



YAKIMA COUNTY
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision

For Ecology Use Only
RECEIVED
Received: APR 15 2024
Date: APR 15 2024
Dept. of Ecology
Central Regional Office
Reviewed by: _____
Date Reviewed: _____

Applicant: Robert and Carol Inouye

Application Number: YAKI-24-01

This record of decision was made by a majority of the board at an open public meeting of the Yakima Water Conservancy Board held on 04-11-2024. The undersigned board commissioners certify that they each understand the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that each commissioner, having reviewed the report of examination, knows and understands the content of the report.

☒ **Approval:** The Yakima Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on 04-11-24, and submits this record of decision and report of examination to the Department of Ecology for final review.

☐ **Denial:** The (board name) Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on _____ and submits this record of decision to the Department of Ecology for final review.

Signed:

David Brown, Chairman
Yakima County Water Conservancy Board

Date: April 11, 2024
Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

Dave England, Board Member
Yakima County Water Conservancy Board

Date: 4/11/24
Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

(Excused)

Jamin Ankney, Board Member
Yakima County Water Conservancy Board

Date: Excused
Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other ☒

Jared McMeen, Board Member Alternate Voting
Yakima County Water Conservancy Board

Date: 4/11/24
Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

(Name), (Title)
(Board Name) Water Conservancy Board

Date: _____
Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

Hand-delivered with all related documents to the Dept of Ecology Central Regional Office, and other interested parties on 04.15.2024

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).

The undersigned board commissioner certifies that he/she understands the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that he/she, having reviewed the report of examination, knows and understands the content of this report and concurs with the report's conclusions.

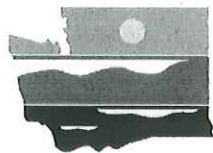
Signed at Yakima, Washington
(City)
This 11 day of Apr. 2024
Date (Day) (Month) (Year)

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Name of Board Representative: Name of Water Conservancy Board:

David Brown Yakima County

Signature: [Signature]



DEPARTMENT OF
ECOLOGY
State of Washington

Board Name:
Yakima County **WATER**

YAKIMA COUNTY

CONSERVANCY BOARD

Application for Change/Transfer

OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF THE
STATE OF WASHINGTON

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Central Regional Office

REPORT OF EXAMINATION

NOTE TO APPLICANT: Pursuant to WAC 173-153-130(8), the applicant is not permitted to proceed to act on the proposal until Ecology makes a final decision affirming, in whole or in part, the board's recommendation. It is advised that the applicant not proceed until the appeal period of Ecology's decision is complete.

NOTE TO AUTHOR: Read the instructions for completing a water conservancy board report of examination. Use the Tab key to move through the form or with your mouse, select the fields to enter information.

☒ **Surface Water**

☐ **Ground Water**

Date Application Received	1-11-2024	Water Right Document Number (i.e., claim, permit, certificate, etc.)	Certificate S4-83445-J
Water Right Priority Date	July 22, 1891	Board-Assigned Change Application Number	YAKI-24-01
Name:	Robert and Carol Inouye	Phone:	(509)4260497
		Email:	bobinouye@gmail.com
Address (street):	1780 Nile Road	City:	Naches
		State:	WA
		Zip:	98937

Changes Proposed:

- ☐ Change purpose ☐ Add purpose ☐ Add irrigated acres
☒ Change point of diversion/withdrawal ☐ Add point of diversion/withdrawal ☒ Change place of use
☐ Other (Temporary, Trust, Interties, etc.)

SEPA:

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☐ Exempt ☐ Not Exempt

BACKGROUND AND DECISION SUMMARY

Please include a map(s) reflecting all referenced existing and proposed point(s) of diversion or withdrawal and place(s) of use (RCW 90.03.260(7); WAC 173-153-070 (6)(c).

Existing Right (Tentative Determination)							
Maximum cub ft/second	0.25 CFS		Maximum gal/minute				
	no limitation stated, but 0.25 cfs continuous equals 181 AFY		Describe Type(s) of use, and period(s) of use	Stock watering and wildlife, continuous			
Maximum acre-ft/yr							
Source	Rattlesnake Creek			Tributary of (if surface water)		Naches River	
At a Point Located: Parcel No.	151504 44003	¼	SW	¼	SE	Section	4
Township N.	15 N	Range	15 EWM	WRIA	38 Naches	County	Yakima
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED							

Type detailed legal description of the place of use:

Since 10-6-23 the full water 0.25 cfs water right has been accepted by DOE as a donation to be retained in Rattlesnake Creek for instream flow, on a temporary basis (Attachment One, page 24).

Prior to that donation the actual place of use was as stated in Certificate S4-83445-J: "That portion of the NW 1/4 SW 1/4 of Section 3, T. 15 N., R. 15 E.W.M. adjacent to the Rattlesnake Ditch." (Attachment One, page 25.)

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Parcel no.	15150332001 and 15150331007	1/4	NW	1/4	SW	Section	3
Township N.	15 N	Range	15 EWM	WRIA	38 Naches	County	Yakima

Proposed Use												
Maximum cub ft/second		0.25		Maximum gal/minute		Stock watering and wildlife, continuous						
Maximum acre-ft/yr		181		Describe Type(s) of use, and period(s) of use								
Source	Rattlesnake Creek				Tributary of (if surface water)			Naches River				
At a Point Located: Parcel No.		151504 44003		¼	SE		¼	SE		Section	4	
Township N.		15		Range	15 EWM		WRIA		38 Naches		County	Yakima

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

Type detailed legal description of the place of use:

The new place of use will be identical to that specified for the side channel in S4-35271, which states "Parcels 15150444003, 15150332001 AND 15150331007" (Attachment One, page 28).

The legal descriptions of those three parcels are:

Parcel No. 151503 32001:

Location: W 1/2, SW 1/4, Sec 3, Township 15N, Range 15 EWM, Yakima County.

Legal Description: TH PT OF W1/2 SW1/4 LY W'LY OF BETHEL RIDGE RD DESC AS FOL: BEG E LN SW1/4TH W'LY & S'LY TO S LN OF SW1/4 & END OF SD LN EX E 254.25 FT EX CO RD R/W

Parcel No. 151504 44003:

Location: E 1/2, SE 1/4, Sec 4, Township 15N, Range 15 EWM, Yakima County.

Legal Description: Section 04 Township 15 Range 15 Quarter SE: BEG SE COR SE1/4, TH W 1320 FT, TH N 448.26 FT, TH N 39^E 1135.74 FT, TH N 536 FT, TH E 592 FT, TH S 1856 FT TO POB

Parcel No. 151503 31007:

Location: SW 1/4, Sec 3, Township 15N, Range 15 EWM, Yakima County.

Legal Description: Section 03 Township 15 Range 15 Quarter SW: TH PT OF SW1/4 LY N OF BETHEL RIDGE RD EX W 1065.75 FT EX BEG 1824.7 FT N & 148.9 FT W OF S 1/4 COR, TH N 100 FT, TH W 300 FT, TH S 45^FT, TH W 75 FT, TH S 45^ 00' 00" W 100 FT, TH S 200 FT, TH N 72^ 25' 00" E 652 FT, TH N 148 FT TO BEG ALSO TH PT OF NW1/4 SE1/4 LY S OF CEN LN OF RATTLE- SNAKE CR & N OF BETHEL RIDGE

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Parcel no.	See above: 3 parcels	1/4	See above: 3 parcels	1/4	See above: 3 parcels	Section	See above: 3 parcels
Township N.	15 N	Range	15 EWM	WRIA	38 Naches	County	Yakima

Board's Decision on the Application

Maximum cub ft/second	0.25	Maximum gal/minute	Stock watering and wildlife, continuous				
Maximum acre-ft/yr	181	Describe Type(s) of use, and period(s) of use					
Source	Rattlesnake Creek			Tributary of (if surface water)		Naches River	
At a Point Located: Parcel No.	151504 44003	1/4	SE	1/4	SE	Section	4
Township N.	15 N	Range	15 EWM,	WRIA	38 Naches	County	Yakima

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

Type detailed legal description of the place of use:

The new place of use will be identical to that specified for the side channel in S4-35271, which states "Parcels 15150444003, 15150332001 AND 15150331007" (Attachment One page 28).

The more detailed legal description of those three parcels is:

Parcel No. 151503 32001:

Location: W 1/2, SW 1/4, Sec 3, Township 15N, Range 15 EWM, Yakima County.

Legal Description: TH PT OF W1/2 SW1/4 LY W'LY OF BETHEL RIDGE RD DESC AS FOL: BEG E LN SW1/4TH W'LY & S'LY TO S LN OF SW1/4 & END OF SD LN EX E 254.25 FT EX CO RD R/W

Parcel No. 151504 44003:

Location: E 1/2, SE 1/4, Sec 4, Township 15N, Range 15 EWM, Yakima County.

Legal Description: Section 04 Township 15 Range 15 Quarter SE: BEG SE COR SE1/4, TH W 1320 FT, TH N 448.26 FT, TH N 39^E 1135.74 FT, TH N 536 FT, TH E 592 FT, TH S 1856 FT TO POB

Parcel No. 151503 31007:

Location: SW ¼, Sec 3, Township 15N, Range 15 EWM, Yakima County.

Legal Description: Section 03 Township 15 Range 15 Quarter SW:
TH PT OF SW1/4 LY N OF BETHEL RIDGE RD EX W 1065.75 FT
EX BEG 1824.7 FT N & 148.9 FT W OF S 1/4 COR, TH N 100 FT,
TH W 300 FT, TH S 45° FT, TH W 75 FT, TH S 45° 00' 00" W 100
FT, TH S 200 FT, TH N 72° 25' 00" E 652 FT, TH N 148 FT TO
BEG ALSO TH PT OF NW1/4 SE1/4 LY S OF CEN LN OF
RATTLE- SNAKE CR & N OF BETHEL RIDGE

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	See above: 3 parcels	¼	See above: 3 parcels	¼	See above: 3 parcels		See above: 3 parcels
Parcel no.						Section	
Township N.	15 N	Range	15 EWM	WRIA	38 Naches	County	Yakima




Description of Proposed Works

Description of water diversion/withdrawal, conveyance, and distribution system:

The creek water will be diverted through an existing wing dam and headgate which are being used for water right S4-35271 for the nearby side channel.

The 0.25 cfs will be conveyed in the side channel, which per S4-35271 meanders within the three parcels listed above (151504 44003, 151503 32001 and 151503 31007) (Attachment One, pages 4 and 5). The earthen open side channel is similar to a braided creek with varying depths and widths. Beavers build dams and ponds in varying locations. The side channel morphs and migrates over time due to beaver activity, snow and ice, wind blown trees and other processes, including some intervention to protect adjacent roadways and improve the wildlife benefits of the water flows.

Development Schedule

Begin project by this date (At least 75 days after Board's ROD issuance):	75 days after Board's ROD issuance. 
Complete project by this date:	85 days after Board's ROD issuance. 
Complete change & put water to full use by this date:	85 days after Board's ROD issuance. 

Report

NOTE TO AUTHOR: This form reflects the minimum regulatory requirements as required in WAC 173-153-130(6). In accordance with WAC 173-153-130(5), "It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." **Completion solely of the minimum regulatory requirements may not constitute a fully documented decision.**

BACKGROUND [See WAC 173-153-130(6)(a)]

On Month January, day 11th, year 2024.

Name of applicant: Robert and Carol Inouye of City: Naches (Nile) State: WA filed an application for change (to do what e.g., POU, POD, POW, etc) point of diversion, place of use, acres under (Water right number, e.g., certificate, permit, claim, superseding document #, cert of change #): S4-83445-J. The application was accepted at an open public meeting on Month: January, day: 11th, year: 2024, and the board assigned application number (XXXXYR-##): YAKI-24-01.

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Attributes of the water right as currently documented

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Name on certificate, claim, permit: Robert Ward Inouye and Carol Grow Inouye

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Water right document number (e.g., cert #, claim #, permit #, superseding document #): S4-83445-J

As modified by certificate of change number: none

Priority date, first use Date of priority or claimed date water was originally first put to beneficial

use : July 22, 1891 Water quantities: Qi (Instant qty): 0.25 cfs Qa (Annual qty):

no limitation stated, but it computes to 181 AFY acre ft./ year Source (well, river, etc):

Rattlesnake Creek

Point of diversion/withdrawal (Distance from 1/4, Section, Township, Range EWM): 75' N and 1450' W from SE corner Sec 4, in the SW1/4 SE1/4 of Section 4, T 15 N, R 15 EWM

Purpose of use: Stock watering and wildlife Number of Acres if Irrigation: n/a

Period of use: continuous

Place of use: That portion of the NW1/4 SW1/4 of Section 3, T. 15N, R. 15 EWM adjacent to the Rattlesnake Ditch

Existing provisions (family farm act, interruptable, etc.): None.

Tentative determination of the water right

The tentative determination is provided on the front page of this report.

History of water use

Describe the historical water use information that was considered by the board:

Use prior to 1993: The existence, extent and past use of this water right was determined by the Aquavella court in 1993. After an evidentiary hearing Judge Stauffacher confirmed the right of 0.25 cfs for stock watering and wildlife, continuous, with priority date July 22nd, 1891.

Use after 1993: Per the landowners, 0.25 cfs was used regularly each year after that court hearing. Stock watering included 2 to 4 horses and dogs and occasional cows. Wildlife included fish, herds of elk (sometimes numbering over 100 when they winter over and are fed on this forest land), deer, coyotes and other wildlife all taking advantage of the riparian growth and wetlands created by the wildlife water right. For photos of wildlife using this creek-like irrigation ditch and its riparian habitat see Attachment One at pages 11, 12.

Seasons of use: year-round for both the wildlife and stock water uses.

Acreage irrigated: This is not an irrigation water right; its purpose is to benefit wildlife and stock. It serves those purposes by creating and improving wildlife habitat through bank wetting areas adjacent to the ditch, as historically increased by beaver damming and ponding in the ditch and by conveyance leakage from the ditch into nearby areas. It contributes to the ground table which feeds native wild vegetation in the wider area through hyporheic flows and raised water tables. The natural forest area benefitting from this ecological lift is the ¼ ¼ section specified in the water right.

Metering: DOE did not require metering on this relatively small irrigation ditch until 2006, at which time the landowner installed a ramp flume and stilling well to record cfs data. The landowner provided weekly cfs records for the years 2006 through 2015 and 2018 (Attachment One, page 6) which reflect the regular year-round use of the water right.

More recent use is reflected in the “Rattlesnake Ditch Association -2020” spreadsheet (Attachment One, page 7) with daily CFS figures for all of 2020.

The amounts shown in those cfs records are greater than 0.25 cfs because one flume measured all water rights coming off the creek into the shared irrigation ditch. The first user on the ditch was the Inouye water right, so every reading above 0.25 cfs reflects the full use of this first-in-ditch right.

Water use from 2020 to 2023: Beginning in 2020 the 0.25 cfs water right continued to be diverted from the creek but actual consumption for wildlife was gradually impaired when downditch irrigators began streamlining the ditch, including some plastic lining (Attachment One, page 13). As a result increasing amounts of the 0.25 cfs were being fast-tracked through the wildlife place of use and sped on downditch to end up in some irrigator’s hayfield. This change of the open earth ditch from its century-old form was instigated by the downditch irrigators and was beyond the control of the Inouyes. Beginning in 2021 the downditch irrigators also shut and locked the shared headgate during the winter (Attachment One, page 13), thereby totally denying the Inouyes the use of their water right during those months.

Water use since 2023: Because the Inouyes’ use of their wildlife water was impaired by other ditch users, they took action in 2023 to preserve the right by trusting the 0.25 cfs through DOE to remain in Rattlesnake Creek, as confirmed in the 10-6-2023 email from DOE (Attachment One, page 24). This 2023 trust to the creek is temporary, until this pending Application for Change is granted. At that point the 0.25 cfs will again be diverted from Rattlesnake Creek but into a different nearby headgate to enter the existing side channel for use within the three parcels specified in the side channel’s water right.

Previous changes

Describe any previous change decisions associated with the water right:

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Central Regional Office**

In 2023 this 0.25 cfs was accepted by DOE as trusted to remain in Rattlesnake Creek to assist with instream flows (Attachment One, page 24). That will continue until approval of the proposed change in point of diversion and place of use.

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SEPA

The board has reviewed the proposed project in its entirety (Provide a detailed explanation of how the board complied with the State Environmental Policy Act):

A full SEPA WAC 1887-11-960 Environmental Checklist was prepared in December 2011 when the side channel project was being built. A Determination of Nonsignificance and Addendum to Determination of Nonsignificance were both issued by WDFW (Attachment One, page 15).

On 6-11-2012 Yakima County Public Services issued authorization and a flood hazard development permit (FLD2012-00051 and EAC2012-00012) for the work involved in the project (Attachment One, page 20).

On 5-4-12 a Restoration Programmatic for the State of Washington Specific Project Information Form was submitted to the U. S. Army Corps of Engineers. A Joint Aquatic Resources Permit Application was prepared for the U.S. Army Corps of Engineers in May 2012. The side channel work was authorized by the Corps by letter dated 7-23-2012 (Attachment One, page 21).

A Archaeological Site Inventory was prepared by the Fennelle Miller, MA, RPA, in March 2012 (Attachment Two - Cultural Resources Assessment Report 4-2012).

The project now proposed (transferring the 0.25 cfs to the diversion point and headgate for the side channel) will only increase the side channel flows by 3% and is a minimal addition to the original project. The proposed new place of use for the 0.25 cfs is identical to the present place of use for the side channel. The purpose of use for the 0.25 cfs ("stock watering and wildlife") is compatible with the purpose of side channel's water right ("fish propagation").

Other

Provide any other pertinent information relative to the background of this water right:

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The information or conclusions in this section were authored and/or developed by (Name of Person):

Robert Inouye, with guidance from the Yakima County Water Conservancy Board.

COMMENT AND PROTESTS [See WAC 173-153-130(6)(b)]

Public notice of the application was given in the **Yakima Herald Republic** newspaper : on

Dates Published: **2/3/24 and 2/10/24**. Protest period ended on **3-12-2024**.

There were # **one** protests received during the 30 day ☐ protest period. In addition, **one** ☐ oral and written comments were received at an open public meeting of the board or other means as designated by the board.

Date of protest: Letter dated March 5, 2024, which was recognized by the board as a Protest.

Name of Protestor: Rattlesnake Ditch Association.

Address of Protester: None listed on their protest letter.

Issue raised: "The Inouye water right does not provide 181-acre ft/yr".

Board's analysis/response to the protest: The Certificate of Adjudicated Water Right S4-83445-J (Attachment One, page 25) specifies "Quantity: 0.25 cubic foot per second" and "Period of Use: Continuous". Though the original certificate does not expressly state an AFY limitation, 0.25 cfs over 365 days computes out to 181 acre feet of water per year. When the Certificate is updated it should specify the maximum AFY as 181.

Issue raised: "Mr. Inouye does not have "irrigated acres.""

Board's analysis/response to the protest: Where the Application form asks about "Irrigated Acres", the information offered in the Application, as quoted from the Certificate, is correct: "Irrigated Acres: "adjacent to the Rattlesnake Ditch" per Certificate. No amount of acreage is specified; instead the diversion from Rattlesnake Creek is continuous year-round at 0.25 cfs."

Issue raised: "The Inouye application does not acknowledge an existing compliance/enforcement action".

Board's analysis/response to the protest: Regarding "compliance/enforcement actions" there have been no actions taken by any federal, state or county agency regarding this water right. A private organization, the Rattlesnake Ditch Association, has brought four separate actions (in both the superior court and the court of appeals) against other users of this shared ditch.

RDA currently has law suits pending against eight individuals alleging a variety of claims. RDA's claims reflect their belief that only it should be involved in certain ditch-related activities, to the exclusion of all others who use the ditch. The resulting discord has caused eight former ditch users to abandon their use of the previously shared ditch and seek other ways to obtain or use their individual water rights. RDA's claims are not relevant to the issue of whether this water right should be transferred as requested.

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Issue raised: The wording used to describe the shared irrigation ditch.

Board's analysis/response to the protest: The Application form asks for a description of "the existing water supply system from the point of diversion or withdrawal to the place of use". The description offered in the Application is accurate and sufficient as regards the Inouye water right on the shared irrigation ditch. It is not necessary to further describe the entire ditch system as it proceeds on to serve 15 other users.

Issue raised: "Mr. Inouye's application stating that "Our 0.25 cfs was used from 1891 to 2022 in the irrigation ditch to create riparian or natural habitat for stock and wildlife" is incorrect."

Board's analysis/response to the protest: RDA objected to the Inouye's use of their water right for the wildlife purpose of creating riparian habitat. But that issue was argued and decided in the Inouye's favor in the 1993 Aquavella hearing before Judge Stauffacher. The court heard argument that the water right had historically created "wildlife habitat" and created "aesthetic enhancement" to the adjacent property. The court considered photographic evidence of the lush riparian wildlife habitat. The court ruling expressly includes "wildlife" as one of the uses of this water right.

RDA is still unhappy with the court's 1993 decision, but it is that court decision and the resulting Certificate of Adjudicated Water Right which guide this Board.

Issue raised: "Mr. Inouye . . . wrongfully accuses Association members of using his water, saying "those same 'improvements' also cause much of our 0.25 wildlife cfs to flow unused through the more efficient ditch and instead continue on down-ditch to their irrigated hayfields."

Board's analysis/response to the protest: The Application and attached photographs clearly reflect the former use of this water right to (among other things) provide wildlife habitat and stock water. The Application also shows that more recently RDA has denied the Inouyes their continued full use of their water right by streamlining the ditch, including partial lining with plastic barrier.

Since RDA continued to divert the Inouye's 0.25 cfs from the creek into the ditch, but streamlined the ditch to hamper the Inouye's wildlife uses of that water, RDA did cause increasing amounts of the Inouye's water to flow past the Inouye land and instead continue on for use by the downditch RDA members.

Issue raised: "Shutdowns have always occurred during the coldest months of winter . . ."

Board's analysis/response to the protest: One of the Applicant's reasons for moving his water right from the shared irrigation ditch to the nearby side channel is because the prior two winters RDA locked the shared headgate shut and denied the Inouyes their right to year-round water.

The supplied cfs records (Attachment One, page 6) do prove that previously the Inouye winter water did flow year-round. It was only after RDA seized control of the shared headgate that the Inouyes were denied their winter water right. This is one of the reasons for the pending Application: so the Inouyes will again be able to use their year-round water right without being locked out by RDA.

Issue raised: "We would request that the Conservancy Board and the Department of Ecology affirm . . . that our access is not interfered with by the influx of additional water into the side channel".

Board's analysis/response to the protest: RDA enjoys access to the half mile of irrigation ditch that runs through the Inouye property. RDA's access is memorialized in a written agreement which was provided to RDA with no charge; and by a court order which adopted that written agreement. Today those easement issues are the subject of new law suits that RDA has brought against eight ditch users. Neither the Conservancy Board nor the Department of Ecology should seek to interfere with those pending easement law suits which dispute whether RDA's access through the Inouye property is adequate.

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NOTE to author: Repeat this table as necessary to describe each protest or comment
(attach a separate sheet if needed)

Other

Provide any other pertinent information relative to the comments and protests receive:

The information or conclusions in this section were authored and/or developed by (Name of Person): _____

INVESTIGATION [See WAC 173-153-130(6)(c)]

The following information was obtained from a site inspection conducted by (person(s)): David Brown and Jared McMeen on 2-19-2024: _____, technical reports, research of department records (list other references, if any) _____ and conversations with the applicant and/or other interested parties.

Proposed project plans and specifications

Describe proposed use of water to include # of connections, method of irrigation, type of crop, commercial use, etc. Also describe any issues related to development, such as the proposed development schedule and an analysis of the effect of the proposed transfer on other water rights, pending change applications & instream flows established under state law.

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The 0.25 cfs, which is presently temporarily trusted to remain in Rattlesnake Creek, will be diverted from the creek via the existing wing dam and headgate which already serve the nearby side channel under S4-35271. That side channel water right (Attachment One, page 27) allows 6,289 AFY, so the 0.25 cfs will add 181 AFY or 3% to the present flow in the side channel.

Granting the pending change application will reduce the instream flow of Rattlesnake Creek by 0.25 cfs; but only because the water right owners temporarily gifted this water to the creek in 2023. Before this temporary gift, the 0.25 cfs was being diverted from the creek into the irrigation ditch. The plan has always been to transfer the 0.25 cfs to the side channel diversion when the change application is granted.

The proposed use of the 0.25 cfs water is the same as the use specified in the original water right permit: "stock watering and wildlife". It will be used to provide water for stock, and to benefit wildlife (including fish) by providing improved habitat for their use, all within the three designated parcels. Benefits to wildlife include riparian vegetation, raising the water table, evening out seasonal water temperature variations in return flows, support of wetlands and ecological lift in the three parcels.

Some of the diverted 0.25 cfs will return to Rattlesnake Creek as surface flow as it exits the mile long side channel. Another portion of the 0.25 cfs will likely return as ground flows to lower stretches of Rattlesnake Creek or the Naches River.

Other water rights appurtenant to the property (if applicable)

Describe any other water rights or other water uses associated with both the current and proposed place of use and an explanation of how those other rights or uses will be exercised in conjunction with the right proposed to be transferred.

Regarding the original place of use:

The irrigation ditch, which this 0.25 cfs was diverted into during prior years, is also used by other water right holders. They share the same point of diversion, but have different places of use:

Certificate S4-83378-J

Certificate S4-83380-J

Certificate S4-83381-J

Certificate S4-83386-J

Certificate S4-83382-J

Certificate S4-83383-J, Court Claim 01643

Certificate S4-83384-J, Court Claim 01609

Certificate S4-83385-J(E), Court Claim 01632

For many years this 0.25 cfs was diverted along with those other water rights, into the same irrigation ditch, and measured in total by one ramp flume. But the shared total diversions from

Rattlesnake Creek, into the shared irrigation ditch, were reduced by 0.25 cfs when the 0.25 cfs was trusted to the creek. The diversion into the irrigation ditch was further reduced in early 2024 when four additional ditch users decided to cease using the irrigation ditch: they plan to obtain their water rights through another route. The remaining water rights using the irrigation ditch will continue to be measured and reported by those water right owners, at the reduced rate.

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Regarding the proposed place of use:

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The 0.25 cfs will continue to travel in Rattlesnake Creek past the irrigation ditch headgate about 150 feet, then enter the existing wingdam and headgate presently used by the side channel under S4-35271. The combined flows will be measured and regulated to add the new 181 AFY to the side channel's present 6,289 AFY.

The new place of use for the 0.25 cfs will be identical to that specified in SR-35271 for the side channel water right: "Parcels 15150444003, 15150332001, AND 15150331007".

Public Interest (groundwater only)

The proposed transfer is subject to RCW 90.44.100 and therefore, cannot be detrimental to the public interest, including impacts on any watershed planning activities. Provide an analysis of the transfer as to whether it is detrimental to the public interest, including impacts on any watershed planning activity. Public interest is not considered if the proposed water right is authorized under RCW 90.03.380 exclusively.

Does not apply.

Tentative Determination

In order to make a water right change decision, the Board must make a tentative determination on the validity and extent of the right. The Board has made the tentative determination as displayed upon the first page of this report. There are several circumstances that can cause the board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the

ECY 040-106 (03/2017) To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program 360-407-6872. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

following findings. Describe any information indicating that an existing water right or portion of a water right has been relinquished or abandoned due to nonuse and the basis for the determination.

The 0.25 cfs water right is valid: it has been regularly used and not abandoned or relinquished.

The amount of this water right actually in use for stock watering and wildlife was determined as of 1993 in Aquavella litigation when Judge Stauffacher examined the conflicting positions and issued his ruling recognizing it at 0.25 cfs, continuous, since 1891.

For decades following that 1993 court order the amount of water actually used remained constant. Historical accounts and ramp flume measurements show that the amounts of water diverted from the creek into the irrigation ditch remained well above the 0.25 amount, since additional water was also diverted for other irrigation users located further down from this place of use. The wild unimproved nature of this open earthen ditch remained in its creek-like state for more than a century, fostering diverse riparian growth and wildlife habitat (Attachment One, page 11).

That full use of the 0.25 cfs continued until 2020 when other ditch users began their aggressive program to remove riparian vegetation, streamline the ditch and line part of it with plastic. Over the next couple of years that series of "improvements" caused increasing reductions in the ability of the ditch to serve its wildlife purpose, and began reducing the amount of the 0.25 cfs which was actually consumed along the ditch to create riparian wildlife habitat. The downditch irrigators also shut and locked the shared irrigation ditch headgate during winters starting in 2021, which made it impossible to use the 0.25 cfs winter water right (Attachment One, page 13).

In 2023 the 0.25 cfs was trusted through DOE to remain in Rattlesnake Creek, and since then it has not been diverted into the irrigation ditch. The water right owner voluntarily set up that temporary gift to the trust, to help with the creek's instream flow, and to preserve the 0.25 cfs water right until it could be transferred to the nearby side channel instead. (Attachment One, page 24.)

Based on the 0.25 cfs Aquavella ruling by Judge Stauffacher, and then the continuing decades of use for wildlife and stock watering, followed by the 2023 preservation of the water right by temporarily trusting it to remain in the creek, the water right has been fully and continuously used and was not relinquished or abandoned. The only exceptions were when other ditch users began interfering with the Inouyes' use of year-round wildlife water by locking the shared headgate shut during the winter (starting in 2021) and streamlining the ditch which impaired use of the Inouyes' wildlife water right (around 2020).

Geologic, Hydrogeologic, or other scientific investigations (if applicable)

Describe the results of any geologic, hydrogeologic, or other scientific investigations that were considered by the board and how this information contributed to the board's conclusions.

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The amount of water consumed in the original specified place of use was determined by Judge Stauffacher in the Aquavella case after a evidence presented in an evidenciary hearing. His order set the water right at 0.25 cfs continuous, with an 1891 priority date. His order was based on the years of use of that amount of water in the designated place of use. More recently that finding and order was again contested during the 2020 appeal, but the end result was that the 0.25 cfs was left in place. In July 2022 DOE issued the Certificate of Adjudicated Water Right confirming the 0.25 cfs.

The Board accepts these court orders and DOE's Certificate as summarizing and resulting from all geologic, hydrogeologic and other scientific information considered by the court. That body of evidence established the historical use of 0.25 cfs for stock watering and wildlife in the designated place of use.

Since 2020 the amount of wildlife water used has decreased some due to ditch streamlining and plastic lining by other ditch users who preferred to see all diverted creek water flow to their own down-ditch uses without being partially absorbed to create riparian wildlife habitat. Those unilateral streamlining efforts conflicted with the court-ordered wildlife use of the Inouye water right and interfered with continued full use of the amounts originally determined by Judge Stauffacher.

In 2023 the Inouyes voluntarily gifted their 0.25 cfs water right through DOE, to remain in Rattlesnake Creek for instream flow, until DOE approves transfer of that water to the Inouyes' nearby side channel project.

Other

Provide any other pertinent information relative to the investigation of this application.

None.

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The information or conclusions in this section were authored and/or developed by (Name of Person): Robert Inouye, with guidance from the Conservancy Board.

CONCLUSIONS [See WAC 173-153-130(6)(d)]

Tentative determination (validity and extent of the right)

Describe whether, and to what extent, a valid water right exists.

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A valid water right does exist, for the full 0.25 cfs continuous stock watering and wildlife uses, as stated in the court order and the 7-20-2022 Certificate of Adjudicated Water Right.

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Relinquishment or abandonment concerns

Describe any relinquishment or abandonment of the water right associated with the water right transfer application as discussed in the investigation section of this report.

There has been no relinquishment or abandonment of the water right.

Hydraulic analysis

Describe the result, as adopted by the board, of any hydraulic analysis done related to the proposed water right transfer.

N/A

Consideration of comments and protests

Discuss the board's conclusions of issues raised by any comments and protests received.

The only filed protest came from the Rattlesnake Ditch Association. RDA's voluminous papers reflect the discord which has arisen between ditch users. But the RDA protests, as addressed above, do not present any reason to deny the requested Application.

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Impairment

Describe how or if the transfer proposal will impair existing rights of others.

The transfer will not impair the existing rights of others.

The 0.25 cfs has not been used in the irrigation ditch since 2022. This is partly because the other ditch irrigators unilaterally shut and locked the headgate during winter months. In any event, this water right owner has the absolute right to decide that his 0.25 cfs will no longer enter the ditch, under the 5-7-2020 Stipulation and Agreed Order of Dismissal in the Aquavella case ("Inouye may decide when the Association shall divert the Inouye water right into the ditch").

Since 2023 this 0.25 cfs has been trusted by the owner, through DOE, to remain in Rattlesnake Creek, rather than being diverted into the irrigation ditch. This temporary gift to the creek will end when this change application is granted to allow the water to flow into the side channel.

Public Interest

If the proposed transfer is authorized pursuant to RCW 90.44.100, describe whether it is detrimental to the public interest. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW 90.03.380 exclusively.

This transfer is not detrimental to the public interest. In fact, it will create a public benefit by enhancing the side channel along Rattlesnake Creek which is designed to foster the creek's native and endangered fish species.

Other

The board also considered the previous provisions associated with the water right as identified in the background section of this report when making its decision. Provide any other pertinent information relative to the board's conclusions.

Does not apply.

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DECISION [See WAC 173-153-130(6)(e)]

Provide a complete description of the board's decision, fully and comprehensively addressing the entire application proposal.

The requested transfer should be approved by DOE.

The 0.25 cfs water right was established by the court in 1993 and was continuously and fully used until 2020. The gradual partial reduction in use starting in 2020 was beyond the control of the water right owner, and was caused by other users of the same irrigation ditch. In 2023 the 0.25 cfs water right was preserved by trusting it to remain in-creek, pending approval of the requested transfer to the side channel.

The 0.25 cfs can flow 150 feet further down Rattlesnake Creek, about 150' beyond the irrigation ditch headgate, to an existing wing dam and headgate which serve another much larger water right (S4-35271) which creates a side channel for the purpose of fish propagation. The 0.25 cfs will add 3% to the existing flows in that side channel.

The original purpose of the 0.25 cfs (stock watering and wildlife) is consistent with the purpose of the side channel water right ("fish propagation"), and need not be changed. Both "wildlife" and "fish propagation" include the fostering of in-stream habitat and riparian habitat, each of which benefit both fish and other wildlife.

The new proposed place of use overlaps the two parcels that the original place of use is within (151503 32001 and 151503 31007), but is expanded to also name one additional adjacent parcel (151504 44003). These three adjoining parcels are the same place of use already specified for the side channel in S4-35271. The three-parcel place of use was intentionally established as the place of use boundary in S4-35271 because the side channel morphs and migrates within those boundaries over time similar to a natural wild creek. The same three parcels should be specified as the new place of use for the 0.25 cfs.

In summary, the transfer should be approved with these specifications:

Diversion Rate: 0.25 cfs, continuous

Annual Quantity: 181 AFY

Purpose: Stock watering and wildlife

Period of Use: 01/01 - 12/31

Source: Rattlesnake Creek

320 feet North and 830 feet West from the SE corner of Section 4.

Being within the SE 1/4 SE 1/4 of Section 4, T. 15 N., R. 15 E.W.M.

Being within Yakima County Parcel No. 151504 44003 in WIRA 38.

Source Location:

Yakima County, Rattlesnake Creek, Tributary to Naches River, WRIA 38-Naches.

Rattlesnake Creek, Parcel 151504 44003, T 15N, R 15EWM, Sec 4, SE1/4 SE 1/4

Latitude 46.81311, Longitude -120.95421, Datum WGS84

Place of Use:

Yakima County Parcels 151504 44003, 151503 32001 and 151503 31007.

~~Development Schedule:~~

~~Begin Project: (45 days after Board's ROD issuance)~~

~~Complete Project: (55 days after Board's ROD issuance)~~

~~Put water to full use: (55 days after Board's ROD issuance)~~

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Provide any other pertinent information relative to the board's decision.

The Inouyes' side channel project transformed part of their xeric forest land by introducing a mile of creek-like habitat to benefit Rattlesnake Creek's native and endangered fish populations.

This volunteer project was supported by generous assistance and financial contributions from many agencies, including the Department of Ecology, the Washington State Department of Fish and Wildlife, the Yakama Nation, Mid-Columbia Fisheries Enhancement Group, the Salmon Recovery Funding Board and the Yakima Basin Fish & Wildlife Recovery Board. (See Attachment Three – Rattlesnake Creek Side Channel.)

The proposed transfer of the Inouyes' irrigation ditch water into their side channel project will further enhance and secure the many benefits which that the side channel already provides for fish and other wildlife along the Rattlesnake Creek corridor.

The information or conclusions in this section were authored and/or developed by (Name of Person): Robert Inouye, with guidance from the Conservancy Board.

PROVISIONS [See WAC 173-153-130(6)(f)]

Conditions and limitations

Identify any conditions and limitations recommended as part of an approved transfer, and/or any other corrective action necessary to maintain the water use in compliance with state laws and regulations.

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Measurement of water use

You are required to measure your water use per chapter 173-173 WAC. See the table below for your specific requirements under this permit.

How often must water use be measured and recorded?	Weekly
How often must water use be reported to Ecology?	By January 31 of the next year
What quantity should be reported?	Total annual volume (ac-ft/yr)
What rate should be reported?	Maximum rate of diversion (cfs)

Measurement, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Regional Office for forms to submit your water use data.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Mitigation (if applicable)

Describe any requirement to mitigate adverse effects of the project. Mitigation may be proposed by the applicant or the board and be required in the board's decision.

Not applicable.

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Construction Schedule

Provide a schedule for development and completion of the water right transfer, if approved in part or in whole that includes a definite date for completion of the transfer and application of the water to an authorized beneficial use.

This change will not require a development schedule since the adjustments to the headgate can be made quickly to divert the additional 0.25 cfs from the creek at the side channel.

The applicant will not need to file the "Complete Construction" and "Proof of Appropriation" notices with Ecology. If Ecology has capacity, it will issue a superseding certificate once the appeal period is complete.

Other

Provide any other pertinent information relative to provisions

The only objection received was from RDA, which is concerned about preserving its own use of the irrigation ditch as it flows through the Inouye property. The proposed change of the Inouye water right is a separate issue and should be approved by DOE.

The information or conclusions in this section were authored and/or developed by (Name of Person): Robert Inouye with guidance from the Ben Carr and the Conservancy Board.

The undersigned board commissioner certifies that he/she understands the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that he/she, having reviewed the report of examination, knows and understands the content of this report and concurs with the report's conclusions.

Signed at

Yakima,
(City)

Washington

This

11
Date (Day)

day of

Apr,
(Month)

2024
(Year)

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Dept. of Ecology
Central Regional Office

Name of Board Representative:

Name of Water Conservancy Board:

David Brown

Yakima County

Signature:

