STATE OF WASHINGTON
DRAFT
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

WR Doc ID 4262092

PRIORITY DATE	WATER RIGHT APPLICATION NUMBER
May 19, 2005	S3-30487

NAME AND MAILING ADDRESS	SITE ADDRESS (IF DIFFERENT)
Paul Sullivan 370 McNary Ridge Road Burbank, WA 99323	

DENIED

Findings of Fact and Order

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated.

Therefore, I ORDER **DENIAL** of Application No. S3-30487, subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this decision to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt. The appeal process is governed by chapter 43.21B RCW and chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal, you must do all of the following within 30 days of the date of receipt of this decision:

- File your notice of appeal and a copy of this decision with the PCHB (see filing information below). "Filing" means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. "Notice of appeal" is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this decision on the Department of Ecology by mail, in person, or by email (see addresses below).

You must also comply with other applicable requirements in chapter 43.21B RCW and chapter 371-08 WAC.

Filing An Appeal

Filing with the PCHB
For the most current information regarding filing with the PCHB, visit: https://eluho.wa.gov/ or call: 360-664-9160.

Service on Ecology

Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

E-mail Address:

ecologyappeals@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
  https://eluho.wa.gov/
- **Chapter 43.21B RCW – Environmental Hearings Office – Pollution Control Hearings Board**
  http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B
- **Chapter 371-08 WAC – Practice And Procedure**
  http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08
- **Chapter 34.05 RCW – Administrative Procedure Act**
  http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05
- **Ecology's Laws, Rules & Rulemaking**
  https://www.ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking#ws

Authorizing Signature

Signed at Spokane, Washington, this _____ day of _____, 2026.

_____
Jaime Short, Section Manager
Water Resources Program/Eastern Region Office
Department of Ecology

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INVESTIGATOR'S REPORT

Water Right Application No.: S3-30487
Applicant: Paul Sullivan
Investigator: Shannon Adams

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S3-30487.

The applicant proposes diverting 6.24 cubic feet per second, an annual quantity of 1120 acre feet per year for seasonal irrigation of 280 acres, year-round.

Table 1. Summary of Requested Water Right

Applicant Name	Paul Sullivan
Priority Date	May 19, 2005
County	Walla Walla
WRIA	33 – Lower Snake watershed
Water Source	Snake River, McNary Pool
Tributary to	Columbia River
Place of Use	Within the NW¼, NE¼, SE¼, NW¼SW¼, and NE¼SW¼ of Sec. 27, T. 9 N., R. 31 E.W.M., in Walla Walla County, Washington.

Purpose	Instantaneous Rate (cfs)	Annual Quantity (ac-ft/yr)	Begin Season	End Season
Irrigation (280 acres)	6.24	1120	1/1	12/31

Source Name	Parcel	Township	Range	Section	QQ Q	Latitude	Longitude
Snake River, McNary Pool	Govt. Lot 1	9 N.	31 E.W.M.	27	NW¼NW¼		

Datum: NAD83/WGS84

INVESTIGATION

Ecology initiated a Targeted Application Processing (TAP) for WRIA 33. The applicant was notified and requested processing of the application. Ecology's Water Resources preliminary review of the watershed indicated likely denial of the pending application.

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) Appropriate rules and statutes; (2) Ecology water right file; (3) Other water rights, permits and claims; (4) USGS topographic maps, aerial photographs, and other GIS data; (5) Proposed point of diversion; (6) Proposed place of use; (7) Processing of Water Right Applications in the Snake River Basin, Washington State letter from Ecology sent to National Oceanic and Atmospheric Administration August 19, 2014; (8) Processing of Water Right Applications in Southeastern Washington State letter from United States Department of Commerce National Oceanic and Atmospheric Administration sent to Ecology October 1, 2014; (9)Letter from State of Washington Department of Fish and Wildlife dated December 15, 2025; (10) Chapter 173-564 WAC Water Resources Snake River (expired), WRIA 33 and Watershed Planning; 11) Chapter 173-563 WAC Instream Resources Protection Program for the Main Stem Columbia River in Washington State; 12) Chapter 173-531A WAC Water Resources Program for the John Day-McNary Pools Reach of the Columbia River, WRIA 31 and parts of WRIAs 32, 33, 36, And 37; and (13) Discussions with Department of Ecology regional program staff.

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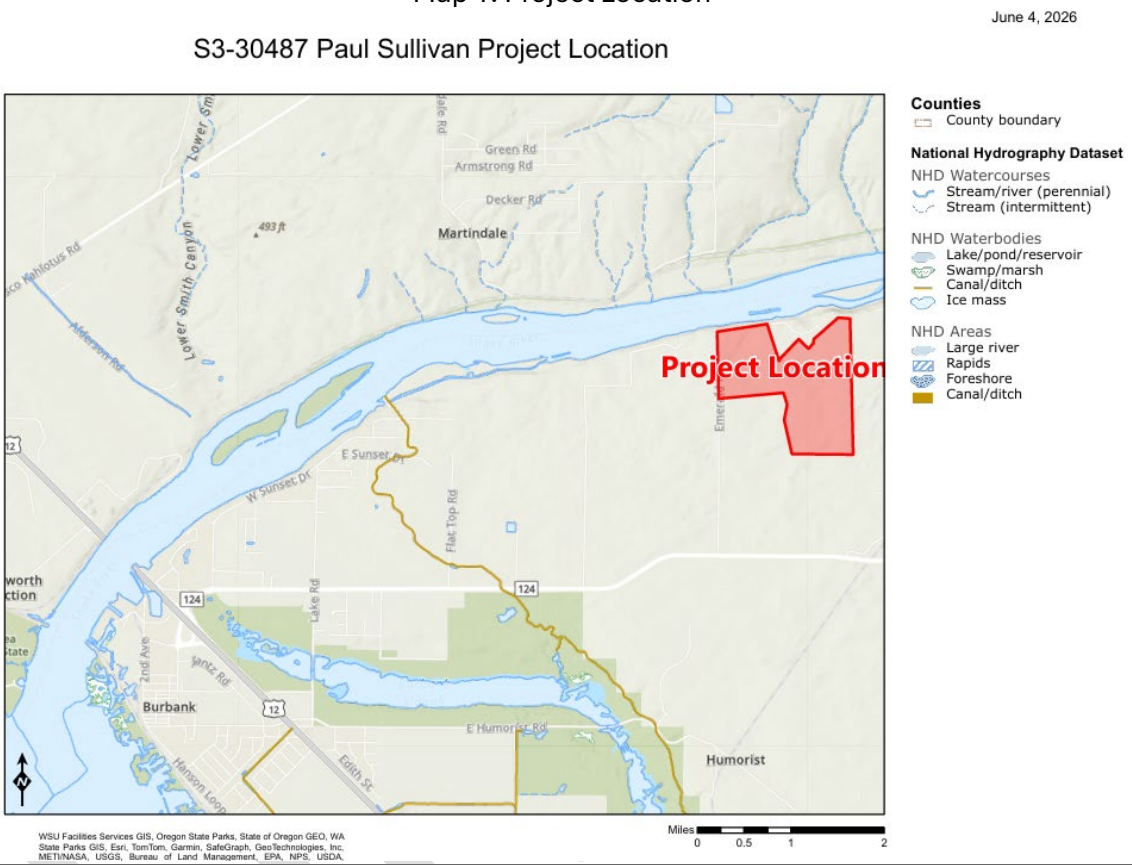
On May 27, 2026, the Investigator, Shannon Adams, attempted to visit the site based on directions provided in the application. The road had No Trespassing signs, so the site was viewed from local roads. The project is located approximately 4.75 miles northeast of Burbank, Washington in Walla Walla County, within WRIA 33 – Lower Snake watershed. The main stem of the Snake River in Washington State was previously protected by Chapter 173-564 WAC which expired on January 1, 1999.

Map 1: Project Location

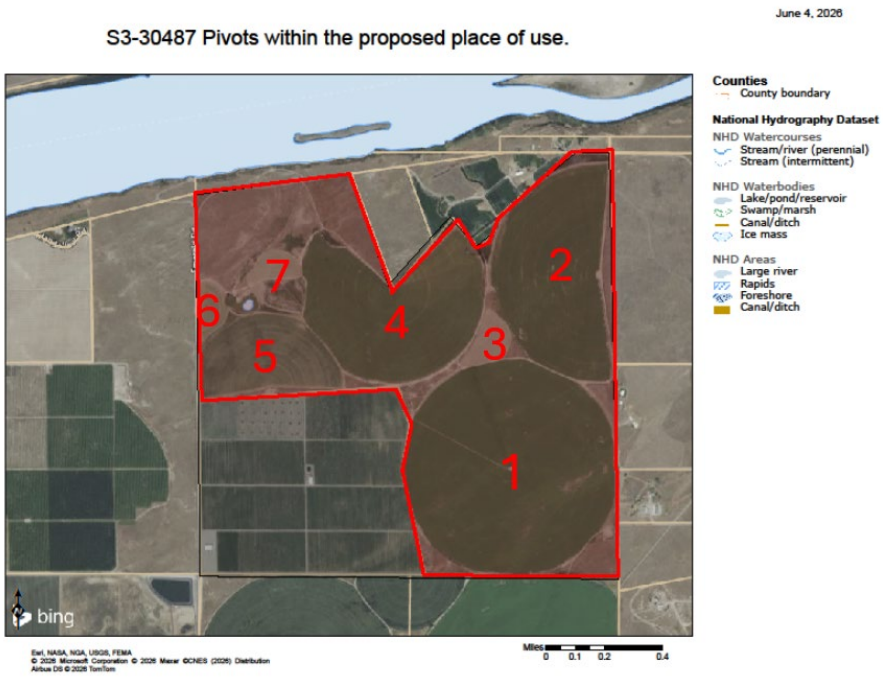


Proposed Use and Basis of Water Demand

Site Description

The proposed project is situated in rolling hills south of the Snake River. Aerial photos show seven pivots of various shapes and sizes that are in use for irrigation.

Map 2: Pivots



Proposed Use

The Applicant proposes diverting surface water from the Snake River at an instantaneous quantity of 6.24 cfs (2800.51 gpm), an annual quantity of 1120 acre feet per year, for year-round irrigation of 280 acres. According to OpenET, crops grown within this project area since 2022 included: potatoes, apples, corn, wheat, hay, buckwheat, and alfalfa. The standard water duty in this area for these crops range from 2.3 to 4 acre-feet per acre depending on the irrigation system. The applicant requests 4 acre-feet per acre, which is reasonable given these crops may be rotated. Consumptive use calculations were not completed as this application is being denied.

A typical instantaneous recommendation when filing an application for irrigation is 10 gallons per minute per acre. The request for 6.24 cfs (2800.51 gpm) is reasonable.

Water System Description

The Applicant proposes adding a pump to the existing river station. Pivots are in use for irrigation.

Other Rights Associated with Project or Place of Use

Ecology records were reviewed for existing water right certificates, permits, and claims within the project and the surrounding area. The search focused primarily in Section 27 within T. 9 N., R. 31 E.W.M. within the proposed place of use.

There are two overlapping permits within the place of use: Surface Water Superseding Permit No. S3-27891(A) and Groundwater Permit No. G3-28599. Groundwater Permit No. G3-28599 is provisioned that the total amount of water appropriated for irrigation under the authorization G3-28599 and S3-27891 shall not exceed 3400 gallons per minute, 1581 acre-feet per year, for irrigation of 340 acres. S3-27891 was partially assigned to a new landowner within the place of use, becoming S3-27891(A) and (B). Legal documents show that G3-28599 was withheld from the sale. However, these water right permits cannot be separated as they are alternate supplies for one project.

Paul Sullivan also submitted a groundwater application G3-30019 that has not been acted upon.

Although the water rights are appurtenant to the land, they may not be part of this project. The validity and extent of the above listed overlapping water rights are not determined in this report.

ANALYSIS

Under Washington State law (RCW 90.03.290), each of the following four criteria must be met for an application for a new water right permit to be approved:

- Water use must not be detrimental to public interest (public welfare).
- Water must be available for appropriation.
- Water diversion and use must not cause impairment of existing water rights.
- The proposed water use must be beneficial.

Public Interest

The withdrawal and associated use must not be detrimental to the public interest. At a minimum, the following are considered when making this assessment.

Notification to the Washington Department of Fish and Wildlife

Per RCW 90.03.280 and 77.57.020, Ecology must give notice to the Washington Department of Fish and Wildlife (WDFW) of applications to divert, withdraw, use, or store water.

WDFW was provided notice of this water right application on March 17, 2025. WDFW responded on December 16, 2025, via email with an attached letter dated December 16, 2025.

"Based on impacts to fish and/or wildlife and the habitat they rely on, and pursuant to 77.57.020 RCW, WDFW recommends denial of this water right. Surface Water Source Limitation (SWSL) lists Snake River mainstem and tributaries as having low flow recommendations or concerns expressed by WDFW predecessor agencies in at least eight letters in 1952, 1956, 1968, 1969, 1971, 1972 (2), and 1974. A letter from Roger A. Will, Department of Fisheries, dated July 1, 1993, also recommended denial." (Washington, Department of Fish and Wildlife, 2025).

"More recent WDFW comments have requested that new surface water diversions comply with the 2000 FCRPS BiOp flows. Target flows in the Snake River are often not met. Migration downstream through the dams is compromised by slow water and delayed arrival to saltwater. The presence of endangered sockeye salmon and threatened Chinook and Steelhead elevate the concern and indicates that fish are already impaired by low flows. Increasing diverted water for out-of-stream uses will only make conditions for fish worse." (Washington, Department of Fish and Wildlife, 2025).

State Environmental Policy Act (SEPA)

Under chapter 197-11 WAC, a water right application is subject to a SEPA threshold determination (i.e., an evaluation of whether there will be significant adverse environmental impacts) if any of the following conditions are met:

- It is a surface water right application for more than 1 cfs, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cfs, so long as that irrigation project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gpm;
- It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

This application is being denied and therefore a SEPA determination is not required. Additionally, this application would be categorically exempt from a SEPA threshold determination.

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is stored, diverted, and used. Notice of this application was published in The Times in the City of Waitsburg, Walla Walla County on March 16, 2006, and March 23, 2006. No protests were received regarding this notice.

Yakama Nation

Based on Ecology's agreement with the Yakama Nation (PCHB, September 2021), Ecology engaged in the Enhanced Tribal Consultation. On September 17, 2025, Ecology sent the appropriate letter with documents to the Yakama Nation Tribal Council Chairman, written notice to the Yakama Nation's Department of Natural Resources representative, and written notice to the Yakama Nation's Office of Legal Counsel. The correspondence alerted the Yakama Nation that Ecology would begin processing applications proposing surface water diversion from the Snake River (McNary Pool). The Yakima Nation was provided with a 35-day review period to request an in-person consultation meeting regarding these applications. The Yakama Nation did not respond.

Other Public Interest Concerns

Chapter 90.90 RCW[1] tasks Ecology's Office of Columbia River (OCR) with the aggressive pursuit of water solutions to meet water needs in the Columbia River. This includes mitigation water to offset new out of stream uses for new water rights. New consumptive uses from the Snake River without mitigation is contrary to the downstream rule of the Columbia River, and not in the public interest as it undermines the purpose of OCR.

On August 19, 2014, Ecology requested National Marine Fisheries Service (NMFS) input on new water appropriations. A response was received in a letter dated October 1, 2014, regarding the Snake River, the upper Columbia River, the middle Columbia River, and their tributaries. They indicated the presence of fish within these basins listed under the Endangered Species Act (ESA). These basins have limited flows and often poor-quality habitat affecting these ESA listed species. NMFS stated they had a draft and final plan for recovery of these basins and indicated new consumptive water uses should be denied unless

[1] https://app.leg.wa.gov/rcw/default.aspx?cite=90.90

they have appropriate mitigation. The fisheries recommendation for denial of new consumptive uses affects all surface water applications for new water rights within the watershed.

NOAA Fisheries website states that once a species is ESA listed, they evaluate and identify areas that meet the definition of critical habitat. Through a rule making process, critical habitat is designated. NOAA Fisheries defines critical habitat as follows:[2] "1) Specific areas within the geographical area occupied by the species at the time of listing that contain physical or biological features essential to conservation of the species and that may require special management considerations or protection; and 2) Specific areas outside the geographical area occupied by the species if the agency determines that the area itself is essential for conservation." According to NOAA's NMFS (2020), many stream reaches designated as critical habitat in the Interior Columbia Recovery Domain (this includes the Snake River) are over-allocated. Surface Water diversions for agricultural purposes generally occur during low-flow periods in the summer. The increase in summer stream temperatures results in blocking salmon migration, stranding fish, and altering sediment transport. These elevated surface water temperatures restrict salmonids' use of historically suitable habitat areas.

"Thirteen species of salmon and steelhead listed as threatened or endangered under the Endangered Species Act use the Columbia River Basin to swim to the Pacific Ocean as juveniles and to return to spawning grounds as adults. A portion of the seasonal migratory runs of most of these 13 species occurs when Columbia and Snake River temperatures exceed 20°C, and these elevated temperatures have been identified by NOAA Fisheries as a limiting factor in the recovery of the listed species (NOAA, 2020)." (EPA p.4, 2021)[3].

Ecology's Columbia River & Lower Snake River temperature TMDL[4] states the Columbia and Lower Snake Rivers are listed on the state's polluted waters list for high water temperatures. On May 10, 2022, the U.S. Environmental Protection Agency Region 10 (EPA) published the revised Columbia and Lower Snake Rivers Temperature Total Maximum Daily Load[5]. The total maximum daily load (TMDL) is a calculation that identifies the amount of a pollutant (in this case, heat) that a river or waterbody can receive and still meet specific standards to protect water quality. Under the federal Clean Water Act (CWA), the development of a TMDL[6] is required when a waterbody does not meet identified standards for certain pollutants and is considered "impaired" for those pollutants.

The U.S. Army Corp of Engineers owns and operates four dams on the Snake River in Washington State. These dams include Ice Harbor[7], Lower Monumental[8], Little Goose[9], and Lower Granite[10]. Each of these dams have a National Pollutant Discharge Elimination System (NPDES) permit that authorizes discharge of pollutants from facility processes, waste streams and operations identified in the application for the

[2] https://www.fisheries.noaa.gov/national/endangered-species-conservation/critical-habitat#definition-of-critical-habitat
[3] https://www.epa.gov/system/files/documents/2022-06/tmdl-columbia-snake-temperature-errata-update-05102022.pdf
[4] https://ecology.wa.gov/water-shorelines/water-quality/water-improvement/total-maximum-daily-load-process/directory-of-improvement-projects/columbia-snake-river-tmdl
[5] https://www.epa.gov/columbiariver/tmdl-temperature-columbia-and-lower-snake-rivers
[6] https://ecology.wa.gov/water-shorelines/water-quality/water-improvement/total-maximum-daily-load-process
[7] https://www.epa.gov/system/files/documents/2024-02/r10-npdes-usace-ice-harbor-wa0026816-final-permit-mod-2024.pdf
[8] https://www.epa.gov/system/files/documents/2024-02/r10-npdes-usace-lower-monumental-wa0026808-final-permit-mod-2024.pdf
[9] https://www.epa.gov/system/files/documents/2024-02/r10-npdes-usace-little-goose-wa0026786-final-permit-mod-2024.pdf
[10] https://www.epa.gov/system/files/documents/2024-02/r10-npdes-usace-lower-granite-wa0026794-final-permit-mod-2024.pdf

permit. Each NPDES permit has a 401 certification issued by Ecology incorporated into the NPDES permit. These permits require continuous temperature monitoring and reporting. The facility must not exceed the monthly average heat load listed in the NPDES permit between June 1 to October 1. The permittee must implement temperature control strategies to meet the load allocations for the Lower Snake Rivers Temperature TMDL and must achieve Washington Water Quality Standards (Chapter 173-201A WAC)[11].

The survival of the threatened or endangered salmon and steelhead in the Columbia and Snake River require clean flowing water with an optimal species-specific temperature. The Columbia and Lower Snake River Temperature TMDL[12] recommends that Federal Hydroelectric Facilities parter with the states, and tribes, while the EPA is to work with National Oceanic and Atmospheric Administration (NOAA) Fisheries, U.S. Army Corps of Engineers, Bureau of Reclamation and Bonneville Power Administration on the development and implementation of water temperature reduction actions as part of their water quality plans.

Based on the combined efforts of the agencies/entities regarding the preservation of threatened or endangered species in the Columbia and Snake Rivers, goals for improving water quality parameters, and the purpose of OCR, the proposed appropriation is not in the public interest.

Water Availability

For any new appropriation, water must be both physically and legally available.

Physical Availability

For water to be physically available for appropriation, water must be present in quantities and quality and on a sufficiently frequent basis to provide a reasonably reliable source for the requested beneficial use or uses.

The physical availability of water for this proposed appropriation is based on the combined flows from the Walla Walla, Snake, Yakima, and Upper Columbia Rivers that supply water to Lake Wallula (McNary Dam Reservoir or McNary pool). According to the "Lakes of Washington, Volume 2 of Eastern Washington[13]", the storage capacity of Lake Wallula (McNary Dam Reservoir or McNary pool) is approximately 1,350,000 acre-feet. Given the listed storage capacity of the lake, water is physically available.

Legal Availability

To meet the legal availability test, the proposed appropriation may not divert and use water that is already "spoken for", such as water from sources that are protected by administrative rule or court order.

The Applicant proposes to divert water from an existing surface water diversion located on the Snake River within the McNary Pool (Lake Wallula). The main stem of the Snake River in Washington State was previously protected under Chapter 173-564 WAC which expired on January 1, 1999. The McNary pool in the Columbia River extends up the lower portion of the Snake River and is regulated by Chapter 173-563 WAC. Applications considered for approval or denial after July 27, 1997, are to be evaluated for possible impacts on fish and existing water rights. Any permit that is approved will be subjected to instream flow protection or mitigation conditions if deemed necessary. Additionally, Chapter 173-531A WAC[14] Water Resources Program for the John Day-McNary Pools Reach of the Columbia River, WRIA 31 and parts of WRIAs 32, 33, 36, and 37 had

[11] https://app.leg.wa.gov/wac/default.aspx?cite=173-201A&full=true
[12] https://www.epa.gov/system/files/documents/2022-06/tmdl-columbia-snake-temperature-errata-update-05102022.pdf
[13] https://apps.ecology.wa.gov/publications/SummaryPages/WSB14b.html
[14] https://app.leg.wa.gov/WAC/default.aspx?cite=173-531A&full=true

“reservation” water that was designated for specific beneficial uses. This reservation water for irrigation projects was to be developed by the year 2020. Permit conditions in Chapter 173-531A-040(1) WAC state that approval or denial of applications after July 27, 1997, will be evaluated for possible impacts on fish and existing water rights. This evaluation would be based on consultation with local, state, and federal agencies, and Indian Tribes.

Ecology consulted with Washington Department of Fish and Wildlife (WDFW) in 2025. WDFW recommended denial of this water right due to impacts on fish (see Public Interest above). Ecology consulted with National Marine Fisheries Service (NMFS) in 2014. NMFS recommended denial of water right application without mitigation from the Snake and Columbia Rivers (see Public Interest above). On September 17, 2025, Ecology engaged in the Enhanced Tribal Consultation with the Yakama Nation (see Public Interest above).

Given the storage capacity of Lake Wallula (McNary pool), water is physically available. Undeveloped reservation water expired in 2020. Consultation with WDFW (2025), NMFS (2014), and Yakama Nation (2025) occurred. These consultations resulted in denial of this application due to Public Interest. The comprehensive evaluation required by WAC 173-531A-060 to determine legal availability was not performed due to the denial of this application based on Public Interest.

Impairment

In analyzing impairment, Ecology must make a determination as to whether existing water rights, including adopted instream flows, may be impaired by the diversion and proposed use.

Applications for appropriations are subject to Chapter 90.03.290 RCW which states new water uses cannot impair existing water rights or be detrimental to public welfare. New consumptive uses of surface water from the Snake River can affect downstream users by reducing the amount of water available to meet existing rights, including those with the minimum flow provision. Current estimates suggest there are approximately 123 senior water right diverters downstream, extending to the McNary Dam. Of these, roughly 46 diverters are subject to the minimum flow provision per Chapter 173-563-040 WAC. New uses from the Snake River will reduce the amount of water available downstream, impairing senior water right holders by interrupting their existing water rights when less water is available, curtailing their water use earlier. Preventing senior water right holders from exercising their existing water right to its full extent is impairment. Appropriating a new consumptive surface water right could impair downstream users.

Although new consumptive surface water rights may impair downstream uses, this application is denied based on public interest.

Beneficial Use

Irrigation is considered a beneficial use of water under RCW 90.54.020(1).

Conclusions

I find that:

- Approval of this application will be detrimental to the public interest.
- Water is available.
- The appropriation could impair existing rights.
- The proposed Irrigation is a beneficial use.

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RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend this request for a water right be **DENIED**. Numerous agencies/entities are working together towards the preservation of threatened or endangered species on the Columbia and Snake Rivers, and the issuance of this water right is not in the public interest to approve. This appropriation will likely impair downstream senior water rights.

Report Writer *Date*

To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program at 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.

References

Columbia River Basin Water Supply. "Chapter 90.90 RCW." https://app.leg.wa.gov/rcw/default.aspx?cite=90.90. Accessed June 11, 2026.

Instream Resources Protection Program For The Main Stem Columbia River In Washington State. "Chapter 173-563 WAC." https://app.leg.wa.gov/WAC/default.aspx?cite=173-563. Accessed June 11, 2026.

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United States Environmental Protection Agency. “Summary of the Clean Water Act.” EPA, Updated February 23, 2026, https://www.epa.gov/laws-regulations/summary-clean-water-act. Accessed June 10, 2026.

United States Environmental Protection Agency Region 10 (2022). Authorization to Discharge under the National Pollutant Discharge Elimination System In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the “Act”, Ice Harbor Lock and Dam.

United States Environmental Protection Agency Region 10 (2022). Authorization to Discharge under the National Pollutant Discharge Elimination System In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the “Act”, Little Goose Lock and Dam.

United States Environmental Protection Agency Region 10 (2022). Authorization to Discharge under the National Pollutant Discharge Elimination System In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the “Act”, Lower Monumental Lock and Dam.

United States Environmental Protection Agency Region 10 (2022). Authorization to Discharge under the National Pollutant Discharge Elimination System In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the “Act”, Lower Granite Lock and Dam.

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