *Notices.* Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of its Secretary or such other person as the Company may designate by notice hereunder, and any notice to be given to Holder shall be addressed to Holder at Holder's then current address on the books and records of the Company. By a notice given pursuant to this Section 10(g), either party may hereafter designate a different address for notices to be given to it or him. Any notice which is required to be given to Holder shall, if Holder is then deceased, be given to Holder's personal representative if such representative has previously informed the Company of his status and address by written notice under this Section 10(g).

(h) *Captions.* Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

(i) *Governing Law.* This Agreement (including any claim or controversy arising out of or relating to this Agreement) shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of California without reference to any choice of law provisions thereof that would result in the application of any law other than the law of the State of California.

(j) *Authority.* The Board shall have the power to interpret this Agreement and to adopt and interpret such rules for its administration, interpretation and application as are consistent with the terms hereof. All actions taken and all interpretations and determinations made by the Board in good faith will be final and binding upon Holder, the Company and any and all other interested persons. No member of the Board will be personally liable for any action, determination or interpretation made in good faith with respect to this Agreement and, to

the greatest extent allowable pursuant to applicable law, each member of the Board shall be fully indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with such administration of this Agreement.

IN WITNESS WHEREOF, this Agreement is deemed made as of the date first set forth above.

WESTERN WATER HOLDINGS, LLC

By:

  
Name: Robert W. Dove

Title: Chairman of the Board

HOLDER

  
John Kappes

**EXHIBIT A**

**CONSENT OF SPOUSE**

I, [REDACTED], spouse of [REDACTED], have read and approve the foregoing Class B Unit Grant Agreement (the "Agreement"). In consideration of the issuance to my spouse of Class B Units of Western Water Holdings, LLC as set forth in the Agreement (the "Class B Units"), I hereby appoint my spouse as my attorney-in-fact in respect to the exercise of any rights under the Agreement and agree to be bound by the provisions of the Agreement insofar as I may have any rights therein or in or to any Class B Units under the community property laws or similar laws relating to marital property in effect in the state of our residence as of the date of the signing of the Agreement.

Dated: November 26, 2012

[REDACTED]  
Signature of Spouse

# EXHIBIT

4

**PARK WATER COMPANY  
PUD GENERAL ORDER 77  
AS OF DECEMBER 31, 2013**

<u>Officers &amp; Compensation During 2013</u>	<u>Salary</u>	<u>Utility</u>	<u>Non-Utility</u>
President/CEO	539,419.00	539,419.00	
Executive Vice President/Corporate Secretary	337,728.00	337,728.00	
Senior Vice President/General Manager	291,088.00	291,088.00	
Senior Vice President	291,844.00	291,844.00	
Senior Vice President/CFD	291,882.00	291,727.00	133.00
Vice President	217,881.00	217,881.00	
Vice President - Retired 3/29/2013	45,718.00	45,718.00	
Assistant Vice President	169,927.00	169,927.00	
Senior Vice President	291,820.00	0.00	291,820.00
Vice President - Retired 10/31/2013	139,417.00	139,417.00	
Assistant Vice President	185,975.00	185,975.00	
	<u>2,773,937.00</u>	<u>2,481,692.00</u>	<u>291,765.00</u>

<u>Names and titles of Employees receiving more than \$93,000 in 2013</u>	<u>Salary</u>	<u>Utility</u>	<u>Non-Utility</u>
Director of Revenue Requirements	189,729.00	189,729.00	
Director of Information Technology	172,805.00	172,805.00	
Director of Accounting	165,724.00	165,724.00	
Division Chief Engineer	144,493.00	144,493.00	
Enterprise Application Manager	141,992.00	141,992.00	
Communications Center Foreperson	124,853.00	124,853.00	
Senior Network Engineer	124,825.00	124,825.00	
GIS Project Coordinator	123,438.00	123,438.00	
Programmer Analyst	121,893.00	121,893.00	
Manager of Financial Services	120,782.00	120,782.00	
Production Supervisor	120,005.00	120,005.00	
Manager of Financial Reporting and Applications	119,898.00	119,898.00	
Field Foreperson - Retired 12/27/2013	115,191.00	115,191.00	
General Accounting Supervisor	114,810.00	114,810.00	
Cross Connection Control Specialist	112,481.00	112,481.00	
Utility Service Supervisor	112,188.00	112,188.00	
Rate Analyst	108,939.00	108,939.00	
Programmer Analyst	103,637.00	103,637.00	
Engineer Technician	101,838.00	101,838.00	
Production Foreperson	101,421.00	101,421.00	
Transportation Equipment Foreperson	101,107.00	101,107.00	
Manager of Safety Services	99,353.00	99,353.00	
Director of Human Resources	99,249.00	99,249.00	
Systems Engineer	97,708.00	97,708.00	
Benefits Manager	94,828.00	94,828.00	
Production Technician 3	94,248.00	94,248.00	
Civil Engineer 2	93,478.00	93,478.00	
Senior Public Affairs Specialist	92,831.00	92,831.00	
General Plant Lead	89,809.00	89,809.00	
Production Technician	89,994.00	89,994.00	
Production Technician	88,048.00	88,048.00	
	<u>3,579,765.00</u>	<u>3,578,765.00</u>	<u>0.00</u>

Other Fees paid to officers or Employees  
None.

Fees

# **EXHIBIT**

**5**

**SALARY SURVEY - CITIES OF MONTANA**

March 2014

**City Manager**

City	Position	Salary Range			Incumbant's Salary	Other: Retirement, car allowance, etc.
		Min	Mid	Max		
Billings	City Administrator				\$130,561	Plus 10.8% to deferred compensation account. \$4800/yr auto allowance.
Bozeman	City Manager	\$ 106,458	\$ 125,245	\$ 144,031	\$121,671	Plus 18% to deferred compensation account. \$1000/mo housing allowance. \$553/mo auto allowance.
Butte	Chief Executive				\$105,614	
Great Falls	City Manager	\$ 100,647		\$ 120,776	\$ 117,630	Plus 7% to deferred compensation account. \$450/mo auto allowance.
Helena	City Manager				\$128,298	Plus 11.49% to deferred compensation account. Will go up 6% plus any COLA the employees receive July 1. \$450/month auto allowance.
Kalispell	City Manager				\$ 114,712	

**September 2014**

**Public Works Director**

City	Position	Salary Range			Incumbant's Salary
		Min	Mid	Max	
Billings	Public Works Director	\$ 90,300	\$ 104,512	\$ 120,971	
Bozeman	Director of Public Works	\$ 86,864		\$ 95,455	
Butte	Director of Public Works				\$ 83,944
Great Falls	Public Works Director	\$ 70,471	\$ 88,089	\$ 105,706	
Helena	Public Works Director	\$ 87,043		\$ 105,802	
Kalispell	Public Works Director	\$ 65,400		\$ 102,500	\$ 86,600

February 2015

Water Manager

Position	Salary Range			Incumbant's Salary
	Min	Mid	Max	
Plant Operations Supervisor	\$ 50,211	\$ 67,246		
Water Superintendent	\$ 60,329	\$ 70,976	\$ 81,622	\$ 76,433
Water Plant Manager	\$ 51,121	\$ 63,901	\$ 76,682	\$ 64,375
Water Supervisor	\$ 51,824		\$ 62,993	\$ 62,993
Water Superintendent	\$ 50,600		\$ 68,300	\$ 59,509