

When Recorded, Return to:  
PacifiCorp, Real Estate Mgmt.  
825 NE Multnomah St. Suite 1700  
Portland, OR 97232

SKAMANIA COUNTY  
REAL ESTATE EXCISE TAX  
31636  
JAN 20 2016

PAID 410.00  
*Shirley Ann Depuy*  
SKAMANIA COUNTY TREASURER

### FLOOD AND FLOWAGE EASEMENT

**Abbreviated Legal Description:** LOT 4 GLACIER VIEW SP BK 3/PG 402

THIS FLOOD AND FLOWAGE EASEMENT ("**Easement**"), including all exhibits attached hereto, is made by and between Phillip K. Kiyasu and Janette M. Kiyasu, husband and wife, jointly and severally ("**Grantor**"), and PacifiCorp, an Oregon corporation ("**Grantee**"), each a Party and together the Parties.

#### RECITALS

A. Whereas Grantee owns and operates Federal Energy Regulatory Commission ("**FERC**") Hydroelectric Project Number 2111 known as the Swift No.1 Project (the "**Project**"), which includes a dam and reservoir commonly known as Swift Reservoir, (the "**Reservoir**").

B. Whereas Grantor owns certain real property commonly known as Skamania County, Washington Tax lot 07052100021500 and more particularly shown in Exhibit A (the "**Property**"), which Property is adjacent to the Reservoir.

C. Whereas the waters of the Reservoir may or do overflow some or all of the Property and Grantee wishes to obtain from Grantor an easement confirming its rights to cause such waters to overflow such lands.

D. Whereas Grantor is willing to grant to Grantee a non-exclusive perpetual easement in accordance with and subject to the terms and conditions set forth in this Easement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and received, the Parties enter into this Easement under the following terms and conditions:

1. **EASEMENT AREA:** The portion of the Property lying equal to and below elevation 1,010-foot (NGVD 29 datum) as more approximately shown in **Exhibit B** (the "**Easement Area**").

2. **PERMITTED USE:** Grantor hereby grants to Grantee, its successors and assigns, a perpetual flood, flowage and drainage easement for, in, on, over, under, across, and through the

Easement Area. Grantee may use such easement for all flowage and drainage purposes (whether intentional, unintentional, man-made or naturally occurring), and such purposes may include, without limitation: (i) the temporary or permanent inundation of the Easement Area, (ii) the fluctuation of the waters of the Reservoir in, on, over, under, across and through the Easement Area, (iii) the temporary or permanent withdrawal of some or all of the waters of the Reservoir from the Easement Area, and (iv) any other purpose as necessary or desirable in the operation of Grantee's hydroelectric project or other business purposes.

Grantor also hereby grants to Grantee the right and privilege of ingress and egress over and across the Property and Grantor's adjacent lands as the Grantee may find necessary in connection with the construction, maintenance or operation of the Project and Reservoir; provided, however, that the Grantee will limit such ingress and egress to such locations as may be approved by the Grantor at the time of the exercise of such right (Grantor shall not unreasonably refuse, condition, or limit such ingress and egress).

This Easement is perpetual and shall run with the land.

3. **RESERVATIONS BY GRANTOR:** Grantor, its heirs and assigns, reserves the right to occupy and use the Property for any purpose not inconsistent with the rights granted to Grantee under this Easement.

4. **RESTRICTIONS ON GRANTOR USE OF EASEMENT AREA:** Unless Grantee provides advanced written approval, Grantor shall not install, build, construct, or erect any new improvements (including without limitation any above-or-below-ground man-made structures, systems, utilities, pipelines, or other types of temporary or permanent structures) in the Easement Area. Likewise, unless Grantee provides advanced written approval, Grantor shall not allow any third-party to install any improvements in the Easement Area. Grantee shall have sole discretion regarding whether to grant or deny such approvals. Any improvement authorized per this Section shall not interfere with Grantee's right of use under this Easement. Grantee shall not be liable for any impact to existing improvements or to such future improvements as may be authorized by Grantee, regardless of whether such damage or impact is caused by flooding or other authorized use of the Easement Area. Nothing contained herein shall be construed to assign any maintenance responsibility to Grantee. In addition to the written approval required by this Section, Grantor may not install any docks, boardwalks or other shoreline appurtenances within or adjacent to the shoreline of the Reservoir without first obtaining Grantee's written approval under the processes and guidelines set forth in Grantee's Lewis River Shoreline Management Plan, which is publicly available. Grantor shall not use the Easement Area for any purpose inconsistent with Grantee's rights under this Easement.

5. **RELEASE:** Grantor, its successors, assigns, heirs, executors, and administrators, release Grantee, its directors, officers, representatives, employees, agents, successors assigns, heirs, executors, and administrators from all past, present or future claims or liability for injury to persons, decrease in land value to the Property or Grantor's adjacent lands, damage to lands, or damage to vegetation or improvements in the Easement Area arising from flooding, saturation of soils, erosion, wave action, overflowing, or de-watering of the Easement Area, or as the result of any other action of Grantee authorized by this Easement.

6. **TIMBER:** If the Easement Area is inundated or overflowed by the waters of the Reservoir, Grantee shall pay Grantor the fair market value of any merchantable timber that is damaged by such inundation or overflow. Any such damaged timber shall remain the property of the Grantor, and Grantee shall have no duty to salvage or otherwise dispose of such timber.

7. **LIENS OR ENCUMBRANCES:** Grantor covenants that the Easement herein granted is free from liens or encumbrances, except those of record as of the date of this instrument, and that they will warrant and defend same against all persons who may lawfully claim same.

8. **COMPLIANCE WITH LAWS:** In exercising their respective rights and complying with their respective duties under this Easement, each Party shall comply with all applicable federal, state, and local laws, including all environmental laws and regulations during the term of this Easement.

9. **CHOICE OF LAW:** The internal laws of the State of Washington shall govern this Easement (without regard to Washington's conflict-of-laws provisions).

10. **WAIVER:** No waiver of any term of this Easement constitutes a waiver of any other provision, whether similar or dissimilar. No waiver of any term constitutes a continuing waiver of that term. No waiver is binding unless signed in writing by the waiving Party.

11. **BINDING EFFECT:** This Easement shall run with the land and shall bind and inure to the benefit of the Parties and their successors and assigns.

12. **HEADINGS:** The headings in this Easement are for convenience of reference only and do not constitute a part of it. The headings do not affect its interpretation.

13. **ENTIRE AGREEMENT; MODIFICATIONS:** This Easement, including exhibits, represents the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, representations, and undertakings. No supplement, modification, or amendment of this Easement will be binding unless it is in writing and signed by the Parties.

14. **NO THIRD-PARTY BENEFICIARIES:** This Easement is not intended to create any rights in any third-party.

15. **LEGAL FEES:** In the event any court action shall be instituted by a Party to enforce any of the terms and provisions contained herein, the prevailing Party in such action shall be entitled to reasonable attorneys' fees, costs and expenses from the other Party. A Party is not a prevailing Party if it refuses a settlement offer from the other Party and then recovers through legal action an award less than or equal to the settlement offer.

16. **AUTHORITY:** Each individual executing this Easement does thereby represent and warrant to each other that he or she has been duly authorized to sign this Easement in the capacity and for the entities set forth where he or she signs.


17. **EXISTING ENCUMBRANCES:** This Easement is subject to all existing rights of way and encumbrances of record, or in equity or at law.

18. **JURY WAIVER:** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS EASEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE, OR TO REQUEST THE CONSOLIDATION OF, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

EXECUTED in duplicate as of the dates set forth below.

**GRANTOR:**

**PHILLIP K. KIYASU** and  
**JANETTE M. KIYASU**,  
husband and wife, jointly and severally

  
Phillip K. Kiyasu


Date: 11-20-15

  
Janette M. Kiyasu

Date: 11-20-15

**GRANTEE:**

**PACIFICORP**, an Oregon corporation

  
Deanna Adams  
Manager, Property Management

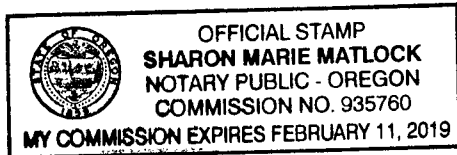
Date: 1/6/16

# ACKNOWLEDGEMENT

STATE OF OREGON                   )  
   ) ss.  
 COUNTY OF MULTNOMAH        )

On this day personally appeared before me Deanna Adams, to me known to be the Manager of Property Management at PacifiCorp, the corporation which executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the use and purposes therein mentioned.

Given under my hand and official seal this 6 day of January, 2015. *2016*



*Sharon Marie Matlock*  
 \_\_\_\_\_  
 NOTARY PUBLIC in and for the State of Oregon  
 My Commission Expires 2/11/2019

Unofficial Copy

# ACKNOWLEDGEMENT

STATE OF Washington  
COUNTY OF Clark ) ss.

On this day personally appeared before me Phillip K. Kiyasu, which executed the foregoing instrument and acknowledged the said instrument to be their free and voluntary act and deed for the use and purposes therein mentioned.

Given under my hand and official seal this 20<sup>th</sup> day of November 2015.

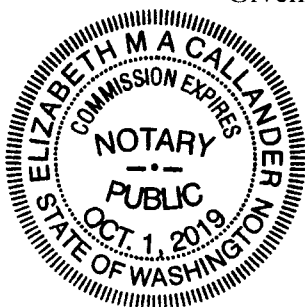


Elizabeth M.A. Callander  
NOTARY PUBLIC in and for the State of Washington  
My Commission Expires October 1, 2019

STATE OF Washington  
COUNTY OF Clark ) ss.

On this day personally appeared before me Janette M. Kiyasu, which executed the foregoing instrument and acknowledged the said instrument to be their free and voluntary act and deed for the use and purposes therein mentioned.

Given under my hand and official seal this 20<sup>th</sup> day of November 2015.



Elizabeth M.A. Callander  
NOTARY PUBLIC in and for the State of Washington  
My Commission Expires October 1, 2019

**EXHIBIT A**  
**Page 1 of 1**  
**Description of the Property**

**Lot 4 of the GLACIER VIEW SHORT PLAT, recorded in Book "3" of Short Plats, page 402,  
records of Skamania County, Washington.**

Skamania  
date 1-19-16

for 7-5-21-215

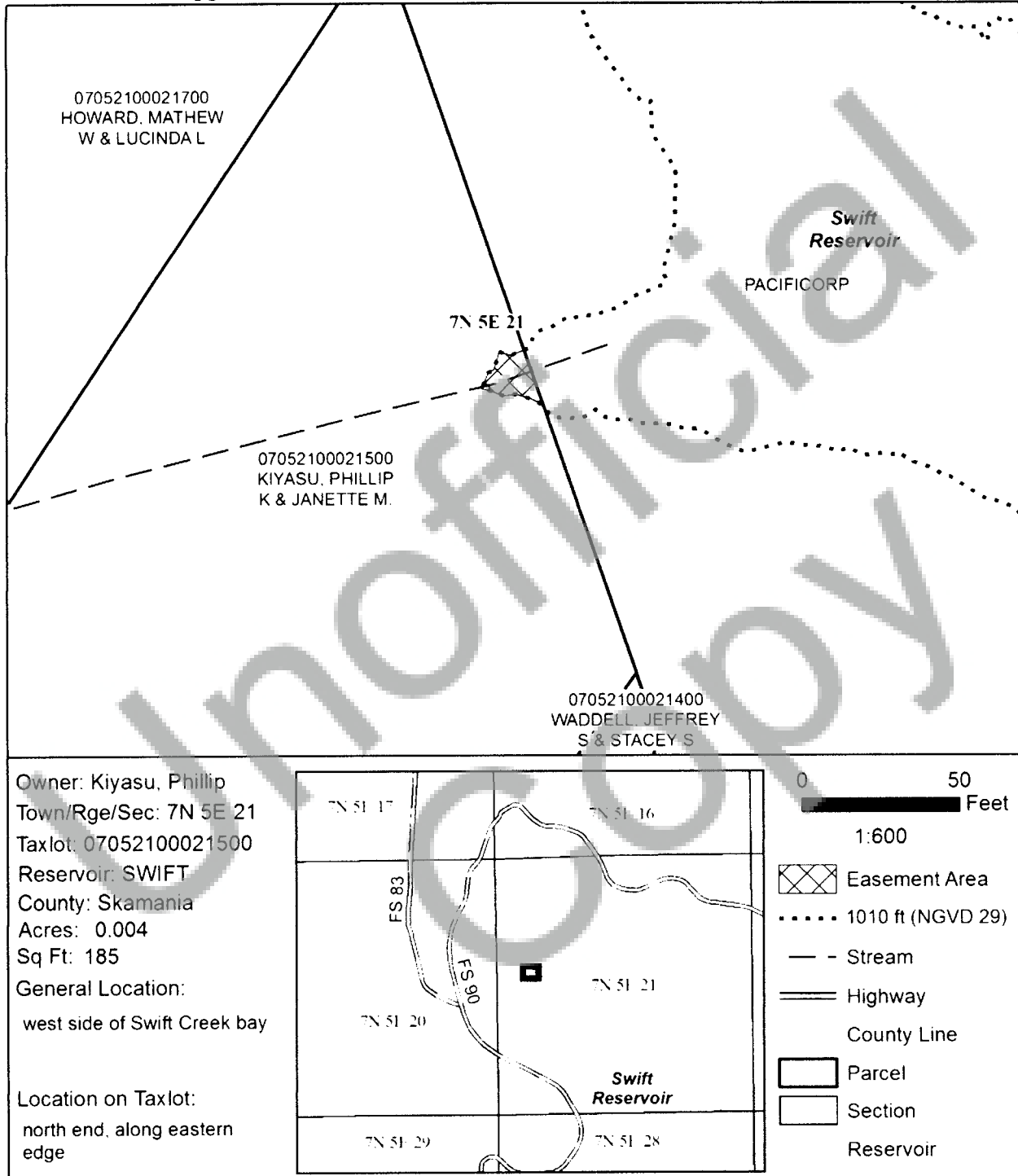
*Dr*

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# EXHIBIT B

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## Approximate Location of the Easement Area on the Property



The above-described Easement Area has not been surveyed and all distances shown are approximate. In the event of any errors or ambiguity in the description, or misunderstanding with respect to the location or extent of the property, PacifiCorp reserves the right to resolve the dispute or ambiguity and to designate the configuration of the area in dispute.