



## State of Washington Report of Examination for Water Right Change

PRIORITY DATE	WATER RIGHT NUMBER
May 10, 1905	S4-84616-J (Court Claim No. 01752)

MAILING ADDRESS
US Bureau of Reclamation 1917 Marsh Road Yakima, WA 98901-2058

**Purpose & Quantity – Portion of Water Right No. S4-84616-J Placed in Trust under WRTS File No. CS4-01752@11**

A conserved water portion of Adjudicated Water Right Certificate No. S4-84616-J, confirmed to the United States of America [Bureau of Reclamation (USBR or Reclamation)] on behalf of Sunnyside Division (Sunnyside)<sup>1</sup>, is transferred to instream flow Trust water right use in the Yakima River system. This conserved water portion is derived from water savings created during the April 1 through October 31 portion of the Sunnyside irrigation season, and is generated by implementation of the Sunnyside Phase I, the Benton Irrigation District (BID), and the Sunnyside Phase II water conservation projects. These conservation projects, funded with Yakima River Basin Water Enhancement Project (YRBWEP) funding, include:

- Sunnyside Phase I (Completed): Re-regulation reservoirs and canal check structures and automation.
- BID (Completed): A downstream diversion point move and pressurized pipeline irrigation system.
- Sunnyside Phase II (Ongoing – to be completed in 2042): Lateral piping.

This conserved water portion creates a primary-reach-only instream flow Trust water right in the Yakima River system, with a season of use from April 1 through March 31 or later of the following year<sup>2</sup>. Since these Sunnyside water conservation projects do not create any reduction in the consumptive use of water, there is no secondary reach instream flow Trust water right associated with these USBR ‘Sunnyside’ water rights.

<sup>1</sup> The Sunnyside Division includes Sunnyside Valley Irrigation District and several other irrigation entities, like Benton Irrigation District, who either currently or historically have shared the use of Sunnyside Canal.

<sup>2</sup> ‘Previous-year’ Trust water remaining in storage on 3/31 may be used in the ‘new year’ until the Federal reservoirs fill and spill or until storage control date at the latest, at which time any remaining ‘previous-year’ Trust water will become part of the ‘new year’s’ total water supply available (TWSA).

**Primary Reach**

Full Water Supply Years

Under this water right change/Trust application, a 24,779.16 acre-feet per year (ac-ft/yr) portion of Water Right No. S4-84616-J is changed to instream flow Trust water right use in the Yakima River system during full water supply years. During full water supply years, this 24,779.16 ac-ft/yr portion of instream flow Trust water enhances/augments Yakima River system instream flows, either at the constant rate of 58.38 cubic feet per second (cfs) from April 1 through October 31 each year, or alternatively its usage is shaped to maximize biological benefits by larger quantity (in cfs) releases of portions of this water reserved in storage in the 5 Federal Yakima Basin reservoirs and it can be used until March 31 or later of the following year. [See Footnote No. 2 on page 1.] Those 5 Federal reservoirs are Keechelus, Kachess, Cle Elum, Bumping, and Tieton/Rimrock Reservoirs.

Water Supply Shortfall Years with Prorating of May 10, 1905-Priority Proratable Water Rights

During water supply shortfall years, 31.1% of the total USBR and Sunnyside water rights are subject to prorating, and receive a reduced pro rata share of their full Federal water supply contract 'entitlement', as determined by Reclamation. Thus during prorating periods, this 24,779.16 ac-ft/yr of instream flow Trust water will be reduced by the appropriate level of prorating.

**Secondary Reach**

NOT APPLICABLE, there is no secondary reach.

Source Location – Portion of the Water Right Placed in Trust			
COUNTIES	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREAS
Kittitas, Yakima, and Benton Counties	The Yakima River, its tributaries, & its side channels	Columbia River	39 – Upper Yakima 38 – Naches 37 – Lower Yakima

**Place of Use – Trust Water Right Portion of Water Right No. S4-84616-J under WRTS File No. CS4-01752@11 (See Attached Map)**

**PRIMARY REACH**

Reclamation will manage this 24,779.16 ac-ft/yr instream flow Trust water right, subject to its availability (i.e., prorating) as described above, either:

- 1) **[Normal or Default Use]** As a constant rate instream flow augmentation Trust water right in the Yakima River of 58.38 cfs from April 1 through October 31, from Sunnyside Dam at Yakima River Mile (RM) 103.8 (Yakima County Parcel No. 19122899989), downstream to the discharge of Spring/Snipes Creek to the Yakima River at Yakima RM 41.8 (Benton County Parcel No. 127953013247002), which is the last return flow point from the Sunnyside Valley Irrigation District (SVID) service area, then downstream past the new Benton Irrigation District (BID) Yakima River pump plant at Yakima RM 32.5 (Benton County Parcel No. 111964000004000), and continuing downstream to the primary reach's end and this Trust water right's termination at the discharge of the Kiona Canal Wasteway to the Yakima River at Yakima RM 23.8 (Benton County Parcel No. 130072000006000), the last/end spill for the BID service area; or,
- 2) **[Alternate Use]** As a shaped usage instream flow augmentation, at varying rates of flow (in cfs), from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.]

Under this alternate shaped usage option, Reclamation may choose to retain the storable portion of this Trust water right in the Federal Yakima Basin reservoirs to make shaped releases of the stored Trust water to maximize fisheries and habitat benefits. The place of use for this alternate usage option would be from the outlets of each of the 5 Federal Yakima Basin reservoirs, downstream to the primary reach's end and this Trust water right's termination at the discharge of the Kiona Canal Wasteway to the Yakima River at Yakima RM 23.8 (Benton County Parcel No. 130072000006000); or,

3) **[Hybrid Use]** A combination of usage patterns (1) and (2).

**Option #1:** Normal or Default Constant-Rate Instream flow Trust Water Right Primary Reach Place of Use (from April 1 through October 31)

Within the Yakima River system and its side channels, with the primary reach beginning at the Sunnyside Canal diversion point (POD) from the Yakima River, located 130 feet south and 1500 feet west of the east quarter corner of Section 28, being within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M. (Yakima RM 103.8, Yakima County Parcel No. 19122899989); and travelling down the Yakima River and its side channels, downstream to the discharge of Spring/Snipes Creek to the Yakima River, located approximately 1,560 feet north and 2,170 feet east of the southwest corner of Section 27, being within the NE¼SW¼ of Section 27, T. 9 N., R. 25 E.W.M. (Yakima RM 41.8, Benton County Parcel No. 127953013247002), which is the last return flow point from the Sunnyside Valley Irrigation District (SVID) service area; then downstream past the new BID Yakima River pump plant POD, located approximately 480 feet west and 3,989 feet south of the northeast corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M. (Yakima RM 32.5, Benton County Parcel No. 111964000004000); and continuing downstream to the primary reach's end and this Trust water right's termination point at the discharge of the Kiona Canal Wasteway to the Yakima River, located approximately 1,830 feet south of the northwest corner of Section 30, being within the SW¼NW¼ of Section 30, T. 10 N., R. 27 E.W.M. (Yakima RM 23.8, Benton County Parcel No. 130072000006000), the last/end spill for the BID service area. When used this way (i.e., Option #1), this instream flow Trust water right augments instream flows in a total of 80.0 Yakima River miles.

**Option #2:** Alternate Shaped Usage Instream Flow Trust Water Right Primary Reach Place of Use (from April 1 through March 31 or later of the following year). [See Footnote No. 2 on page 1.]

Within those portions of the entire Yakima River system beginning immediately downstream of each of the 5 Federal Yakima Basin reservoirs [Keechelus Reservoir Dam: at Yakima RM 214.5, within the SE¼NE¼ of Section 12, T. 21 N., R. 11 E.W.M. (Kittitas County Parcel No. 906535); Kachess Reservoir Dam: at Kachess RM 1.2, within the NW¼SW¼ of Section 34, T. 21 N., R. 13 E.W.M. (Kittitas County Parcel No. 386935), then downstream to Yakima RM 203.5, within the NW¼SE¼ of Section 3, T. 20 N., R. 13 E.W.M.; Cle Elum Reservoir Dam: at Cle Elum RM 8.2, within the NE¼NE¼ of Section 10, T. 20 N., R. 14 E.W.M. (Kittitas County Parcel No. 102434), then downstream to Yakima RM 185.6, within the SW¼SE¼ of Section 32, T. 20 N., R. 15 E.W.M.; Bumping Reservoir Dam: at Bumping RM 17.0, within Section 23, T. 16 N., R. 12 E.W.M. (Yakima County Parcel No. 12162399989), then downstream to Naches RM 44.6, within the NE¼SE¼ of Section 4, T. 17 N., R. 14 E.W.M., and then downstream to Yakima RM 116.3, within the SE¼NE¼ of Section 12, T. 13 N., R. 18 E.W.M.; and Rimrock Reservoir/Tieton Dam: at Tieton RM 21.3, within the NE¼SW¼ of Section 31, T. 14 N., R. 14 E.W.M. (Yakima County Parcel No. 14143199989), then downstream to Naches RM 17.5, within the SW¼NE¼ of Section 35, T. 15 N., R. 16 E.W.M.]; and ending downstream at the primary reach's end and this Trust water right's termination point at the discharge of the Kiona Canal Wasteway to the Yakima River, located approximately 1,830 feet south of the northwest corner of Section 30, being within the SW¼NW¼ of Section 30, T. 10 N., R. 27 E.W.M. (Yakima RM 23.8, Benton County Parcel

No. 130072000006000), the last/end spill for the BID service area. When used this way (i.e., Option #2), this instream flow Trust water right would potentially augment instream flows in a total of 283.0 river miles in the Yakima River Basin.

**SECONDARY REACH**

Not applicable. There is no secondary reach.

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE – INSTREAM FLOW TRUST PORTION OF WATER RIGHT No. S4-84616-J UNDER WRTS FILE No. CS4-01752@11							
REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LONGITUDE	LATITUDE
Begin Normal or Default Primary Reach Option #1	<b>Option #1:</b> Within the Yakima River and its side channels	Yakima RM 103.8	12 N.	19 E.	28	-120.44410° W	46.49859° N
Begin Alternate Primary Reach Option #2	<b>Option #2:</b> Within the Yakima River system and its side channels, beginning at the outlets of each of the 5 Federal Yakima Basin reservoirs	<u>a. Keechelus Dam:</u> Yakima RM 214.5	21 N.	11 E.	12	-121.34060 W	47.32243 N
		<u>b. Kachess Dam:</u> Kachess RM 1.2, then to Yakima RM 203.5	21 N.	13 E.	34	-121.20599 W	47.26497 N
		<u>c. Cle Elum Dam:</u> Cle Elum RM 8.2, then to Yakima RM 185.6	20 N.	14 E.	10	-121.07306 W	47.24790 N
		<u>d. Bumping Dam:</u> Bumping RM 17.0, then to Naches RM 44.6, then to Yakima RM 116.3	16 N.	12 E.	23	-121.30013 W	46.86882 N
		<u>e. Rimrock/ Tieton Dam:</u> Tieton RM 21.3, then to Naches RM 17.5	14 E.	14 E.	31	-121.12828 W	46.65637 N
End of Both Primary Reaches	At Kiona Canal Wasteway's discharge point to the Yakima River	Yakima RM 23.8	10 N.	27 E.	30	-119.49298 W	46.32539 N
No Secondary Reach	n/a - none	n/a	—	—	—	—	—

Datum: WGS84

Development Schedule – Portion of the Water Right Placed in Trust		
BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Begun	2042	2042

**Provisions Related to the Portion of the Water Right Placed in Trust**

**July 9, 2008 MOU Regarding Trust Water Rights Management**

The US Bureau of Reclamation (Reclamation) and the Washington State Department of Ecology (Ecology), on July 9, 2008, entered a “Memorandum of Understanding No. 1425-08MU1U7121 Between the United States Department of the Interior Bureau of Reclamation and the State of Washington Department of Ecology for Water Marketing and for Management of Trust Water Rights in the Yakima River Basin” (Trust Water MOU). This Trust Water MOU documents ongoing cooperation between Reclamation and Ecology in implementing the Federal Yakima River Basin Water Enhancement Project, Title XII of Public Law 103-434 (YRBWEP). The subject Trust Water Right No. S4-84616-J, as changed under this Trust Water Right Change Application No. CS4-01752@11, will be managed under the provisions of the July 9, 2008 Trust Water MOU between Reclamation and Ecology.

The Trust Water MOU provides, in part, that:

- Reclamation will place water rights it acquires for the United States to facilitate the purposes of YRBWEP in the Washington State Trust Water Rights Program (Trust);
- While in the Trust, the water will remain in the United States’ ownership;
- Reclamation will retain full ownership title to the water rights jointly acquired by Reclamation and Ecology, with Ecology’s cost-share reaping the benefit of long-term placement of the jointly-acquired water rights in the Trust;
- The Trust water will be used for instream flow enhancement or for other purposes of use consistent with the intent of YRBWEP and the Trust; and,
- The water will be placed in Trust on a long-term renewable basis, each term being for a period of 10 years, with automatic renewals, unless terminated earlier by Reclamation.

**Federal Ownership Is Maintained while Water Is in Trust**

The following provision clarifies the ownership of this water right held by Reclamation, No. S4-84616-J, during its placement in Trust:

“This transfer is not a conveyance of the water right, but merely an assignment of Reclamation’s interest into the Trust Water Rights Program (TWRP). The United States, in no way conveys any property interest in this right to the State or back to the State as trustee or otherwise. Reclamation maintains ownership of, and title to, the water right throughout its term in the TWRP. No new third-party property rights are created, authorized, or derived from this transfer unless provided in writing by Reclamation. The use of the term “acquires” in this document has no meaning beyond programmatic inclusion in the TWRP with the conditions contained in the application.”

**No Impairment**

The transfer of this water right to the Trust is subject to Reclamation’s continuing compliance with the orders and rulings entered by Yakima County Superior Court in the general adjudication of Yakima River Basin surface water rights (*Acquavella* Court), and Reclamation’s continuing satisfaction of its contractual obligations to the various Yakima Project water users, thus ensuring this transfer does not

adversely affect or impair any third-party water rights. Section 90.38.040(5)(a) of the Revised Code of Washington (RCW) provides that a Trust water right may not be exercised if any “existing water rights, junior or senior in priority, will be impaired as to their exercise or injured in any manner whatever”. If this water right change/transfer results in the future impairment of any third-party water rights, Reclamation will be required to take the actions needed to correct and eliminate the impairment.

Section 1205(a)(4)(B)(i) of the 1994 YRBWEP Act states that instream target flow increases authorized by the Act “shall not further diminish the amount of water that otherwise would have been delivered by an entity to its water users in years of water proration.” Further, Section 1208(d) of the YRBWEP Act states that “[t]he Secretary [of the Interior] shall ensure that the irrigation water supply for the Kennewick Irrigation District shall not be negatively affected by conservation...pursuant to this title and any reduction in its irrigation water supply resulting from conservation measures adopted or implemented by other entities pursuant to this title shall be replaced by water developed through subordination, electrification or water exchange, or a combination thereof.” KID has historically benefited, during prorationing years, from its ability to divert and use return flows.. Under state law, KID has no legal right to the continued availability of return flows. Reclamation will continue to work with KID and other parties to ensure compliance with Federal law.

**Schedule and Inspections**

Department of Ecology personnel, upon presentation of proper credentials, will 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.

**Portion of Water Right No. S4-84616-J Not Placed into Trust under WRTS File Nos. CS4-01752@11 and CS4-01752@17**

PRIORITY DATE	WATER RIGHT NUMBER
May 10, 1905	S4-84616-J (Court Claim No. 01752)

WATER RIGHT HOLDER	CHANGE APPLICATION NOS.
US Bureau of Reclamation 1917 Marsh Road Yakima WA 98901-2058	CS4-01752@11 and CS4-01752@17

**Purpose and Quantity – Portion of the Water Right Not Placed into Trust under WRTS Files Nos. CS4-01752@11 and CS4-01752@17**

For “(i)rrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses”, up to 606.95 cfs, up to 230,199.84 ac-ft/yr of water, or as prorated, from the Yakima River, from April 1 through October 31.

These reduced retained quantities will become fully effective upon full completion of the YRBWEP-funded Sunnyside Division Phase II water conservation project in 2042, as defined and agreed to in the following several authorities and agreements:

- 1) Title XII of Public Law 103-434, the Federal YRBWEP Act of October 31, 1994, as amended;
- 2) Sections 6 and 17 of the May 12, 2003 “Sunnyside Division Water Right Settlement Agreement”, as amended on July 31, 2003 (said ‘First Amendment’ filed August 4, 2003 with the *Acquavella* Court), and as further amended by the June 23, 2010 “Second Amendment...”;

- 3) The March 27, 2003 Sunnyside Division Board of Control (SDBOC) Benton Irrigation District (BID) Agreement;
- 4) The November 4, 2008 SDBOC, BID, Reclamation, "Diversion Reduction Agreement", as addended on February 19, 2009;
- 5) The April 20, 2010 "SDBOC Resolution No. 2010-04 - 01";
- 6) The April 20, 2010 SDBOC Reclamation "Diversion Reduction Agreement"; and
- 7) The May 11, 2010 *Acquavella* Court "Order Pendente Lite re: Temporary Change, Claim No. 1752".

These USBR and Sunnyside water rights, in total, are 31.1% proratable and are subject to reduction during water supply shortfall years by applying the prorationing level defined by Reclamation against 31.1% of Sunnyside's full Federal water supply contract 'entitlement' of 458,520 ac-ft/yr.

Source Location – Portion of the Water Right Not Placed into Trust under WRTS File Nos. CS4-01752@11 and CS4-01752@17			
COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Kittitas and Yakima	Yakima River	Columbia River	39 – Upper Yakima 38 – Naches 37 – Lower Yakima

SOURCE	PARCEL	TWN	RNG	SEC	QQ Q	LONGITUDE	LATITUDE
Yakima River (Sunnyside Canal POD)	19122899989 (Yakima County)	12 N.	19 E.	28	NW¼SE¼	-120.44410° W	46.49859° N
Yakima River (BID Pump Plant POD)	111964000004000 (Benton County)	9 N.	26 E.	11	SE¼	-119.51717° W	46.27479° N

**Place of Use – Portion of Water Right S4-84616-J Not Placed into Trust under WRTS File  
Nos. CS4-01752@11 and CS4-01752@17**

"Irrigable acres within the Sunnyside Division exterior boundaries as of the date of this Stipulation (July 31, 2003), as described in the Attachment 1 metes and bounds legal description and the Attachment 2 map which are incorporated herein. Attachment 1 is controlling as the description of the Sunnyside Division's place of use." [Multiple Yakima County and Benton County Tax Parcels.]

**Measurement of Water Use – Portion of the Water Right Not Placed in Trust**

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually, by January 31st of each calendar year.
What volume should be reported?	Total Annual Volume in ac-ft/yr.
What rate should be reported?	Weekly Peak Rate of Diversion in cfs.

### Provisions Related to the Portion of the Water Right Not Placed in Trust

The portion of this US Bureau of Reclamation and Sunnyside Division water right not placed in trust and retained solely by Reclamation and Sunnyside shall comply with the *Order Requiring Metering Measuring, and Reporting Requirements, All Subbasins (1-31) in Benton, Kittitas, and Yakima Counties* entered September 15, 2005, in the Yakima Adjudication. The order may be viewed at the following web site: <http://www.ecy.wa.gov/programs/wr/measuring/images/pdf/order772014845.pdf>.

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above provisions, and to inspect at reasonable times any measuring device used to meet the above provisions.

The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). If you have questions about screening criteria contact:

Department of Fish and Wildlife  
Attn: Habitat Program  
600 Capitol Way N.  
Olympia, WA 98501-1091

Phone (360) 902-2534  
Website: <http://www.wdfw.wa.gov/reg/regions.htm>

### Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not be detrimental to existing rights or detrimental to the public interest.

Therefore, I ORDER approval of Trust Water Right Change Application No. CS4-01752@11, subject to existing rights and the provisions specified above. This approval ORDER applies to Surface Water Right No. S4-84616-J.

### 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 of this Decision. 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 appeal and a copy of this Decision with the PCHB (see addresses on the following page). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Decision on Ecology in paper form - by mail or in person. (See addresses on the following page.) E-mail is not accepted.

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



ADDRESS AND LOCATION INFORMATION	
Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503  <b>Pollution Control Hearings Board</b> 1111 Israel Road SW, Suite 301 Tumwater WA 98501	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608  <b>Pollution Control Hearings Board</b> PO Box 40903 Olympia WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>  
 To find laws and agency rules visit the Washington State Legislature Website: <http://www.leg.wa.gov/CodeReviser>

Signed at Union Gap, Washington, this 31<sup>st</sup> day of December, 2019.



Trevor Hutton, Section Manager  
 Water Resources Program  
 Central Regional Office

## INVESTIGATOR'S REPORT

Stan Isley, Department of Ecology

*This is the consolidated report of examination for 12 associated water right change/Trust applications to change the purpose of use, season of use, and place of use, of portions of each of the 6 United States and Sunnyside Division water rights confirmed under Court Claim No. 01752 for irrigation during irrigation season and related uses:*

- 1) *Water Right Control Number CS4-01752@6, for a portion of Adjudicated Surface Water Right Certificate Number S4-84611-J;*
- 2) *CS4-01752@7, for a portion of Certificate S4-84612-J;*
- 3) *CS4-01752@8, for a portion of Certificate S4-84613-J;*
- 4) *CS4-01752@9, for a portion of Certificate S4-84614-J;*
- 5) *CS4-01752@10, for a portion of Certificate S4-84615-J;*
- 6) *CS4-01752@11, for a portion of Certificate S4-84616-J;*
- 7) *CS4-01752@12, for a portion of Certificate S4-84611-J;*
- 8) *CS4-01752@13, for a portion of Certificate S4-84612-J;*
- 9) *CS4-01752@14, for a portion of Certificate S4-84613-J;*
- 10) *CS4-01752@15, for a portion of Certificate S4-84614-J;*
- 11) *CS4-01752@16, for a portion of Certificate S4-84615-J;*
- 12) *CS4-01752@17, for a portion of Certificate S4-84616-J.*

## BACKGROUND

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### *Yakima River Basin Water Enhancement Project*

The Yakima River Basin Water Enhancement Project (YRBWEP) is an ongoing, comprehensive, multi-phase project, being implemented in the Yakima River Basin, to improve instream flows and fish passage conditions, restore Yakima River Basin anadromous fishery resources, improve water management and off-stream water use efficiency, improve the reliability of irrigation water supply, enhance fish and wildlife, enhance wetlands and water quality, and encourage water conservation and voluntary water transactions, among other purposes. Congress authorized the second major phase of YRBWEP on October 31, 1994, by its enactment of Title XII of Public Law 103-434 (Title XII).

Title XII authorizes (in Section 1203) development of a Yakima River Basin Water Conservation Program (BCP), which provides Federal and State cost-share grant funding to implement water conservation projects with participating irrigation districts and water user entities in the Yakima River Basin. The BCP authorizes 65% Federal, 17.5% State, and 17.5% local (i.e., participating water user entity) cost-share grant funding for water conservation project implementation (Title XII Subsection 1203(d)). The BCP provides that two-thirds ( $2/3^{\text{rds}}$ ) of the total conserved water generated by the YRBWEP-funded water conservation project be assigned to instream flow enhancement use, and that normally one-third ( $1/3^{\text{rd}}$ ) of the conserved water be allocated to augment drought-year irrigation water supply for the participating water user entity or to generally benefit Yakima basin irrigators (Subsection 1205(a)(4)(B)(i)). BCP conserved water may not be used to expand irrigated acreage (i.e., may not be used to increase the number of irrigated acres) in the Yakima River Basin (Subsection 1203(a)(2)).

Title XII (Subsection 1203(i)(3)) also authorizes Reclamation to use Federal YRBWEP funds to purchase or lease water from willing sellers for instream flow enhancement use in the Yakima River Basin. Reclamation has purchased several water rights with Federal YRBWEP funds under this authority, for instream flow Trust water right use in the Yakima River Basin and downstream. The Washington State

Department of Ecology (Ecology) provided a one million dollar (\$1,000,000) cost-share towards Reclamation's purchase of the 'former Wapatox' Naches River power water right from PacifiCorp in 2003, a one hundred thousand dollar (\$100,000) cost-share towards Reclamation's purchase of the majority of the 'former Heart K Ranch' Taneum Creek water right from the Rocky Mountain Elk Foundation in 2000, and a \$100,000 cost-share towards Reclamation's purchase of the 'former Buchanan Ranch' Wenas Creek water right from Johnson and Schultz in 2001, with Ecology's state funds cost-shares reaping the benefit of long-term placement of these three jointly-acquired water rights in the Trust Program.

Title XII (Subsection 1203(i)(2)) provides that "The Secretary shall, to the maximum extent possible under applicable Federal, State, and tribal law, cooperate with the State of Washington to facilitate water and water right transfers, water banking, dry year options, the sale and leasing of water, and other innovative allocation tools used to maximize the utility of existing Yakima River basin water supplies." In this spirit, Reclamation and Ecology continue to work collaboratively as partners in jointly implementing the YRBWEP.

#### *Yakima River Basin Water Enhancement Project History and Overview*

YRBWEP is a long-term, multi-phase program initiated in the wake of the serious water supply shortage and environmental and economic impacts caused by the 1977 drought in the Yakima River Basin.

#### **YRBWEP Phase 1:**

- The U.S. Congress, on December 28, 1979, enacted Public Law 96-162, 93 Stat. 1241, which authorized the Secretary of the Department of the Interior to conduct a feasibility study for the YRBWEP.
- Congress, on August 17, 1984, enacted Public Law 98-381 (98 Stat. 1340), which in Section 109 authorized the Secretary of the Interior to design, construct, operate, and maintain fish passage facilities within the Yakima River Basin, and to accept funds from any entity, public or private, to design, construct, operate, and maintain such facilities.
- Under YRBWEP Phase 1, Reclamation and its cooperators have constructed improved fish ladders and fish passage facilities at Yakima Project diversion dams, and have constructed improved fish screen facilities at most of the irrigation diversions throughout the Yakima River Basin.

#### **YRBWEP Phase 2:**

- Congress, on October 31, 1994, enacted Public Law 103-434, which in Title XII authorized Phase 2 of the YRBWEP (Title XII or YRBWEP Phase 2).
- Congress amended Title XII on October 13, 1997, by enacting Section 507 of Public Law 105-62, 111 Stat. 1320, which increased the funding authorization for Section 1208(a)(2) of Title XII (Chandler pumps electrification funding).
- Congress again amended Title XII on October 27, 2000, by enacting Public Law 106-372, 114 Stat. 1425, which further amended Section 1208 of Title XII. This amendment authorized the Secretary of the Interior to conduct a feasibility study for a water exchange alternative for Kennewick Irrigation District, as an alternative to electrification of the hydraulic pumps at the Chandler power plant.
- Under YRBWEP Phase 2, Reclamation and Ecology and Yakima River Basin irrigation and fisheries stakeholders continue to implement water conservation projects that improve instream flows for fish and wildlife and improve the reliability of water supply for irrigation. Additional Phase 2 benefits include water quality, wetlands, and habitat enhancement; improved water

management and fish passage; water supply and habitat enhancement projects on the Yakama Reservation; and stimulation of voluntary transactions among public and private entities that result in implementation of water conservation and water transfers/marketing.

### **YRBWEP Phase 3:**

- YRBWEP 3, the Yakima Basin Integrated Water Resources Management Plan (Integrated Plan), is the emerging next phase of the YRBWEP. Congress on March 12, 2019, enacted Public Law 116-9, which in Subtitle C of Title VIII authorized Phase III of the YRBWEP (YRBWEP 3), authorizing new Federal funding for proposed YRBWEP 3 projects. YRBWEP 3 goals include implementing additional water conservation projects, developing new water storage facilities, improving fish passage at the Federal dams, and improving fish habitat and instream flows throughout the Yakima River Basin.
- The State of Washington has already spent a substantial amount of State funds in 2013 to acquire the Teanaway Community Forest as an initial State investment in the implementation of YRBWEP 3, Integrated Plan, reflecting the State's commitment to its continuing partnership with Reclamation and other entities in implementation of the overarching, multi-phase, YRBWEP in the Yakima River Basin. The State of Washington continues to fund the implementation of additional Integrated Plan projects.

### *YRBWEP Water Acquisitions*

Reclamation has purchased several former irrigation water rights in the Yakima River Basin for permanent instream flow use in the Trust, under the authority of Subsection 1203(i)(3) of Title XII.

Some of the several YRBWEP water acquisitions that have been made are water right purchases made by Reclamation solely with Federal YRBWEP funds. Reclamation has made seven (7) such sole Federal purchases of water rights. Some of the YRBWEP water acquisitions have been joint purchases by Reclamation and Ecology, with each agency providing a cost-share. The three joint purchases to date have been:

- 1) Reclamation's (former Rocky Mountain Elk Foundation Heart K Ranch) Taneum Creek water right (Subbasin 6),
- 2) Reclamation's (former Schultz/Johnson/Buchanan Ranch) Wenas Creek water right (Subbasin 15), and
- 3) Reclamation's (former Pacific Power & Light) Wapatox power water right in Subbasin 19 (Lower Naches River).

Ecology provided a one million dollar (\$1,000,000) cost-share towards Reclamation's purchase from PacifiCorp of the Wapatox power water right, and a one hundred thousand dollar (\$100,000) cost-share towards Reclamation's purchase of each of the other two water rights (i.e., the Taneum Creek and Wenas Creek water rights).

### *Yakima River Basin Trust Water Rights Program*

In the 1989 legislative session, the Washington State Legislature enacted RCW Chapter 90.38, the State's first trust water rights statute, which established the Yakima River Basin Trust Water Rights Program. The State enacted RCW 90.38 to establish a clear State statutory mechanism to place water rights, or portions of water rights, into the Trust Program for instream flow use and other beneficial uses, while preserving the priority date of the original water right. The State established the Yakima River Basin Trust Water Rights Program to facilitate Congress's eventual enactment of the Federal YRBWEP Phase 2 Act (Title XII of P.L. 103-434) in 1994, reflecting Ecology and Reclamation's cooperation in developing and implementing the YRBWEP.

RCW 90.38.030(3) provides that “the department shall cooperate fully with the United States in the implementation of this chapter. Trust water rights may be acquired through expenditure of funds by the United States and shall be treated in the same manner as trust water rights resulting from the expenditure of state funds.”

The Washington State Legislature, in its 2009 amendments to Chapter 90.42 RCW (the statewide Trust Water Rights/Water Resource Management Act, originally enacted in 1991), clarified that groundwater rights may also be placed in the Trust for groundwater preservation use (e.g., see RCW 90.42.040(1)&(2) and RCW 90.42.080(1)).

#### *Trust Water MOU*

On July 9, 2008, Reclamation and Ecology executed a “Memorandum of Understanding No. 1425-08MU1U7121 Between the United States Department of the Interior Bureau of Reclamation and the State of Washington Department of Ecology for Water Marketing and for Management of Trust Water Rights in the Yakima River Basin” (Trust Water MOU). This Trust Water MOU documents ongoing cooperation between Reclamation and Ecology in implementing the Federal Yakima River Basin Water Enhancement Project, Title XII of Public Law 103-434 (Title XII or YRBWEP Phase 2). The subject 12 Reclamation Trust water portions of these 6 Reclamation and Sunnyside Division water rights, and the YRBWEP water acquisitions described in the paragraph above, will all be managed under the provisions of the July 9, 2008 Trust Water MOU between Reclamation and Ecology.

The Trust Water MOU provides, in part, that:

- Reclamation will place water rights it acquires for the United States to facilitate the purposes of YRBWEP in the Washington State Trust Water Rights Program (Trust);
- While in the Trust, the water will remain in the United States’ ownership;
- Reclamation will retain full ownership title to the water rights jointly acquired by Reclamation and Ecology, with Ecology’s cost-share reaping the benefit of long-term placement of the jointly-acquired water rights in the Trust;
- The Trust water will be used for instream flow enhancement or for other purposes of use consistent with the intent of YRBWEP and the Trust; and,
- The water will be placed in Trust on a long-term renewable basis, each term being for a period of 10 years, with automatic renewals, unless terminated earlier by Reclamation.

William Ferry, former Water Rights and Adjudication Manager for Reclamation’s Columbia-Cascades Area Office in Yakima, sent Ecology a letter on February 19, 2016, asking that Ecology add a provision to each report of examination approving placement of these YRBWEP water acquisitions in the Trust, that clarifies that Federal ownership is maintained while the water is in Trust.

The following provision offered by Mr. Ferry clarifies the ownership of these water rights held by Reclamation during their placement in Trust, and will be a provision of each report of examination Ecology issues for this specific set of Reclamation water rights:

“This transfer is not a conveyance of the water right, but merely an assignment of Reclamation’s interest into the Trust Water Rights Program (TWRP). The United States, in no way conveys any property interest in this right to the State or back to the State as trustee or otherwise. Reclamation maintains ownership of, and title to, the water right throughout its term in the TWRP. No new third party property rights are created, authorized, or derived from this transfer unless provided in writing by Reclamation. The use of the term “acquires” in this document has no meaning beyond programmatic inclusion in the TWRP with the conditions contained in the application.”

*State of Washington Department of Ecology v. James J. Acquavella, et al.*

The *State of Washington Department of Ecology v. James J. Acquavella, et al. (Acquavella)* adjudication, Yakima County Superior Court No. 77-2-01484-5, began in 1977 and recently concluded on May 9, 2019. *Acquavella* is a general adjudication of all surface water rights and claims within the entire Yakima River drainage basin, which includes four adjudication pathways: 31 Subbasins, Major Claimants, Federal Reserved Indian Water Rights, and Federal Reserved Non-Indian Water Rights. The 12 portions of the subject 6 Sunnyside water rights that Reclamation obtained for instream flow Trust water use and general TWSA augmentation Trust water use in the Yakima River system from the YRBWEP-funded Sunnyside Phase I and Phase II and Benton Irrigation District water conservation projects, are portions of 6 USBR and Sunnyside water rights confirmed in the Major Claimant court proceedings concerning Water Right Claim No. 01752, filed by the United States Bureau of Reclamation on behalf of the Sunnyside Division and its water users. The court entered its Conditional Final Order (CFO) Concerning the Water Rights for the Sunnyside Division, Court Claim No. 01752, on August 14, 2003. The court entered its Final Decree for *Acquavella* on May 9, 2019. The *Acquavella* Court integrated into its Final Decree the CFO's previously entered by the court, including the CFO's for Sunnyside Division and for Roza Irrigation District.

The court's August 14, 2003 "Conditional Final Order...Sunnyside Division", confirmed 8 different water rights under Claim No. 01752. The court confirmed 6 of those water rights to the United States of America on behalf of Sunnyside Division and its water users, each with a different date of priority ranging from June 29, 1878 through May 10, 1905, for the diversion of a total of 1,316 cubic feet per second (cfs), 435,422 acre-feet per year (ac-ft/yr), of water from the Yakima River, for "irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses", during the April 1 through October 31 irrigation season, embodied in Adjudicated Water Right Certificates No. S4-84611-J through No. S4-84616-J (6 certificates). USBR 'Sunnyside Division' water rights, in total, including these subject 12 Trust water portions of these 6 Sunnyside water rights, have a 31.1% proratable status, and a 68.9% senior-priority non-proratable status, and are subject to prorationing under that applicable formula during drought years with less than a full water supply for May 10, 1905-priority proratable Yakima River Basin surface water rights.

The *Acquavella* Court confirmed a 7<sup>th</sup> water right under Claim No. 01752, also to the United States of America on behalf of Sunnyside Division, with a May 10, 1905 priority date, for the diversion of up to 700 cubic feet per second (cfs), 12,000 acre-feet per year (ac-ft/yr), of water from the Yakima River, from March 1 through March 31, when the U.S. Bureau of Reclamation (USBR or Reclamation) determines it to be available, for irrigation of 99,244 irrigated acres of the 103,570 irrigable acres within the Sunnyside Division and related uses. This 7<sup>th</sup> water right remains unchanged and is not addressed by this report or this set of 12 water right change/Trust applications.

And the *Acquavella* Court confirmed an 8<sup>th</sup> water right under Claim No. 01752 to the City of Prosser, with a February 14, 1941 priority date, for the pumped diversion of 2.11 cfs, 260 ac-ft/yr of water from the Yakima River, from April 1 through October 15, for supplemental irrigation of 150 acres within the City of Prosser, when such diversion does not interfere with operation of the Prosser Dam fish ladder or the needs of the Bureau of Reclamation project. This 8<sup>th</sup> water right remains unchanged and is not addressed by this report or this set of 12 water right change/Trust applications.

Additionally, the court confirmed the Yakama Nation's Treaty Reserved Minimum Instream Flow Water Right for Fish and Other Aquatic Life, with a priority dating from time immemorial, embodied in Adjudicated Water Right Certificate No. S4-84764-J. This "oldest-in-the-basin" Yakama Nation minimum instream flow water right exists throughout the Yakima Basin in streams that produce fish that the Yakamas catch at their Usual and Accustomed Fishing Sites within the Yakima River basin and the

Columbia River basin. The court did not quantify this minimum instream flow water right with a numerical standard, stating that it is that minimum amount of water necessary to maintain fish and other aquatic life. The court further provided that Reclamation would determine the amount of water necessary to satisfy this water right based on annual prevailing conditions. The Yakama Nation Treaty Reserved Minimum Instream Flow Water Right for Fish and Other Aquatic Life is appurtenant to streams throughout the entire Yakima River system, including the lower Yakima River, and is therefore the oldest water right in the Yakima basin.

*Description and Purpose of Requested Change*

Following is a summary of the 6 different Sunnyside water rights, confirmed under Court Claim No. 01752, that are the subject of the 12 different water right change/Trust applications that are addressed in this consolidated investigator's report. The *Acquavella* Court confirmed the following 6 water rights for the diversion of specified quantities of Yakima River water into the Sunnyside Canal, from April 1 through October 31, for irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses. The details follow:

Adjudicated Water Right Number	Priority Date	Change/Trust Application Number	Qi (cfs)	Qa (ac-ft/yr)
S4-84611-J	June 29, 1878	CS4-01752@6	24 cfs	1925 ac-ft/yr
		CS4-01752@12		
S4-84612-J	June 30, 1878	CS4-01752@7	34	14,089
		CS4-01752@13		
S4-84613-J	September 3, 1890	CS4-01752@8	537	145,776
		CS4-01752@14		
S4-84614-J	July 18, 1893	CS4-01752@9	30	12,698
		CS4-01752@15		
S4-84615-J	May 9, 1905	CS4-01752@10	2	138
		CS4-01752@16		
S4-84616-J	May 10, 1905	CS4-01752@11	689	260,796
		CS4-01752@17		
<b>TOTAL</b>			<b>1,316</b>	<b>435,422</b>

The *Acquavella* Court confirmed the Sunnyside Canal as the authorized Yakima River diversion point (POD) for all 6 of these Sunnyside water rights. That authorized POD is located 130 feet south and 1,500 feet west of the east quarter corner of Section 28, being within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M., at Yakima River Mile (RM) 103.8.

On July 10, 2010, The Washington State Department of Ecology (Ecology) authorized a second POD for each of these 6 Sunnyside water rights (No. S4-84611-J through No. S4-84616-J), under water right change applications numbers CS4-01752, CS4-01752@1, CS4-01752@2, CS4-01752@3, CS4-01752@4, and CS4-01752@5. This second authorized Sunnyside POD is the Benton Irrigation District (BID) pump plant, situated 71.3 river miles downstream of the Sunnyside Canal POD, at Yakima RM 32.5. This second POD is used by BID to deliver irrigation water only to the BID portion (4,630 irrigable acres) of the unitary place of use for these 6 Sunnyside water rights. The BID pump plant POD is located approximately 480 feet west and 3,989 feet south of the northeast corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M.

Sunnyside Division historically managed these 6 Sunnyside water rights as one unified water supply for all of its water users, once the water was diverted into the Sunnyside Canal. Therefore these Sunnyside water rights, in total, are 31.1% prorable (against their full Federal water supply contract 'entitlement' quantity sum total of 458,520 ac-ft/yr) during poor water supply years when Reclamation declares prorationing of May 10, 1905 priority prorable Yakima Basin water rights. And 68.9% of these Sunnyside water rights, in total, have senior non-prorable status.

On August 15, 2012, Reclamation filed 6 (of the 12 subject) water right change/Trust applications with the Washington State Department of Ecology (Ecology). Ecology accepted those 6 applications and assigned them Control Nos. CS4-01752@6 through CS4-01752@11 (see table below for additional information). These applications request authorization to change the purpose of use and place of use and also the season of use for the proposed instream flow Trust water portion of each of these 6 Sunnyside water rights. These applications propose to change the purpose, place, and season of use of this water from 'irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses from April 1 through October 31' (as confirmed by the *Acquavella* Court), to instream flow Trust water right use within the Yakima River system from April 1 through March 31 or later of the following year<sup>3</sup>.

The specific portions of these 6 Sunnyside water rights proposed for change to instream flow Trust water use by these applications are as follows:

Change/Trust Application Number	Priority Date	Qi (cfs) <sup>#</sup>	Qa (ac-ft/yr)
CS4-01752@6	June 29, 1878	0.43 <sup>#</sup>	182.90
CS4-01752@7	June 30, 1878	3.15 <sup>#</sup>	1,338.65
CS4-01752@8	September 3, 1890	32.63 <sup>#</sup>	13,850.70
CS4-01752@9	July 18, 1893	2.84 <sup>#</sup>	1,206.48
CS4-01752@10	May 9, 1905	0.03 <sup>#</sup>	13.11
CS4-01752@11	May 10, 1905	58.38 <sup>#</sup>	24,779.16
	<b>TOTAL</b>	<b>97.46<sup>#</sup></b>	<b>41,371.00</b>

<sup>#</sup> or as usage is otherwise shaped

The proposed instream flow trust water portions of these 6 Sunnyside water rights, under these 6 water right change/Trust applications, in sum, total 41,371 ac-ft/yr, 97.46 cfs or as usage is otherwise shaped. This 41,371 ac-ft/yr total Trust water portion, subject to prorationing, will be transferred to instream flow Trust water use in the Yakima River system from April 1 through March 31 or later of the following year<sup>3</sup>.

On September 29, 2016, Reclamation filed the second set of 6 (of the 12 subject) water right change/Trust applications with Ecology. Ecology accepted those applications and assigned them Control Nos. CS4-01752@12 through CS4-01752@17 (see table below for additional information). These applications request authorization to change the purpose, place, and season of use for a portion of each of these 6 Sunnyside water rights (No. S4-84611-J through No. S4-84616-J), from 'irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and

<sup>3</sup> 'Previous-year' Trust water remaining in storage on 3/31 may be used in the 'new year' until the Federal reservoirs fill and spill or until storage control date at the latest, at which time any remaining 'previous-year' Trust water will become part of the 'new year's' total water supply available (TWSA).



related uses from April 1 through October 31' (as confirmed by the *Acquavella* Court), to: 1) instream flow Trust water right use most years<sup>4</sup>, within the Yakima River system from April 1 through March 31 or later of the following year [See Footnote No. 2 on page 1.]; or 2) to use as a Trust water right to augment the Yakima Basin's Total Water Supply Available (TWSA)<sup>5</sup>.

The specific portions of these 6 Sunnyside water rights proposed for change to instream flow Trust water use, and for serious drought-year irrigation and general TWSA Trust water use, subject to appropriate prorationing, are as follows:

Change/Trust Application Number	Priority Date	Qi (cfs <sup>#</sup> )	Qa (ac-ft/yr)
CS4-01752@12	June 29, 1878	0.10 <sup>#</sup>	42.94
CS4-01752@13	June 30, 1878	0.74 <sup>#</sup>	314.25
CS4-01752@14	September 3, 1890	7.66 <sup>#</sup>	3,251.50
CS4-01752@15	July 18, 1893	0.67 <sup>#</sup>	283.23
CS4-01752@16	May 9, 1905	0.01 <sup>#</sup>	3.08
CS4-01752@17	May 10, 1905	13.70 <sup>#</sup>	5,817.00
<b>TOTAL</b>		<b>22.88<sup>#</sup></b>	<b>9,712.00</b>

<sup>#</sup> or as usage is otherwise shaped

The proposed instream flow Trust water portions of these 6 Sunnyside water rights, under these 6 water right change/Trust applications (i.e., applications CS4-01752@12 through @17 above), in sum, total 9,712 ac-ft/yr, 22.88 cfs or as usage is otherwise shaped, in full water supply years in the Yakima River Basin.

**Use No. 1 - of this Trust water during full water supply years and minor water supply shortfall years:**

This 9,712 ac-ft/yr total portion, subject to appropriate prorationing, of these 6 Sunnyside water rights is proposed to be transferred to instream flow Trust water use in the Yakima River system, during most years, from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.]

**Use No. 2 - of this Trust water during serious drought years:**

This 9,712 ac-ft/yr Trust water right total portion, as prorated (for example, the 9,712 ac-ft/yr reduces to 8,806 ac-ft/yr at 70% prorationing), is proposed to be transferred to use as Trust water to augment irrigation water supply and other TWSA water demands, from April 1 through October 31, during serious drought years when Reclamation declares 70% or worse prorationing of Yakima Basin May 10, 1905-priority prorable water rights.

*USBR/Sunnyside Diversion Reduction Agreements and Related Agreements*

**May 12, 2003 "Sunnyside Division Water Right Settlement Agreement"**

USBR, Yakama Nation, Ecology, and the Sunnyside Division Board of Control and the member entities of the Sunnyside Division, all signed and entered this Sunnyside Division Water Rights Settlement

<sup>4</sup> i.e., in full water supply years in the Yakima River Basin, and as prorated, also during minor water supply shortfall years when Reclamation declares prorationing of May 10, 1905-priority Yakima Basin prorable water rights at levels ranging from 99.9% down to 70.1% of their full Federal water supply contract 'entitlement' quantities.

<sup>5</sup> As managed by Reclamation, for irrigation water supply augmentation and general TWSA use, during serious water supply shortfall years when Reclamation declares 70% or worse prorationing of Yakima Basin May 10, 1905-priority prorable water rights.

Agreement on May 12, 2003, in which the parties agreed (among other things) to the terms, limits, and quantities of the Sunnyside Division water rights. The parties also filed this agreement with the *Acquavella* Court on May 12, 2003. The court noted an error in the diversion quantity of the Sunnyside July 18, 1893 priority water right and informed the parties of the error on July 10, 2003. On July 31, 2003, the parties completed a 'First Amendment' to the Sunnyside Water Rights Settlement Agreement, and filed it with the *Acquavella* Court on August 4, 2003, correcting the mathematical error (by reducing the diversion rate for the Sunnyside September 3, 1890 priority water right by 11 cfs and increasing the diversion rate for the Sunnyside July 18, 1893 priority water right by 11 cfs). [Such corrected water quantities were adopted by the *Acquavella* Court in its August 14, 2003 Conditional Final Order for the U.S. and Sunnyside Division water rights.]

The May 12, 2003 Sunnyside Agreement also completed and executed a diversion reduction agreement for Sunnyside. In Sections 6 and 17 of the 2003 Sunnyside Agreement, the parties agreed to provide YRBWEP funding to Sunnyside to fund Sunnyside's Phase I and Phase II water conservation projects. Sunnyside agreed to reduce its off-stream diversion from the Yakima River by two-thirds of the total quantity of water conserved by these two projects: 19,450 ac-ft/yr from Phase I, and 16,500 ac-ft/yr from Phase II. The parties agreed that these 'two-thirds blocks' of the total conserved water would be applied to instream target flow augmentation at the Parker and Prosser streamflow gages on the lower Yakima River. Under the YRBWEP BCP conserved water allocation formula, the remaining 'one-third blocks' of the total conserved water, which equals 9,712 ac-ft/yr from Phase I, and 8,250 ac-ft/yr from Phase II, subject to applicable prorationing, would remain available for Sunnyside to divert and use during drought years to firm up Sunnyside's prorated water supply for its existing irrigated acres (i.e., no acreage expansion allowed).

**November 4, 2008 "Diversion Reduction Agreement, Sunnyside Division Board of Control-Benton Irrigation District-United States Bureau of Reclamation"**

USBR, Sunnyside Division Board of Control, and Benton Irrigation District (BID), signed and entered this diversion reduction agreement on November 4, 2008, and addended it on February 19, 2009. In this agreement, the parties agreed:

- To provide YRBWEP BCP cost-share funding for the Sunnyside Phase II water conservation project, that will reduce Sunnyside's off-stream diversion from the Yakima River by 16,500 ac-ft/yr upon project completion, and to use the 16,500 ac-ft/yr (the 'two-thirds block') of conserved water to augment lower Yakima River instream target flows at the Parker and Prosser streamflow gages;
- To provide YRBWEP BCP cost-share funding for the BID water conservation project, that will: reduce BID's off-stream diversion by 21,044 ac-ft/yr ('up to 70 cfs') at BID's historic Sunnyside Canal POD (i.e., reduce the diversion into the Sunnyside Canal by 21,044 ac-ft/yr); transfer 2,524 ac-ft/yr of former BID conveyance loss water in the Sunnyside Canal to instream target flow augmentation use in the lower Yakima River; transfer the BID Yakima River diversion point 71.3 miles downriver to a new BID pump plant; conserve a total of 4,346 ac-ft/yr of water, on-district, by constructing a new pressurized pipeline irrigation system for the BID service area (4,630 irrigated acres); apply two-thirds of BID's total on-district conserved water, or 2,897 ac-ft/yr, to instream target flow augmentation use in the lower Yakima River; apply one-third of BID's total on-district conserved water, or 1,449 ac-ft/yr, to be used to firm up BID's drought-year prorated water supply for its existing irrigated acres (i.e., no acreage expansion allowed); and limit the BID diversion of water from the Yakima River at its new pump plant POD to 15,623 ac-ft/yr ('up to 60 cfs'). [**Note:** this BID downstream POD move is predicated on the agreement

among the parties (Sunnyside Division Board of Control, BID, and Ecology) in the March 27, 2003 "Sunnyside Division Board of Control Benton Irrigation District Agreement" (the 'Benton Agreement').]

**April 20, 2010 "Diversion Reduction Agreement between the United States of America and the Sunnyside Division Board of Control and its Constituent Entities"**

USBR, Sunnyside Division Board of Control (SDBOC), and the several individual Sunnyside Division member entities, signed and entered this diversion reduction agreement on April 20, 2010. SDBOC signed and approved its "Resolution 2010-04 – 01 Signature Authority for Diversion Reduction Agreement" concurrently on April 20, 2010, authorizing the SDBOC Chairman to sign and enter the April 20, 2010 USBR SDBOC Diversion Reduction Agreement. In this 2010 diversion reduction agreement, the parties agreed that USBR would provide Federal YRBWEP funding (under USBR's direct water acquisition authority in Title XII Subsection 1203(i)(3)) to SDBOC to acquire the right to use, for instream target flow augmentation in the lower Yakima River at the Parker and Prosser streamflow gages, the 'one-third block' (9,712 ac-ft/yr) of Sunnyside Phase I water conservation project conserved water, during most years. This is the 'one-third block' of the total conserved water from Sunnyside's Phase I water conservation project that, under the YRBWEP BCP conserved water allocation formula, would normally remain with Sunnyside to firm up Sunnyside's off-stream irrigation and related water needs during prorationing years in the Yakima Basin. SDBOC opted instead to sell USBR the right to use this water for instream target flow augmentation use during Yakima Basin full water supply years and during minor water supply shortfall years, when Reclamation declares prorationing of May 10, 1905 priority Yakima Basin proratable water rights at levels from 99.9% down to 70.1% of full Federal water supply contract 'entitlement' quantities. And Sunnyside agreed to reduce its off-stream diversion and use of Yakima River water by this 9,712 ac-ft/yr. However, during serious drought years with 70% or worse prorationing of proratable Yakima Basin water rights, the parties agreed that Reclamation would fold the prorated remainder of the 9,712 ac-ft/yr back into the Yakima Basin TWSA to generally augment irrigation water supply and other TWSA water demands. [For example, at 70% prorationing, the prorated remainder of this 9,712 ac-ft/yr block of water is equal to 8,806 ac-ft/yr.]

**May 11, 2010 "Order Granting United States' Petition for Order Pendente Lite re: Temporary Change, Claim No. 1752"**

The *Acquavella* Court entered this Order Pendente Lite on May 11, 2010, authorizing (for 25 years, during the pendency of the adjudication, or until further order of the court) Reclamation's use of this 9,712 ac-ft/yr block of US 'Sunnyside' conserved water (i.e., the 'one-third block' of Sunnyside Phase I water conservation project conserved water) for instream target flow augmentation use most years, and for general TWSA augmentation use for irrigation and other TWSA water uses during serious drought years when Reclamation prorates May 10, 1905 priority Yakima Basin proratable water rights to 70% or worse of their full Federal water supply 'entitlement' quantities.

**June 23, 2010 "Second Amendment to Sunnyside Division Water Rights Settlement Agreement (Additional Point of Diversion and Conserved Water)"**

On June 23, 2010, Reclamation, Ecology, Yakama Nation, and SDBOC and the Sunnyside Division individual member entities, signed and agreed to this 'Second Amendment' to the May 12, 2003 Sunnyside Water Rights Settlement Agreement (as previously amended by the July 31, 2003 'First Amendment' filed with the *Acquavella* Court on August 4, 2003). This 'Second Amendment' authorized, among other things: adding BID's new downstream POD as an authorized POD (for the BID service area) under the Sunnyside water rights; reducing Sunnyside's off-stream diversions into the Sunnyside Canal POD by the full amount of the BID portion of the Sunnyside water rights (21,044 ac-ft/yr, 'up to 70 cfs');

reducing Sunnyside's off-stream diversions into the Sunnyside Canal POD by the 'two-thirds' block of the Sunnyside Phase II water conservation project (16,500 ac-ft/yr, 46 cfs); limiting BID's diversion quantity at its new downstream pump plant POD to 15,623 ac-ft/yr; transferring to instream flow use the BID water conservation project conserved water blocks (2,524 ac-ft/yr of former BID Sunnyside Canal conveyance loss water and the 2,897 ac-ft/yr 'two-thirds block' of BID on-district conserved water); transferring to instream flow use the 'two-thirds block' and also the 'one-third block' of Sunnyside Phase I water conservation project conserved water (19,450 ac-ft/yr + 9,712 ac-ft/yr, for a total of 29,162 ac-ft/yr); transferring to instream flow use the 'two-thirds block' of Sunnyside Phase II water conservation project conserved water (16,500 ac-ft/yr); authorizing Sunnyside's possible future sale of its Phase II 'one-third block' of conserved water for Reclamation to use for instream flow augmentation, with its concurrent Sunnyside diversion reduction; and providing for minimizing flow fluctuations in the lower Yakima River while still allowing possible use of the instream flow augmentation water as shaped releases from the Federal reservoirs to maximize fish and biological benefits. The Agreement affirms that all Sunnyside water rights are 31.1% proratable during Yakima Basin water supply shortfall years, and that Reclamation may choose to place its YRBWEP-funded acquired conserved water into the Trust.

#### *Sunnyside Division and Benton Irrigation District Water Conservation Projects Status*

- The Sunnyside Phase I Water Conservation Project is completed and operational, and the Phase I conserved water is being used for the purposes defined by the Sunnyside and BID Agreements described above.
- The Benton Irrigation District Water Conservation Project is completed and operational, and the BID conserved water is being used for the purposes defined by the Sunnyside and BID Agreements described above.
- The Sunnyside Phase II Water Conservation Project is currently being implemented, with its full completion scheduled for 2042. The Phase II conserved water is being applied to the purposes defined by the Sunnyside Agreements described above, in annually increasing quantities, as the project's incremental implementation generates annually-increasing quantities of conserved water. Upon full implementation of this Sunnyside Phase II Project in 2042, the full quantity of conserved water will be allocated to the purposes defined in the above Sunnyside Agreements, and the full diversion reduction quantities for Sunnyside's off-stream water uses will be in effect, as defined in the above Sunnyside Agreements.

#### *Details – Sunnyside Division and BID Water Conservation Projects & Proposed Conserved Water Uses*

USBR, Ecology, Sunnyside Division, and Benton Irrigation District have variously partnered to cost-share the implementation of 3 water conservation projects: 2 Sunnyside Division projects, Phase I and Phase II (Sunnyside Canal automation, construction and operation of re-regulating reservoirs along the Sunnyside Main Canal, and piping of water delivery laterals), and 1 BID water conservation project (construction of a pressurized pump and pipeline irrigation system for BID's irrigation water supply), under YRBWEP authority, beginning in 2004 (Phase I). The Sunnyside Phase I and BID water conservation projects are now completed and operational. The Sunnyside Phase II project is currently being constructed, with a 2042 full completion date expected. USBR has acquired conserved water generated from the Sunnyside Phase I and BID water conservation projects, which are both now fully completed and operational in 2018, and the acquired conserved water is being used for instream target flow augmentation Trust water use in 2018 and 2019 (as defined in the Sunnyside & BID Diversion Reduction Agreements). 2018 just escaped being a minor water supply shortfall year (96% prorationing declared on June 11, 2018, but upgraded to a 100% supply year on July 1, 2018 with no prorationing through the 2018 irrigation season); and 2019 was a water supply shortfall year, with 72% prorationing of proratable water rights in the Yakima River Basin. USBR is also acquiring conserved water generated from the Sunnyside Phase II water conservation project,

in annually-increasing quantities as Phase II is incrementally implemented, with its full implementation scheduled for 2042. And USBR is currently applying the annually-increasing quantities of this acquired conserved water from Phase II, as it is incrementally generated, to the instream target flow augmentation Trust water use defined in the Sunnyside Diversion Reduction Agreements. These YRBWEP water conservation projects have made the Sunnyside Division and BID irrigators much more efficient with their off-stream water use, allowing Sunnyside Division and BID to continue to irrigate all their authorized acreage with less water diverted out of the Yakima River. YRBWEP-generated conserved water is allocated under a formula that generally provides for using two-thirds of the conserved water to augment instream flows in the Yakima River, and one-third to augment the participating irrigation district's drought-year irrigation (and other authorized uses) water supply. However, Reclamation has acquired the right to use the Sunnyside Phase I 'one-third block' of conserved water (9,712 ac-ft/yr), that normally would remain with Sunnyside to augment Sunnyside's drought-year prorated water supply, instead for instream target flow Trust water use in the Yakima River system during full water supply years and during minor water supply shortfall years in the Yakima Basin, and alternatively (as prorated) for Trust water use to generally augment the Yakima Basin TWSA for irrigation and other authorized TWSA water uses during serious drought years when USBR declares 70% or worse prorationing of Yakima Basin prorable water rights.

Upon full implementation of the Sunnyside Phase II water conservation project in 2042, USBR will then have acquired a total of 51,083 ac-ft/yr, 120.34 cfs from April 1 – October 31, or as usage is otherwise shaped from April 1 – March 31 or later of the following year<sup>6</sup> (during full water supply years, but subject to applicable prorationing during prorationing years/periods), of Sunnyside Phase I and Phase II and BID conserved water to apply to Trust water uses. The conserved water has historically been authorized for irrigation and related uses [i.e., 'irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses'], which includes the service areas for the Sunnyside Valley Irrigation District and several smaller Sunnyside Division member entities including BID. USBR requests authorization from Ecology to use this 51,083 ac-ft/yr (in 2042, et seq.) portion of the total Sunnyside/BID conserved water, as it increasingly becomes available as the Sunnyside Phase II water conservation project is implemented, beginning in 2018, and to use the full 51,083 ac-ft/yr in 2042 and subsequent years, for instream flow Trust water use in the Yakima River system and its side channels **during full water supply years** in the Yakima River Basin, with the quantities broken out in detail as follows:

- 19,450 ac-ft/yr, 45.82 cfs from April 1 – October 31, or as usage is otherwise shaped from April 1 – March 31 or later of the following year<sup>6</sup>, of Sunnyside Phase I 'two-thirds block' conserved water;
- 9,712 ac-ft/yr, 22.88 cfs from April 1 – October 31, or as usage is otherwise shaped from April 1 – March 31 or later of the following year<sup>6</sup>, of Sunnyside Phase I 'one-third block' conserved water;
- 5,421 ac-ft/yr, 12.77 cfs from April 1 – October 31, or as usage is otherwise shaped from April 1 – March 31 or later of the following year<sup>6</sup>, of BID conserved water (2,524 ac-ft/yr of BID former conveyance loss in the Sunnyside Main Canal conserved water plus 2,897 ac-ft/yr of BID 'two-thirds block' conserved water = 5,421 ac-ft/yr total); and,
- 16,500 ac-ft/yr, 38.87 cfs from April 1 – October 31, or as usage is otherwise shaped from April 1 – March 31 or later of the following year<sup>6</sup>, of Sunnyside Phase II 'two-thirds block' conserved water;
- For a grand total of 51,083 ac-ft/yr, 120.34 cfs from April 1 – October 31, or as usage is otherwise shaped from April 1 – March 31 or later of the following year<sup>6</sup>, of Sunnyside Division Phase I, BID,

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<sup>6</sup> 'Previous-year' Trust water remaining in storage on 3/31 may be used in the 'new year' until the Federal reservoirs fill and spill or until storage control date at the latest, at which time any remaining 'previous-year' Trust water will become part of the 'new year's' total water supply available (TWSA).

and Sunnyside Division Phase II, acquired conserved water for instream target flow augmentation use during full water supply years in the Yakima River Basin.

**NOTE:** These quantities above are subject to applicable prorationing rates during prorationing periods in water supply shortfall years.

Reclamation filed 6 water right change applications with Ecology on August 15, 2012, applications No. CS4-01752@6 through No. CS4-01752@11, that request approval to use the Sunnyside Phase I 'two-thirds block' of conserved water (19,450 ac-ft/yr), the BID conserved water (5,421 ac-ft/yr), and the Sunnyside Phase II 'two-thirds block' of conserved water (16,500 ac-ft/yr), totaling 41,371 ac-ft/yr (subject to appropriate prorationing in water supply shortfall years) of Sunnyside and BID conserved water, for instream flow Trust water use in the Yakima River system from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.] Reclamation proposes to use this 41,371 ac-ft/yr of Sunnyside and BID Trust water, as prorated, either:

- A) as a 97.46 cfs addition, from April 1 through October 31, to instream target flows at the Parker and Prosser streamflow gages in the lower Yakima River, from the Sunnyside Canal POD at Yakima RM 103.8 to the Kiona Canal Wasteway's discharge point to the Yakima River at Yakima RM 23.8, thus augmenting instream flows in a total of 80.0 Yakima River miles

[In this first case, the place of use for this instream flow trust water right would be within the Yakima River and its side channels, beginning at Sunnyside Diversion Dam (i.e., the Sunnyside Division's main canal diversion point from the Yakima River) at Yakima RM 103.8 (within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M., Yakima County Parcel No. 19122899989), and ending downstream at the Kiona Canal Wasteway's discharge to the Yakima River at Yakima RM 23.8 (within the SW¼NW¼ of Section 30, T. 10 N., R. 27 E.W.M., Benton County Parcel No. 13007200006000). When used this way, this instream flow Trust water right would augment instream flows in a reach of approximately 80.0 river miles of the Yakima River and its side channels.]; or,

- B) as shaped releases at larger flow rates in cfs, from the 5 Federal Yakima Project reservoirs, from April 1 through March 31 or later of the following year [See Footnote No. 2 on page 1.], from points immediately downstream of 1) Keechelus Dam at Yakima RM 214.5, 2) Kachess Dam at Kachess RM 1.2 and then downstream to Yakima RM 203.5, 3) Cle Elum Dam at Cle Elum RM 8.2 and then downstream to Yakima RM 185.6, 4) Bumping Dam at Bumping RM 17.0 and then downstream to Naches RM 44.6 and then downstream to Yakima RM 116.3, and 5) Tieton/Rimrock Dam at Tieton RM 21.3 and then downstream to Naches RM 17.5 and then downstream to Yakima RM 116.3, then all flowing downstream in the Yakima River to their termination point at the Kiona Canal Wasteway discharge point at Yakima RM 23.8, thus augmenting instream flows in a total of 283.0 river miles in the Yakima River system (mainstem, side channels, and tributaries)

[In this second case, the place of use for this instream flow trust water right would be within those portions of the Yakima River system beginning immediately downstream of each of the 5 Federal reservoirs (Keechelus Reservoir Dam: at Yakima RM 214.5, within the SE¼NE¼ of Section 12, T. 21 N., R. 11 E.W.M., Kittitas County Parcel No. 906535; Kachess Reservoir Dam: at Kachess RM 1.2, within the NW¼SW¼ of Section 34, T. 21 N., R. 13 E.W.M., Kittitas County Parcel No. 386935; Cle Elum Reservoir Dam: at Cle Elum RM 8.2, within the NW¼NE¼ of Section 10, T. 20 N., R. 14 E.W.M., Kittitas County Parcel No. 102434; Bumping Reservoir Dam: at Bumping RM 17.0, within Section 23, T. 16 N., R. 12 E.W.M., Yakima County Parcel No. 12162399989, downstream to Naches RM 44.6, within the NE¼SE¼ of Section 4, T. 17 N., R. 14 E.W.M.; and

Rimrock Reservoir/Tieton Dam: at Tieton RM 21.3, within the NE¼SW¼ of Section 31, T. 14 N., R. 14 E.W.M., Yakima County Parcel No. 14143199989), and ending downstream at the Kiona Canal Wasteway's discharge to the Yakima River at Yakima RM 23.8 (within the SW¼NW¼ of Section 30, T. 10 N., R. 27 E.W.M., Benton County Parcel No. 130072000006000). When used this way, this instream flow Trust water right would potentially augment instream flow in a total of 283.0 river miles in the Yakima River Basin.]; or,

C) in some combination of these above 2 usage patterns.

This 41,371 ac-ft/yr of instream target flow Trust water is subject to the same prorationing rate as are all the Sunnyside water rights in Yakima Basin water supply shortfall years. All confirmed Sunnyside water rights, including this 41,371 ac-ft/yr instream target flow augmentation Trust water portion, are 31.1% prorable, while 68.9% of Sunnyside water rights enjoy senior non-prorable status. During water supply shortfall years, Reclamation calculates the Yakima Basin TWSA and determines the prorationing rate that applies to May 10, 1905-priority prorable Yakima Basin water rights, and then applies that prorationing rate against the total Federal water supply contract 'entitlement' quantities of the prorable water rights. This 41,371 ac-ft/yr of USBR instream target flow augmentation Trust water will be reduced according to this prorationing formula, by applying the applicable prorationing rate against the 31.1% prorable portion of this Trust water, during prorationing years in the Yakima River Basin.

Reclamation filed a second set of 6 water right change applications with Ecology on September 29, 2016, applications No. CS4-01752@12 through No. CS4-01752@17, that request approval to use the Sunnyside Phase I 'one-third block' of conserved water, totaling 9,712 ac-ft/yr of conserved water (subject to appropriate prorationing in water supply shortfall years), for instream target flow Trust water use in the Yakima River system during full water supply years and during minor water supply shortfall years in the Yakima Basin, from April 1 through March 31 or later of the following year [See Footnote No. 2 on page 1.], and alternatively (as prorated) for Trust water use to generally augment the Yakima Basin TWSA for irrigation and other authorized TWSA water uses, from April 1 through October 31, during serious drought years when USBR declares 70% or worse prorationing of Yakima Basin prorable water rights.

[For example, at 70% prorationing, this 9,712 ac-ft/yr block of Trust water is reduced to just 8,806 ac-ft/yr.]

**- During full water supply years and during minor water supply shortfall years** in the Yakima River Basin when Reclamation declares prorationing of May 10, 1905-priority prorable Yakima Basin water rights at levels from 99.9% down to 70.1% of their full Federal water supply contract 'entitlement' quantities, Reclamation proposes to use this 9,712 ac-ft/yr block of Sunnyside Trust water, as prorated, either:

A) as a 22.88 cfs addition, from April 1 through October 31, to instream target flows at the Parker and Prosser streamflow gages in the lower Yakima River, from the Sunnyside Canal POD at Yakima RM 103.8 to the Kiona Canal Wasteway's discharge point to the Yakima River at Yakima RM 23.8, thus augmenting instream flows in a total of 80.0 Yakima River miles

[In this first case, the place of use for this instream flow trust water right would be within the Yakima River and its side channels, beginning at Sunnyside Diversion Dam (i.e., the Sunnyside Division's main canal diversion point from the Yakima River) at Yakima RM 103.8 (within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M., Yakima County Parcel No. 19122899989), and ending downstream at the Kiona Canal Wasteway's discharge to the Yakima River at Yakima RM 23.8 (within the SW¼NW¼ of Section 30, T. 10 N., R. 27 E.W.M., Benton County Parcel No. 130072000006000). When used this way, this instream flow Trust water right would augment instream flows in a reach of approximately 80.0 river miles of the Yakima River and its side channels.]; or,

- B) as shaped releases at larger flow rates in cfs, from the 5 Federal Yakima Project reservoirs, from April 1 through March 31 or later of the following year [See Footnote No. 2 on page 1.], from points immediately downstream of 1) Keechelus Dam at Yakima RM 214.5, 2) Kachess Dam at Kachess RM 1.2 and then downstream to Yakima RM 203.5, 3) Cle Elum Dam at Cle Elum RM 8.2 and then downstream to Yakima RM 185.6, 4) Bumping Dam at Bumping RM 17.0 and then downstream to Naches RM 44.6 and then downstream to Yakima RM 116.3, and 5) Tieton/Rimrock Dam at Tieton RM 21.3 and then downstream to Naches RM 17.5 and then downstream to Yakima RM 116.3, then all flowing downstream in the Yakima River to their termination point at the Kiona Canal Wasteway discharge point at Yakima RM 23.8, thus augmenting instream flows in a total of 283.0 river miles in the Yakima River system (mainstem, side channels, and tributaries)

[In this second case, the place of use for this instream flow trust water right would be within those portions of the Yakima River system beginning immediately downstream of each of the 5 Federal reservoirs (Keechelus Reservoir Dam: at Yakima RM 214.5, within the SE¼NE¼ of Section 12, T. 21 N., R. 11 E.W.M., Kittitas County Parcel No. 906535; Kachess Reservoir Dam: at Kachess RM 1.2, within the NW¼SW¼ of Section 34, T. 21 N., R. 13 E.W.M., Kittitas County Parcel No. 386935; Cle Elum Reservoir Dam: at Cle Elum RM 8.2, within the NW¼NE¼ of Section 10, T. 20 N., R. 14 E.W.M., Kittitas County Parcel No. 102434; Bumping Reservoir Dam: at Bumping RM 17.0, within Section 23, T. 16 N., R. 12 E.W.M., Yakima County Parcel No. 12162399989, downstream to Naches RM 44.6, within the NE¼SE¼ of Section 4, T. 17 N., R. 14 E.W.M.; and Rimrock Reservoir/Tieton Dam: at Tieton RM 21.3, within the NE¼SW¼ of Section 31, T. 14 N., R. 14 E.W.M., Yakima County Parcel No. 14143199989), and ending downstream at the Kiona Canal Wasteway's discharge to the Yakima River at Yakima RM 23.8 (within the SW¼NW¼ of Section 30, T. 10 N., R. 27 E.W.M., Benton County Parcel No. 130072000006000). When used this way, this instream flow Trust water right would potentially augment instream flow in a total of 283.0 river miles in the Yakima River Basin.]; or,

- C) in some combination of these above 2 usage patterns.

- **During serious drought years with 70% or worse prorationing** of May 10, 1905-priority Yakima Basin prorable water rights, Reclamation proposes to use the prorated remainder of this 9,712 ac-ft/yr block of Trust water (which for example reduces to 8,806 ac-ft/yr at 70% prorationing) to generally augment the Yakima Basin TWSA to satisfy all of the existing authorized Yakima Basin surface water rights for irrigation and other uses, and all other authorized water demands satisfied out of the TWSA managed by Reclamation, and located generally within the Federal Yakima Reclamation Project boundaries. When managed this way, the places of use for this Trust water would be the many and various water use locations throughout the Yakima River Basin for all currently-existing authorized water uses supplied by the Yakima Basin TWSA.

#### *Expedited Application Processing*

Subsection 173-152-050(2)(c) of the Washington Administrative Code (WAC) allows Ecology to prioritize processing of applications that are nonconsumptive and if approved would substantially enhance or protect the quality of the natural environment, such as transfers or changes of water into the Trust that provide a substantial environmental benefit. The YRBWEP is an ongoing cooperative Federal/State/Local program that is generating instream flow and groundwater preservation Trust water rights, like the subject water rights, that provide substantial environmental benefit. Therefore, Ecology may priority process this application, and other associated YRBWEP Trust water right change applications, ahead of other competing applications.



**Table 1: Existing Water Rights Attributes – All 6 USBR and Sunnyside Irrigation Season Rights**

<b>Water Rights Owner:</b>	United States of America on behalf of Sunnyside Division
<b>Priority Dates:</b>	<u>1.</u> S4-84611-J: June 29, 1878 [CS4-01752@6 & CS4-01752@12] <u>2.</u> S4-84612-J: June 30, 1878 [CS4-01752@7 & CS4-01752@13] <u>3.</u> S4-84613-J: September 3, 1890 [CS4-01752@8 & CS4-01752@14] <u>4.</u> S4-84614-J: July 18, 1893 [CS4-01752@9 & CS4-01752@15] <u>5.</u> S4-84615-J: May 9, 1905 [CS4-01752@10 & CS4-01752@16] <u>6.</u> S4-84616-J: May 10, 1905 [CS4-01752@11 & CS4-01752@17]
<b>Place of Use</b>	<p>“Irrigable acres within the Sunnyside Division exterior boundaries as of the date of this Stipulation (July 31, 2003) as described in the Attachment 1 metes and bounds legal description and the Attachment 2 map which are incorporated herein. Attachment 1 is controlling as the description of the Sunnyside Division’s place of use.”</p> <p>[Multiple Yakima County and Benton County Tax Parcels.]</p>

Counties	Waterbody	Tributary To	WRIA's
Yakima and Benton	Yakima River	Columbia River	37 - Lower Yakima

Purpose	Rate	Unit	Ac-Ft/Yr	Begin Season	End Season
Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses.	1. (S4-84611-J): 24	CFS	1. 1,925	April 1	October 31
	2. (S4-84612-J): 34		2. 14,089		
	3. (S4-84613-J): 537		3. 145,776		
	4. (S4-84614-J): 30		4. 12,698		
	5. (S4-84615-J): 2		5. 138		
	6. (S4-84616-J): 689		6. 260,796		
	<b>TOTAL: 1,316</b>		<b>TOTAL: 435,422</b>		

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Longitude	Latitude
Yakima River #1: (via Sunnyside Main Canal POD):	#1: 19122899989 (Yakima County)	12 N.	19 E.	28	NWSE	-120.44410° W	46.49859° N
#2: (via Benton ID pump plant POD):	#2: 111964000004000 (Benton County)	9 N.	26 E.	11	SE	-119.51717° W	46.27479° N

CFS = Cubic Feet per Second; Ac-Ft/Yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a Section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

**Table 2a:** Requested Water Right Attributes – the Reduced Portion of Each of the 6 USBR and Sunnyside Irrigation Season Water Rights Retained for Continuing Off-Stream Use for Irrigation of a Maximum of 99,244 Irrigated Acres of the Total 103,570 Irrigable Acres within the Sunnyside Division and Related Uses, in Full Effect in 2042 (Not Placed in Trust)

<b>Water Rights Owner:</b>	United States of America on behalf of Sunnyside Division
<b>Priority Dates:</b>	<ol style="list-style-type: none"> <li>1. S4-84611-J: June 29, 1878 [as changed/reduced by CS4-01752@6 &amp; CS4-01752@12]</li> <li>2. S4-84612-J: June 30, 1878 [as changed/reduced by CS4-01752@7 &amp; CS4-01752@13]</li> <li>3. S4-84613-J: September 3, 1890 [as changed/reduced by CS4-01752@8 &amp; CS4-01752@14]</li> <li>4. S4-84614-J: July 18, 1893 [as changed/reduced by CS4-01752@9 &amp; CS4-01752@15]</li> <li>5. S4-84615-J: May 9, 1905 [as changed/reduced by CS4-01752@10 &amp; CS4-01752@16]</li> <li>6. S4-84616-J: May 10, 1905 [as changed/reduced by CS4-01752@11 &amp; CS4-01752@17]</li> </ol>
<b>Place of Use</b>	<p>“Irrigable acres within the Sunnyside Division exterior boundaries as of the date of this Stipulation (July 31, 2003) as described in the Attachment 1 metes and bounds legal description and the Attachment 2 map which are incorporated herein. Attachment 1 is controlling as the description of the Sunnyside Division’s place of use.”</p> <p>[Multiple Yakima County and Benton County Tax Parcels.]</p>

Counties	Waterbody	Tributary To	WRIA's
Yakima and Benton	Yakima River	Columbia River	37 - Lower Yakima

Purpose	Rate (CFS)	Unit	Ac-Ft/Yr	Begin Season	End Season
Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses.	1. S4-84611-J (as changed/reduced by CS4-01752@6 & CS4-01752@12): 23.39 [23.13 cfs at POD #1 (Sunnyside Canal POD) + 0.26 cfs at POD #2 (BID Pumpsite) = 23.39 cfs]	CFS	1. 1,699.16 ac-ft/yr [1,630.09 at POD #1 + 69.07 at POD #2 = 1,699.16 ac-ft/yr]	April 1	October 31
	2. S4-84612-J (as changed/reduced by CS4-01752@7 & CS4-01752@13): 29.57 [27.63 cfs at POD #1 + 1.94 cfs at POD #2 = 29.57 cfs]		2. 12,436.11 ac-ft/yr [11,930.59 at POD #1 + 505.52 at POD #2 = 12,436.11 ac-ft/yr]		

Table continued on page 18.

Table from page 17 – continued.

Purpose	Rate (CFS)	Unit	Ac-Ft/Yr	Begin Season	End Season
	3. S4-84613-J (as changed/reduced by CS4-01752@8 & CS4-01752@14): 491.13 [471.04 cfs at POD #1 + 20.09 cfs at POD #2 = 491.13 cfs]		3. 128,673.80 ac-ft/yr [123,443.34 at POD #1 + 5,230.46 at POD #2 = 128,673.80 ac-ft/yr]		
	4. S4-84614-J (as changed/reduced by CS4-01752@9 & CS4-01752@15): 26.00 [24.25 cfs at POD #1 + 1.75 cfs at POD #2 = 26.00 cfs]		4. 11,208.29 ac-ft/yr [10,752.68 at POD #1 + 455.61 at POD #2 = 11,208.29 ac-ft/yr]		
	5. S4-84615-J (as changed/reduced by CS4-01752@10 & CS4-01752@16): 1.96 [1.94 cfs at POD #1 + 0.02 cfs at POD #2 = 1.96 cfs]		5. 121.80 ac-ft/yr [116.85 at POD #1 + 4.95 at POD #2 = 121.80 ac-ft/yr]		
	6. S4-84616-J (as changed/reduced by CS4-01752@11 & CS4-01752@17): 606.95 [571.01 cfs at POD #1 + 35.94 cfs at POD #2 = 606.95 cfs]		6. 230,199.84 ac-ft/yr [220,842.45 at POD #1 + 9,357.39 at POD #2 = 230,199.84 ac-ft/yr]		
	<b>TOTAL RETAINED:</b> 1,179 cfs [1,119 cfs at POD #1 + 'up to 60 cfs' at POD #2 = 1,179 cfs]		<b>TOTAL RETAINED:</b> 384,339 ac-ft/yr [368,716 at POD #1 + 15,623 at POD #2 = 384,339 ac-ft/yr]		

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Longitude	Latitude
Yakima River #1: (via Sunnyside Main Canal POD):	#1: 19122899989 (Yakima County)	12 N.	19 E.	28	NWSE	-120.44410° W	46.49859° N
#2: (via Benton ID pump plant POD):	#2: 111964000004000 (Benton County)	9 N.	26 E.	11	SE	-119.51717° W	46.27479° N

CFS = Cubic Feet per Second; Ac-Ft/Yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a Section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

**Table 2b: Requested Trust Water Right Attributes – the Trust Water Portions of each of the 6 USBR and Sunnyside Irrigation Season Water Rights, Fully in Effect in 2042 (Placed in Trust)**

<p><b>Water Rights Owner:</b></p>	<p>U.S. Bureau of Reclamation</p>
<p><b>Priority Dates:</b></p>	<p>Trust Water Portions of:</p> <ol style="list-style-type: none"> <li>1. S4-84611-J: June 29, 1878 [CS4-01752@6 &amp; CS4-01752@12]</li> <li>2. S4-84612-J: June 30, 1878 [CS4-01752@7 &amp; CS4-01752@13]</li> <li>3. S4-84613-J: September 3, 1890 [CS4-01752@8 &amp; CS4-01752@14]</li> <li>4. S4-84614-J: July 18, 1893 [CS4-01752@9 &amp; CS4-01752@15]</li> <li>5. S4-84615-J: May 9, 1905 [CS4-01752@10 &amp; CS4-01752@16]</li> <li>6. S4-84616-J: May 10, 1905 [CS4-01752@11 &amp; CS4-01752@17]</li> </ol>
<p><b>Place of Use – Trust Water Portions of the 6 USBR and Sunnyside Irrigation Season Water Rights</b></p>	<p><b><u>When these USBR Trust Water Rights, Created under the 12 Water Right Change/Trust Applications #CS4-01752@6 through #CS4-01752@17, as Prorated, Are Available for Instream Flow Trust Water Right Use</u></b></p> <p><b>INSTREAM FLOW TRUST WATER USE PRIMARY REACH –</b></p> <p>Reclamation will manage this 51,083 ac-ft/yr (subject to applicable prorationing) block of instream flow Trust water rights, subject to its availability for instream flow use as described below under ‘Purpose and Quantity’, in one of two ways (or in a combination thereof), either:</p> <ol style="list-style-type: none"> <li>1) as normal, or default, constant rate instream flow augmentation Trust water rights in the Yakima River and its side channels from April 1 through October 31, from Sunnyside Dam at Yakima River Mile (RM) 103.8 (Yakima County Parcel No. 19122899989), downstream to the discharge of Spring/Snipes Creek to the Yakima River at Yakima RM 41.8 (Benton County Parcel No. 127953013247002), which is the last return flow point from the Sunnyside Valley Irrigation District (SVID) service area, then downstream past the new Benton Irrigation District (BID) Yakima River pump plant at Yakima RM 32.5 (Benton County Parcel No. 111964000004000), and continuing downstream to the primary reach’s end and these instream flow use Trust water rights’ termination at the discharge of the Kiona Canal Wasteway to the Yakima River at Yakima RM 23.8 (Benton County Parcel No. 130072000006000), the last/end spill for the BID service area; or,</li> <li>2) alternatively, as shaped usage instream flow augmentation Trust water rights, at varying rates of flow in cfs, from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.] Under this alternate shaped usage option #2, Reclamation may choose to retain the storable portions of these instream flow use Trust water rights in the 5 Federal Yakima Basin reservoirs to make shaped releases of the stored instream flow use Trust water, in varying rates of flow in cfs, from April 1 through March 31 or later of the following year [See Footnote No. 2 on page 1.], to maximize fisheries and habitat benefits. The place of use for this alternate usage option #2 would be from the outlets of each of the 5 Federal Yakima Basin reservoirs, downstream to the primary reach’s end and these Trust water rights’ termination at the discharge of the Kiona Canal Wasteway to the Yakima River at Yakima RM 23.8 (Benton County Parcel No. 130072000006000); or,</li> <li>3) in some combination of the above 2 usage patterns.</li> </ol>

Table continued on page 20.

Table from page 19 – *continued.*

<p><b>Place of Use – Trust Water Portions of the 6 USBR and Sunnyside Irrigation Season Water Rights</b> - <i>Continued</i> -</p>	<p><b><u>Option #1: Normal or Default Constant-Rate Instream flow Trust Water Rights Primary Reach Place of Use (from April 1 through October 31)</u></b></p> <p>Within the Yakima River and its side channels, with the primary reach beginning at the Sunnyside Canal diversion point (POD) from the Yakima River, located 130 feet south and 1500 feet west of the east quarter corner of Section 28, being within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M. (Yakima RM 103.8, Yakima County Parcel No. 19122899989); and travelling down the Yakima River and its side channels, downstream to the discharge of Spring/Snipes Creek to the Yakima River, located approximately 1,560 feet north and 2,170 feet east of the southwest corner of Section 27, being within the NE¼SW¼ of Section 27, T. 9 N., R. 25 E.W.M. (Yakima RM 41.8, Benton County Parcel No. 127953013247002), which is the last return flow point from the Sunnyside Valley Irrigation District (SVID) service area; then downstream past the new BID Yakima River pump plant POD, located approximately 480 feet west and 3,989 feet south of the northeast corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M. (Yakima RM 32.5, Benton County Parcel No. 111964000004000); and continuing downstream to the primary reach’s end and these instream flow Trust water rights’ termination point at the discharge of the Kiona Canal Wasteway to the Yakima River, located approximately 1,830 feet south of the northwest corner of Section 30, being within the SW¼NW¼ of Section 30, T. 10 N., R. 27 E.W.M. (Yakima RM 23.8, Benton County Parcel No. 130072000006000), the last/end spill for the BID service area. When used this way (i.e., Option #1), these instream flow use Trust water rights augment instream flows in a total of 80.0 Yakima River miles.</p> <p><b><u>Option #2: Alternate Shaped Usage Instream Flow Trust Water Rights Primary Reach Place of Use (from April 1 through March 31 or later of the Following Year)</u></b> <u>[See Footnote No. 2 on page 1.]</u></p> <p>Within those portions of the entire Yakima River system beginning immediately downstream of each of the 5 Federal Yakima Basin reservoirs [Keechelus Reservoir Dam: at Yakima RM 214.5, within the SE¼NE¼ of Section 12, T. 21 N., R. 11 E.W.M. (Kittitas County Parcel No. 906535); Kachess Reservoir Dam: at Kachess RM 1.2, within the NW¼SW¼ of Section 34, T. 21 N., R. 13 E.W.M. (Kittitas County Parcel No. 386935), then downstream to Yakima RM 203.5, within the NW¼SE¼ of Section 3, T. 20 N., R. 13 E.W.M.; Cle Elum Reservoir Dam: at Cle Elum RM 8.2, within the NE¼NE¼ of Section 10, T. 20 N., R. 14 E.W.M. (Kittitas County Parcel No. 102434), then downstream to Yakima RM 185.6, within the SW¼SE¼ of Section 32, T. 20 N., R. 15 E.W.M.; Bumping Reservoir Dam: at Bumping RM 17.0, within Section 23, T. 16 N., R. 12 E.W.M. (Yakima County Parcel No. 12162399989), then downstream to Naches RM 44.6, within the NE¼SE¼ of Section 4, T. 17 N., R. 14 E.W.M., and then downstream to Yakima RM 116.3, within the SE¼NE¼ of Section 12, T. 13 N., R. 18 E.W.M.; and Rimrock Reservoir/Tieton Dam: at Tieton RM 21.3, within the NE¼SW¼ of Section 31, T. 14 N., R. 14 E.W.M. (Yakima County Parcel No. 14143199989), then downstream to Naches RM 17.5, within the SW¼NE¼ of Section 35, T. 15 N., R. 16 E.W.M.], and ending downstream at the primary reach’s end and these instream flow use Trust water rights’ termination point at the discharge of the Kiona Canal Wasteway to the Yakima River, located approximately 1,830 feet south of the northwest corner of Section 30, being within the SW¼NW¼ of Section 30, T. 10 N., R. 27 E.W.M. (Yakima RM 23.8,</p>
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Table continued on page 21.

Table from page 20 – continued.

<p><b>Place of Use – Trust Water Portions of the 6 USBR and Sunnyside Irrigation Season Water Rights - Continued -</b></p>	<p>Benton County Parcel No. 130072000006000), the last/end spill for the BID service area. When used this way (i.e., Option #2), this instream flow Trust water right would potentially augment instream flows in a total of 283.0 river miles in the Yakima River Basin.</p> <p><b>INSTREAM FLOW TRUST WATER USE SECONDARY REACH</b> – Not applicable. There is no secondary reach.</p> <p><b><u>When the Prorated Remainders of these USBR Trust Water Rights, Created under the 6 Water Right Change/Trust Applications #CS4-01752@12 through #CS4-01752@17, Are Used to Augment Drought-Year Irrigation Water Supply and for General TWSA Use during 70% or Worse Prorating Years</u></b></p> <p><b>IRRIGATION AND GENERAL TWSA TRUST WATER USE –</b></p> <p>Reclamation will manage the prorated remainder of these 9,712 ac-ft/yr of TWSA augmentation Trust water rights (which for example reduces to 8,806 ac-ft/yr at 70% prorating) to generally meet the water supply needs of all of the existing authorized Yakima Basin surface water rights and water uses satisfied out of the TWSA managed by Reclamation, and located generally within the Federal Yakima Reclamation Project exterior boundaries. The places of use for these TWSA augmentation Trust water rights would be the many and various water use locations throughout the Yakima River Basin for all currently-existing authorized water uses supplied by the Yakima Basin TWSA.</p>
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LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE – INSTREAM FLOW TRUST WATER PORTIONS OF WATER RIGHTS Nos. S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J							
REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LONGITUDE	LATITUDE
Begin Normal or Default Primary Reach Option #1	<b>Option #1:</b> Within the Yakima River and its side channels	Yakima RM 103.8	12 N.	19 E.	28	-120.44410° W	46.49859° N
Begin Alternate Primary Reach Option #2	<b>Option #2:</b> Within the Yakima River system and its side channels, beginning at the outlets of each of the 5 Federal Yakima Basin reservoirs	<u>a. Keechelus Dam:</u> Yakima RM 214.5	21 N.	11 E.	12	-121.34060 W	47.32243 N
		<u>b. Kachess Dam:</u> Kachess RM 1.2, then to Yakima RM 203.5	21 N.	13 E.	34	-121.20599 W	47.26497 N

Table continued on page 22.

Table from page 21 – continued.

REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LONGITUDE	LATITUDE
		<u>c. Cle Elum Dam:</u> Cle Elum RM 8.2, then to Yakima RM 185.6	20 N.	14 E.	10	-121.07306 W	47.24790 N
		<u>d. Bumping Dam:</u> Bumping RM 17.0, then to Naches RM 44.6, then to Yakima RM 116.3	16 N.	12 E.	23	-121.30013 W	46.86882 N
		<u>e. Rimrock/Tieton Dam:</u> Tieton RM 21.3, then to Naches RM 17.5	14 E.	14 E.	31	-121.12828 W	46.65637 N
End of Both Primary Reaches (Options #1 and #2)	At Kiona Canal Wasteway's discharge point to the Yakima River	Yakima RM 23.8	10 N.	27 E.	30	-119.49298 W	46.32539 N
No Secondary Reach	N/A - none	N/A	—	—	—	—	—

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE – GENERAL TWSA AUGMENTATION TRUST WATER PORTIONS OF WATER RIGHTS Nos. S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J, DURING 70% OR WORSE PRORATIONING YEARS (Water Right Change/Trust Applications No. CS4-01752@12 through No. CS4-01752@17)**

During 70% or worse prorationing years, Reclamation will manage the prorated remainder of these 9,712 ac-ft/yr of TWSA augmentation Trust water rights (which for example reduces to 8,806 ac-ft/yr at 70% prorationing) to generally meet the water supply needs of all of the existing authorized Yakima Basin surface water rights and water uses satisfied out of the TWSA managed by Reclamation, and located generally within the Federal Yakima Reclamation Project exterior boundaries. The places of use for these TWSA augmentation Trust water rights would be the many and various water use locations throughout the Yakima River Basin for all currently-existing authorized water uses supplied by the Yakima Basin TWSA.

Counties	Waterbody	Tributary To	WRIA's
Kittitas, Yakima, and Benton	The Yakima River, its tributaries, & its side channels	Columbia River	39 - Upper Yakima 38 - Naches 37 - Lower Yakima

<b>Purpose – Instream Flow Trust Portions of Water Rights Nos. S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, &amp; S4-84616-J [under CS4-01752@6 through CS4-01752@17 (12 Change/Trust Apps)]</b>	<b>Rate (CFS)</b>	<b>Unit</b>	<b>Ac-Ft/Yr</b>	<b>Begin Season</b>	<b>End Season</b>
<p>Primary Reach:</p> <p>1) Instream flow Trust water use, only in the primary reach, in the Yakima River system, from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.]</p> <p>[In 70% or worse prorationing years, the prorated remainders of the total 9,712 ac-ft/yr of water in change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 are not available for instream flow Trust water use, but instead are used for general TWSA augmentation Trust water use.]</p>	<p>[Subject to applicable prorationing]</p> <ol style="list-style-type: none"> <li>1. S4-84611-J (CS4-01752@6): 0.43 cfs from 4/01-10/31, or as its usage is otherwise shaped by USBR from 4/01-3/31 or later</li> <li>2. S4-84612-J (CS4-01752@7): 3.15 cfs, or as usage is shaped</li> <li>3. S4-84613-J (CS4-01752@8): 32.63 cfs, or as usage is shaped</li> <li>4. S4-84614-J (CS4-01752@9): 2.84 cfs, or as usage is shaped</li> <li>5. S4-84615-J (CS4-01752@10): 0.03 cfs, or as usage is shaped</li> <li>6. S4-84616-J (CS4-01752@11): 58.38 cfs, or as usage is shaped</li> </ol>	<p>CFS</p>	<p>[Subject to applicable prorationing]</p> <ol style="list-style-type: none"> <li>1. S4-84611-J (CS4-01752@6): 182.90 ac-ft/yr from 4/01-3/31 or later [See Footnote No. 2 on page 1.]</li> <li>2. S4-84612-J (CS4-01752@7): 1,338.65 ac-ft/yr from 4/01-3/31 or later</li> <li>3. S4-84613-J (CS4-01752@8): 13,850.70 ac-ft/yr from 4/01-3/31 or later</li> <li>4. S4-84614-J (CS4-01752@9): 1,206.48 ac-ft/yr from 4/01-3/31 or later</li> <li>5. S4-84615-J (CS4-01752@10): 13.11 ac-ft/yr from 4/01-3/31 or later</li> <li>6. S4-84616-J (CS4-01752@11): 24,779.16 ac-ft/yr from 4/01-3/31 or later</li> </ol>	<p>April 1</p>	<p>March 31 or later of the following year [See Footnote No. 2 on page 1.]</p>

Table continued on page 24.



Table from page 23 – continued.

Purpose – continued	Rate (CFS)	Unit	Ac-Ft/Yr	Begin Season	End Season
	<p><b>7.</b> S4-84611-J (CS4-01752@12): 0.10 cfs, or as usage is shaped</p> <p><b>8.</b> S4-84612-J (CS4-01752@13): 0.74 cfs, or as usage is shaped</p> <p><b>9.</b> S4-84613-J (CS4-01752@14): 7.66 cfs, or as usage is shaped</p> <p><b>10.</b> S4-84614-J (CS4-01752@15): 0.67 cfs, or as usage is shaped</p> <p><b>11.</b> S4-84615-J (CS4-01752@16): 0.01 cfs, or as usage is shaped</p> <p><b>12.</b> S4-84616-J (CS4-01752@17): 13.70 cfs, or as usage is shaped</p> <p><b>TOTAL:</b> 120.34 cfs from 4/01 to 10/31, or as usage is shaped from 4/01 to 3/31 or later [See Footnote No. 2 on page 1.]</p>		<p><b>7.</b> S4-84611-J (CS4-01752@12): 42.94 ac-ft/yr from 4/01-3/31 or later</p> <p><b>8.</b> S4-84612-J (CS4-01752@13): 314.25 ac-ft/yr from 4/01-3/31 or later</p> <p><b>9.</b> S4-84613-J (CS4-01752@14): 3,251.50 ac-ft/yr from 4/01-3/31 or later</p> <p><b>10.</b> S4-84614-J (CS4-01752@15): 283.23 ac-ft/yr from 4/01-3/31 or later</p> <p><b>11.</b> S4-84615-J (CS4-01752@16): 3.08 ac-ft/yr from 4/01-3/31 or later</p> <p><b>12.</b> S4-84616-J (CS4-01752@17): 5,817.00 ac-ft/yr from 4/01-3/31 or later</p> <p><b>TOTAL:</b> 51,083 ac-ft/yr from 04/01 to 3/31 or later [See Footnote No. 2 on page 1.]</p>		
<p>Secondary Reach: Not applicable. There is no secondary reach.</p>	<p>—</p>	<p>—</p>	<p>—</p>	<p>—</p>	<p>—</p>

<b>Purpose – General TWSA Augmentation Trust Portions of Water Rights Nos. S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J [Under CS4-01752@12 through CS4-01752@17 (6 Change/Trust Apps), during 70% or Worse Prorating Periods for Proratable Water Rights]</b>	<b>Rate (CFS)</b>	<b>Unit</b>	<b>Ac-Ft/Yr</b>	<b>Begin Season</b>	<b>End Season</b>
General TWSA augmentation Trust water use at the many water use locations for all currently-existing authorized water uses supplied by the Yakima Basin TWSA, from April 1 through October 31, during 70% or worse prorating periods	<u>The prorated remainders of:</u> <ol style="list-style-type: none"> <li>1. S4-84611-J (CS4-01752@12): 0.10 cfs [e.g., 0.09 cfs at 70% prorating]</li> <li>2. S4-84612-J (CS4-01752@13): 0.74 cfs [e.g., 0.67 cfs at 70% prorating]</li> <li>3. S4-84613-J (CS4-01752@14): 7.66 cfs [e.g., 6.95 cfs at 70% prorating]</li> <li>4. S4-84614-J (CS4-01752@15): 0.67 cfs [e.g., 0.60 cfs at 70% prorating]</li> <li>5. S4-84615-J (CS4-01752@16): 0.01 cfs [e.g., 0.01 cfs at 70% prorating]</li> <li>6. S4-84616-J (CS4-01752@17): 13.70 cfs [e.g., 12.43 cfs at 70% prorating]</li> </ol>	CFS	<u>The prorated remainders of:</u> <ol style="list-style-type: none"> <li>1. S4-84611-J (CS4-01752@12): 42.94 ac-ft/yr [e.g., 38.95 at 70% prorating]</li> <li>2. S4-84612-J (CS4-01752@13): 314.25 ac-ft/yr [e.g., 284.95 ac-ft/yr at 70% prorating]</li> <li>3. S4-84613-J (CS4-01752@14): 3,251.50 ac-ft/yr [e.g., 2,948.17 ac-ft/yr at 70% prorating]</li> <li>4. S4-84614-J (CS4-01752@15): 283.23 ac-ft/yr [e.g., 256.82 ac-ft/yr at 70% prorating]</li> <li>5. S4-84615-J (CS4-01752@16): 3.08 ac-ft/yr [e.g., 2.81 ac-ft/yr at 70% prorating]</li> <li>6. S4-84616-J (CS4-01752@17): 5,817.00 ac-ft/yr [e.g., 5,274.30 ac-ft/yr at 70% prorating]</li> </ol>	April 1	October 31

Table continued on page 26.

Table from page 25 – continued.

Purpose – continued	Rate (CFS)	Unit	Ac-Ft/Yr	Begin Season	End Season
	<b>TOTAL:</b> the prorated remainder of 22.88 cfs [e.g., 20.75 cfs at 70% prorationing]		<b>TOTAL:</b> the prorated remainder of 9,712 ac-ft/yr [e.g., 8,806 ac-ft/yr at 70% prorationing]		

CFS = Cubic Feet per Second; Ac-Ft/Yr = Acre-Feet per Year; Sec. = Section; QQ Q = Quarter-quarter of a Section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

**Purpose and Quantity – Portions of the 6 USBR and Sunnyside Division Water Rights Numbers S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J, Placed in Trust under WRTS Files Nos. CS4-01752@6 through CS4-01752@17 (12 Water Right Change/Trust Applications)**

The 12 water right change/Trust applications No. CS4-01752@6 through No. CS4-01752@17 propose to transfer conserved water portions of Adjudicated Surface Water Right Certificates Nos. S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J, confirmed to the United States of America on behalf of Sunnyside Division (Sunnyside), totaling 51,083 ac-ft/yr of water during full water supply years in the Yakima Basin (but subject to applicable prorationing during Yakima Basin water supply shortfall years), to instream flow Trust water right use in the Yakima River system. During 70% or worse prorationing years/periods for May 10, 1905-priority proratable Yakima Basin water rights, the prorated remainder of the 9,712 ac-ft/yr total of Sunnyside conserved water addressed by the 6 water right change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 would not be used for instream flow Trust use, but instead are proposed to be used as TWSA augmentation Trust water to generally meet the water supply needs for all of the currently-existing authorized Yakima Basin surface water rights and water uses satisfied out of the TWSA managed by Reclamation, and located generally within the Federal Yakima Reclamation Project exterior boundaries.

These conserved water portions are derived from water savings created during the April 1 through October 31 Sunnyside Division irrigation season, and are generated by implementation of the Sunnyside Phase I and Benton Irrigation District water conservation projects (both completed) and the ongoing Sunnyside Phase II water conservation project (scheduled for completion in 2042), funded with Yakima River Basin Water Enhancement Project (YRBWEP) funding. These conserved water portions would create primary-reach-only instream flow Trust water rights in the Yakima River system, with a season of use extending from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.] Since these Sunnyside and BID water conservation projects did not create any reduction in the consumptive use of water, there are no secondary reach instream flow Trust water rights associated with these USBR and Sunnyside Division water rights. And as noted above, during serious drought years/periods in the Yakima Basin when Reclamation declares 70% or worse prorationing, the prorated remainders of the total 9,712 ac-ft/yr of conserved water addressed by the 6 applications No. CS4-01752@12 through No. CS4-01752@17 would not be applied to instream flow Trust water use, but rather would be applied to general TWSA augmentation Trust water use in the Yakima Basin.

The subject 6 Sunnyside water rights (S4-84611-J through S4-84616-J) enjoy 68.9% non-proratable (senior-priority) standing, and 31.1% proratable (May 10, 1905-priority) standing, in the Yakima Basin

TWSA as managed by Reclamation. The proposed Trust water portions of these 6 water rights enjoy the same priority status as the retained continuing off-stream use portions of these 6 water rights.

### **Primary Reach**

#### **- Full Water Supply Years and Years of Better than 70% Proratable Water Rights Supply**

The 12 water right change/Trust applications No. CS4-01752@6 through No. CS4-01752@17 propose to transfer conserved water portions of 6 adjudicated Sunnyside Surface Water Right Certificates numbers S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J, totaling 51,083 ac-ft/yr in full water supply years (31.1% of which is subject to applicable prorationing during water supply shortfall years in the Yakima Basin), to instream flow Trust water right use in the Yakima River system during full water supply years and during minor water supply shortfall years when Reclamation declares prorationing of May 10, 1905-priority proratable Yakima Basin surface water rights at levels from 99.9% down to 70.1% of full 'entitlement' (aka full Federal water supply contract water quantities). This 51,083 ac-ft/yr total block of instream flow Trust water, as prorated, would enhance/augment Yakima River instream flows, either at the constant rate of 120.34 cfs (in full water supply years) from April 1 through October 31 each year, or alternatively as its usage is shaped to maximize biological benefits by larger quantity (in cfs) releases of portions of this water reserved in storage in the 5 Federal Yakima Basin reservoirs (i.e., Keechelus, Kachess, Cle Elum, Bumping, and Tieton/Rimrock Reservoirs) from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.]

#### **- Serious Water Supply Shortfall Years with Prorationing Levels of 70% or Worse**

During serious drought years in the Yakima River Basin, when Reclamation declares 70% or worse prorationing for May 10, 1905-priority Yakima Basin proratable water rights:

- 1) the prorated remainders of the 41,371 ac-ft/yr total of conserved water addressed by water right change/Trust applications No. CS4-01752@6 through No. CS4-01752@11 (6 applications) would continue to be applied to instream flow augmentation Trust water use in the Yakima River system [For example, at 70% prorationing, the prorated remainder of the 41,371 ac-ft/yr total of conserved water addressed by the 6 water right change/Trust applications No. CS4-01752@6 through No. CS4-01752@11 reduces to just 37,511 ac-ft/yr (88.37 cfs, or as usage is shaped)]; but,
- 2) the prorated remainders of the 9,712 ac-ft/yr total of conserved water addressed by water right change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 (6 applications) would no longer be applied to instream flow Trust water use in the Yakima River system, but instead are proposed to be used as Trust water to generally augment the Yakima River Basin's TWSA as managed by Reclamation, to assist in meeting the water supply needs of all of the currently-existing authorized surface water rights and water uses satisfied out of the TWSA, and generally located within the Federal Yakima Reclamation Project exterior boundaries [For example, at 70% prorationing, the prorated remainder of the 9,712 ac-ft/yr total of conserved water addressed by the 6 water right change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 reduces to just 8,806 ac-ft/yr (20.75 cfs, or as usage is shaped)].

### **Secondary Reach**

NOT APPLICABLE, there is no secondary reach.

Source Location – Portions of the USBR and Sunnyside Division Water Rights Placed in Trust			
COUNTIES	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREAS
Kittitas, Yakima, and Benton Counties	The Yakima River, its tributaries, & its side channels	Columbia River	39 – Upper Yakima 38 – Naches 37 – Lower Yakima

### Legal Requirements for Requested Changes

The following is a list of requirements that must be met prior to authorizing the proposed changes to the subject 6 USBR and Sunnyside Division water rights, Adjudicated Certificates numbers S4-84611-J through S4-84616-J (6 irrigation season water rights), proposed by water right change/Trust applications numbers CS4-01752@6 through CS4-01752@17 (12 applications):

#### *Public Notice*

Reclamation published a consolidated Public Notice of these 12 applications in the following three newspapers: the "Ellensburg Daily Record" (Kittitas County), the "Yakima Herald-Republic" (Yakima County), and the "Tri-City Herald" (Benton County), on July 24 and 31, 2019. No letters of protest were received during the 30-day protest period, which expired on August 30, 2019.

#### *Consultation with the Department of Fish and Wildlife and the Water Transfer Working Group*

These 12 Reclamation 'Sunnyside Division' Trust water right change/Trust applications were presented to the Yakima River Basin Water Transfer Working Group (WTWG) during the July 1, 2019 monthly meeting as WTWG Proposal 2019-33 (presented to WTWG simultaneously with WTWG 2019-32 for the water right change application for the water right held by Reclamation on behalf of the Roza Irrigation District). The Department of Fish and Wildlife participates in the WTWG, as does the Yakama Nation, irrigation district representatives, USBR, other agency staff, and interested parties. At the July 1, 2019 meeting, the WDFW and other WTWG participants gave these 12 USBR 'Sunnyside Division' water right change/Trust applications their recommendations for approval, but Kennewick Irrigation District explicitly did not approve of these USBR water right change application. WTWG therefore gave a 'no recommendation' to these applications (WTWG 2019-33).

#### *State Environmental Policy Act*

A water right application is subject to a State Environmental Policy Act (SEPA) threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions is met:

- It is a surface water right application for more than 1 cubic foot per second (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 gallons per minute.
- It is an application that, in combination with other water right applications for the same project, collectively exceeds 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.

These 12 USBR 'Sunnyside Division' water right change/Trust applications, numbers CS4-01752@6 through CS4-01752@17, collectively request that a total of 120.34 cfs (or as usage is otherwise shaped), 51,083 ac-ft/yr, 12 portions of 6 USBR and Sunnyside Division surface water rights (Adjudicated Certificates numbers S4-84611-J through S4-84616-J), be changed from their confirmed purpose of use for irrigation (of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division) and related uses, during full water supply years in the Yakima Basin, to primary-reach-only instream flow Trust water use within the Yakima River system. This Trust water is subject to prorationing during water supply shortfall years during periods when Reclamation declares prorationing of May 10, 1905-priority Yakima Basin proratable water rights. Further, during serious drought years, during periods when Reclamation declares 70% or worse prorationing of Yakima Basin proratable water rights, the prorated remainder of the total 9,712 ac-ft/yr of Trust water addressed under water right change/Trust applications numbers CS4-01752@12 through C4-01752@17 (6 applications) will no longer be applied to instream flow Trust water use, but instead will be applied to general augmentation of the Yakima Basin TWSA Trust water use from April 1 through October 31. [For example, the prorated remainder of this total 9,712 ac-ft/yr block of Trust water is reduced to just 8,806 ac-ft/yr at 70% prorationing.] These 12 applications also request change of the season of use for these 12 portions of these 6 USBR and Sunnyside Division water rights, derived from water savings created during the April 1 through October 31 Sunnyside Division irrigation season, when this water is used for instream flow Trust water use, from the confirmed April 1 through October 31 season of use for the historic irrigation and related uses, to April 1 through March 31 or later of the following year [See Footnote No. 2 on page 1.] for instream flow Trust water use. These 12 'in total up to 120.34 cfs' (or as usage is otherwise shaped) water right change/Trust applications exceed the 1 cfs SEPA categorical exemption limit. Therefore this collective administrative action (i.e., these 12 water right change/Trust application decisions) requires SEPA review and compliance.

Ecology acted as lead agency, reviewed the April 11, 2018 SEPA Environmental Checklist describing and analyzing these actions, determined the subject actions do not have a probable significant adverse impact on the environment, and issued a Determination of Nonsignificance (DNS) on July 24, 2019. Notice of Ecology's DNS was published in the SEPA register on July 24, 2019, and was published on July 24 and 31, 2019 in the "Ellensburg Daily Record", the "Yakima Herald-Republic", and the "Tri-City Herald" newspapers. The SEPA comment period closed on August 7, 2019, with no comments received by Ecology.

Additionally:

- Benton County acted as lead agency and completed SEPA review for the actual construction of the Benton Irrigation District (BID) water conservation project, determining that the BID project would have no probable significant adverse impact on the environment, and issued a Determination of Nonsignificance (DNS) on April 29, 2009. The DNS and the entire official SEPA file for this project are available from the Benton County Planning Department in Prosser, WA, at (509) 786-5612; or a copy of the DNS is available by contacting Ecology's Central Region Office in Union Gap, WA, at (509) 575-2490.
- Sunnyside Division Board of Control with Sunnyside Valley Irrigation District acting as operating agency has acted as lead agency conducting SEPA review for the actual construction of the Sunnyside Phase I and the ongoing Sunnyside Phase II water conservation projects, most recently adopting 2 DNS's for two current construction phases of the Sunnyside Phase II water conservation project, determining that the two project phases do not have a probable significant adverse impact on the environment. These two DNS's and SEPA file are available from the Sunnyside Valley Irrigation District in Sunnyside WA, at (509) 837-6980; or a copy of these two DNS's is available by contacting Ecology's Central Region Office in Union Gap, WA, at (509) 575-2490.

### *National Environmental Policy Act and Federal Endangered Species Act*

The U.S. Bureau of Reclamation prepared a Final Programmatic Environmental Impact Statement (PEIS) for the Yakima River Basin Water Enhancement Project, Washington (YRBWEP), required under the National Environmental Policy Act (NEPA), and signed the Record of Decision adopting that PEIS on March 5, 1999. This PEIS evaluated the environmental impacts of implementing the YRBWEP, and it provides 'umbrella' coverage for implementing the general provisions of the YRBWEP. The PEIS did not discuss site-specific impacts, noting that additional NEPA compliance for specific actions will be developed in the future as appropriate, and that those subsequent NEPA documents will refer to information in the PEIS in a process called tiering. The PEIS analyzed generally the impact of acquiring conserved water from willing participating entities receiving grant funding under the YRBWEP Basin Conservation Plan, as is the case for these 12 subject Trust water right change applications, for instream flow enhancement and groundwater enhancement, and did not identify any negative impacts that would preclude Reclamation from continuing with implementation of YRBWEP water acquisitions.

Reclamation subsequently completed, as required by NEPA, project-specific reviews for Reclamation's funding and implementation of the Sunnyside Division Water Conservation Projects, as follows:

- 1) USBR completed a Sunnyside Division Board of Control Water Conservation Program Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), dated September 21, 2004, for USBR's Federal cost-share funding for implementation of the Sunnyside Phase I water conservation project, finding that this action would have no significant impact on the quality of the human environment or the natural resources in the affected area;
- 2) USBR completed a Sunnyside Division Phase II Conservation Plan EA and FONSI, dated September 4, 2009, for USBR's Federal cost-share funding for implementation of the Sunnyside Phase II water conservation project, concluding that this action would have no significant impact on the quality of the human environment or the natural resources in the affected area;
- 3) USBR completed a Sunnyside Division Conservation Project EA Supplemental Analysis, dated September 11, 2009 (last signature on September 14, 2009). This Analysis was tiered to the September 21, 2004 FONSI for the Sunnyside Division Board of Control Water Conservation Program. The Supplemental Analysis concluded that Reclamation's purchase of the right to use the one-third block of conserved water from Phase I of the Sunnyside Division Water Conservation Project for additional fisheries use (instream flow use) would have no significant impact on the quality of the human environment or the natural resources in the affected area. And since no new significant effects were identified in the Supplemental Analysis, the existing FONSI remains applicable to the Sunnyside Conservation Program, covered in the 2004 EA; and,
- 4) USBR completed a Benton Irrigation District Water Conservation Program EA and FONSI, dated September 25, 2008, for USBR's Federal cost-share funding for implementation of the Benton Irrigation District water conservation project, concluding the action would have no significant impact on the quality of the human environment or the natural resources in the affected area.

Additionally, ESA Consultation:

- Reclamation completed a Biological Assessment (BA) of Potential effects to Middle Columbia River Summer Steelhead from Implementation of the Sunnyside Division (Phase I) Water Conservation Plan, dated July 15, 2004 (July 20, 2004?), concluding that the action may affect but is not likely to adversely affect Middle Columbia River summer steelhead in the Yakima River, and submitted this BA to the National Marine Fisheries Service (NMFS) for informal consultation under Section 7 of the Federal Endangered Species Act (ESA). In its

September 20, 2004 concurrence letter, NMFS concurred with Reclamation's determination that the proposed action is not likely to adversely affect Middle Columbia River steelhead or critical habitat.

- Reclamation completed a BA of Potential Effects to Middle Columbia River Summer Steelhead from Implementation of the Sunnyside Division Phase II Water Conservation Plan, dated July 13, 2009, concluding that the action may affect but is not likely to adversely affect Middle Columbia River summer steelhead in the Yakima River, and submitted this BA to the NMFS for informal consultation under Section 7 of the ESA. In its August 31, 2009 concurrence letter, NMFS concurred with Reclamation's determination that the proposed action is not likely to adversely affect Middle Columbia River steelhead or critical habitat.
- Reclamation completed a BA of Potential Effects to Middle Columbia River Summer Steelhead from Implementation of the Sunnyside Division Phase 2B Water Conservation Plan, dated May 8, 2012, concluding that the action may affect but is not likely to adversely affect Middle Columbia River summer steelhead in the Yakima River, and submitted this BA to NMFS for informal consultation under Section 7 of the ESA. In its June 8, 2012 concurrence letter, NMFS concurred with Reclamation's determination that the proposed action is not likely to adversely affect Middle Columbia River steelhead and their designated critical habitat.
- Reclamation completed a BA of Potential Effects to Middle Columbia River Summer Steelhead from Implementation of the Benton Irrigation District Water Conservation Plan, dated May 16, 2008, and submitted it to NMFS for informal consultation, as required by Section 7 of the ESA. Reclamation concluded in this BA that 'this action may affect but is not likely to adversely affect Middle Columbia River summer steelhead in the Yakima River.' In its June 25, 2008 concurrence letter, NMFS concurred with Reclamation's determination that the proposed action is not likely to adversely affect Middle Columbia River steelhead or critical habitat.

#### *Water Resources Statutes and Case Law*

RCW 90.03.360 requires metering of all water users within fish critical basins. The Yakima River has been designated a fish critical basin. RCW 77.55.320, RCW 77.55.040, and RCW 77.55.070 require all diversions from surface waters of the state to be screened to protect fish.

RCW 90.03.380(1), RCW 90.44.100, Chapter 90.38 RCW, and Chapter 90.42 RCW, provide that a water right that has been put to beneficial use may be changed. The point of withdrawal (POW) or point of diversion (POD), place of use (POU), and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change or transfer of a water right, is required to make a tentative determination of the extent and validity of the right. This is necessary to establish whether a water right is eligible for change (*R.D. Merrill Co. v. PCHB*, 137 Wn.2d 118, 969 P.2d 458 (1999); *Okanogan Wilderness League v. Town of Twisp*, 133 Wn.2d 769, 947 P.2d 732 (1997)). It is not within Ecology's authority to adjudicate or make a final determination of the extent and validity of any water right or claim to a water right, because only the Superior Court has such authority.

Once Ecology tentatively determines that the portion of a water right sought to be changed is valid and eligible for change, then under the relevant change and trust statutes, Ecology must determine that approving the change (e.g., change in purpose of use to instream flow augmentation) will not cause impairment of other existing water rights or impairment of the public interest. RCW 90.42.040(4)(a).



## INVESTIGATION

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In considering this application the investigation included, but was not limited to, research and review of:

- The Washington State Water Code.
- Yakima River Basin Surface Water Rights Adjudication documents, filed with the Yakima County Superior Court, in *The State of Washington, Department of Ecology v. James J. Acquavella, et al. (Acquavella)*: Report of the Court (dated October 23, 2001), Notice of Amendment to Sunnyside Division Water Right Settlement Agreement (dated July 31, 2003 and filed August 4, 2003 – i.e., ‘First Amendment’), Supplemental Report of the Court (dated August 14, 2003) and Amended Stipulation Re: Sunnyside Division (dated July 31, 2003 and filed August 12, 2003), the court’s August 14, 2003 Conditional Final Order (CFO), Sunnyside Division, Court Claim No. 1752, and the court’s Order Granting United States’ Petition for Order Pendente Lite re: Temporary Change, Claim No. 1752, entered May 11, 2010.
- Sunnyside Division Water Right Settlement Agreement, dated May 12, 2003.
- Adjudicated Surface Water Right Certificates numbers S4-84611-J through S4-84616-J (6 certificates) from the May 9, 2019 *Acquavella* Final Schedule of Rights (FSOR).
- Sunnyside Division Board of Control Benton Irrigation District Agreement, dated March 27, 2003.
- The November 4, 2008 Diversion Reduction Agreement between the United States Bureau of Reclamation, Sunnyside Division Board of Control, and Benton Irrigation District, and its February 19, 2009 Addendum.
- Sunnyside Division Board of Control Resolution 2010-04 – 01 Signature Authority for Diversion Reduction Agreement, dated April 20, 2010.
- Diversion Reduction Agreement between the United States of America and the Sunnyside Division Board of Control and its Constituent Entities, dated April 20, 2010.
- Second Amendment to Sunnyside Division Water Rights Settlement Agreement (Additional Point of Diversion and Conserved Water), dated June 23, 2010 (i.e., ‘Second Amendment’).
- Stream flow and diversion data.
- Water Transfer Working Group proposal description for WTWG 2019-33; and review of meeting minutes and proposal recommendations for the WTWG July 1, 2019 meeting.
- Review of file information and Reclamation and Ecology staff communications regarding the Sunnyside Phase I and Phase II and Benton Irrigation District Water Conservation Projects and the subject Trust water right change applications from 2012 to the present.
- Notes from site visits conducted by Ecology staff, including the author, and Reclamation staff and others, from 2004 to the present date.
- Topographic and local area maps.
- Aerial photographs of the site.
- Kittitas County Assessor’s Office, Yakima County Assessor’s Office, and Benton County Assessor’s Office, records.

## History of Water Use and Tentative Determination of Extent and Validity of Water Rights

### *Adjudicated Surface Water Right Certificates (SWC) No. S4-84611-J through No. S4-84616-J (6 Certificates) and Actual Water Use of these USBR and Sunnyside Division Water Rights*

The *Acquavella* Court, in its August 14, 2003 CFO, confirmed 6 different water rights to the United States of America on behalf of the Sunnyside Division and its water users under Court Claim No. 01752, for a total of 1,316 cfs, 435,422 ac-ft/yr, from the Yakima River, for irrigation of 99,244 irrigated acres of the 103,570 irrigable acres within the Sunnyside Division and related uses, from April 1 through October 31, with 6 different priority dates that range from June 29, 1878 through May 10, 1905. The authorized Yakima River diversion point (POD) for the Sunnyside Main Canal is located 130 feet south and 1,500 feet west from the east quarter corner of Section 28, being within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M. These USBR and Sunnyside Division water rights are 31.1% prorable and that proportion of the rights is subject to the applicable rate of prorationing during water supply shortfall years with less than a full water supply for Yakima River Basin prorable surface water right holders.

Ecology authorized a second POD for these 6 USBR and Sunnyside Division water rights on July 21, 2010, under water right change applications No. CS4-01752 through No. CS4-01752@5 (6 applications), that being a new downstream pumpsite POD specifically to serve the Benton Irrigation District service area (4,630 acres) portion of the Sunnyside Division place of use. This second POD is located 480 feet west and 3,989 feet south of the northeast corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M.

These USBR and Sunnyside Division water rights have suffered their applicable drought-year prorationing in 2003, 2004, 2005, 2015, 2016, and 2019. During 2010, Reclamation's TWSA forecasts from March through June (4 monthly forecasts) called for prorationing of prorable Yakima Basin water rights, including the prorable portion (31.1%) of the Sunnyside Division water rights. 2010 ultimately escaped prorationing, and ended as a 100% water supply for prorable water rights, but the early forecasts caused all of the Yakima Basin irrigators to reduce their diversion quantities in order to stretch (successfully) the basin's water supply as far as possible through the 2010 irrigation season. Sunnyside Division began implementing its Phase I water conservation project in 2004, and Reclamation, beginning in 2005, has been reallocating the Sunnyside Phase I and Phase II and Benton ID water conservation projects' conserved water according to the provisions of P.L. 103-434 (the 1994 YRBWEP Act). Reclamation has added the conserved water (as defined in the several diversion reduction agreements between the USBR and Sunnyside Division and Benton Irrigation District), as prorated, to the instream target flows maintained by Reclamation at the Parker and Prosser streamflow gages in the lower Yakima River, as provided by the 1994 YRBWEP Title XII Act. In 2015, a 'worse-than-70%' prorationing year with 47% prorationing, the prorated remainder of the 9,712 ac-ft/yr block of Sunnyside Phase I conserved water that is the subject of water right change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 (6 applications) was not added to the instream target flows in the lower Yakima River, but rather was used for general TWSA augmentation Trust water use in the Yakima Basin, per the provisions of the April 20, 2010 diversion reduction agreement between Reclamation and the Sunnyside Division.

Furthermore, a portion of the total conserved water that has been, and is being, generated by the Sunnyside Division Phase I and Phase II and Benton ID water conservation projects is allocated to augmenting the irrigation water supply for Sunnyside Division, including Benton ID, during drought/prorationing years in the Yakima Basin, according to the provisions of Title XII of P.L. 103-434, the 1994 YRBWEP Act. That retained portion of the total conserved water (i.e., the 'one-third' portions of the total conserved water from the Sunnyside Division Phase II and the Benton ID water conservation projects, retained for continuing irrigation and other off-stream uses) is not addressed by these subject

12 water right change/Trust applications, and will continue in the future to be used to firm up the irrigation water supply for the Sunnyside Division, including Benton ID, during drought/prorating years, and to benefit the Yakima Basin TWSA generally.

Subsection RCW 90.42.040(9) states “Where a portion of an existing water right that is acquired or donated to the trust water rights program will assist in achieving established instream flows, the department shall process the change or amendment of the existing right without conducting a review of the extent and validity of the portion of the water right that will remain with the water right holder.”

- Reclamation is managing this USBR ‘Sunnyside Division’ conserved water for instream flow augmentation in the Yakima River system, which is assisting in achieving the instream flows established by the *Acquavella* Court, and affirmed by the Washington Supreme Court, and documented in Adjudicated Water Right Certificate No. S4-84764-J, the Yakama Nation’s Treaty Reserved Minimum Instream Flow Water Right for Fish and Other Aquatic Life.
- Therefore, Ecology may process these changes of portions of the existing USBR and Sunnyside Division water rights to instream flow Trust water right use and general TWSA augmentation Trust water right use without conducting a review of the extent and validity of the portion of the water right that will remain with the water right holder.

*No Relinquishment of the Portions of These 6 USBR and Sunnyside Division Water Rights that These 12 Applications Request to Be Transferred into the Trust Has Occurred*

Reclamation acquired these 12 Trust water portions (for instream flow and/or general TWSA augmentation Trust water uses) of these 6 USBR and Sunnyside Division water rights under authority of Section 1203 of Title XII (1994 YRBWEP Act), to enhance fish and wildlife, improve instream flows, and improve the reliability of water supply for irrigation, among other purposes. The *Acquavella* Court entered its CFO confirming these 6 USBR and Sunnyside Division water rights embodied in Certificates Nos. S4-84611-J through S4-84616-J on August 14, 2003. On August 15, 2012, Reclamation filed 6 water right change/Trust applications, No. CS4-01752@6 through No. CS4-01752@11, with Ecology, to change portions of Surface Water Rights No. S4-84611-J through No. S4-84616-J (6 rights). Then on September 29, 2016, Reclamation filed an additional 6 water right change/Trust applications with Ecology, No. CS4-01752@12 through No. CS4-01752@17, to change additional portions of those same 6 Surface Water Rights No. S4-84611-J through No. S4-84616-J. Reclamation has been managing the full conserved water portions of these USBR and Sunnyside Division water rights (which are increasing annually in quantity as Sunnyside incrementally completes its Phase II water conservation project) for instream flow augmentation use in the Yakima River system since 2005, in accordance with the provisions of P.L. 103-434, the YRBWEP Act.

The 12 subject conserved water portions of these 6 USBR and Sunnyside water rights, totaling 51,083 ac-ft/yr, have been fully utilized for irrigation prior to implementation of the ongoing YRBWEP-funded Sunnyside and BID water conservation projects. USBR has been utilizing the annually-increasing conserved water portions of these water rights for instream target flow augmentation and general TWSA augmentation use in the Yakima River system since April 1, 2005, as the water conservation projects are implemented, and the conserved water becomes available. Upon full implementation of these water conservation projects in 2042, Reclamation will utilize the full 51,083 ac-ft/yr for the intended instream flow augmentation and general TWSA augmentation uses described elsewhere in this report. Ecology has tentatively determined that these conserved water portions of these water rights, totaling 51,083 ac-ft/yr, are valid and are thus eligible for change and transfer.

## Proposed Uses

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The author will now transition to my review of potential impairment of other water rights and impairment of the public interest.

As detailed elsewhere in this report, Reclamation is proposing to change the purpose of use and place of use and season of use of a 51,083 ac-ft/yr (120.34 cfs, or as usage is otherwise shaped) total portion of these 6 subject USBR and Sunnyside Division water rights, when it's available, and subject to applicable prorationing, to instream flow Trust water use, from April 1 through March 31 or later of the following year [See Footnote No. 2 on page 1.], in the primary reach of the Yakima River system, in either, or in some combination, of the following two ways:

- 1) its default usage would be for constant-rate (120.34 cfs, or as prorated) instream flow augmentation in the Yakima River and its side channels, from Sunnyside Dam at Yakima RM 103.8 downstream to the Kiona Canal Wasteway's discharge point to the Yakima River at Yakima RM 23.8, from April 1 through October 31; or
- 2) alternatively, the shapable portion of this water would be used in the Yakima River system as shaped releases, in varying flow rates in cfs, of storage water from the 5 Federal Yakima Basin reservoirs to maximize biological and fisheries benefits, from the outlet of each of the 5 Federal reservoirs (Keechelus, Kachess, Cle Elum, Bumping, and Tieton/Rimrock Reservoirs), downstream to the Kiona Canal Wasteway discharge point to the Yakima River at Yakima RM 23.8 where these Primary Reach-only Trust water rights terminate, from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.]

During 70% or worse prorationing years for Yakima Basin proratable May 10, 1905-priority water rights, Reclamation proposes to use the prorated remainder of the 9,712 ac-ft/yr block of water addressed by water right change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 (which for example is reduced to 8,806 ac-ft/yr at 70% prorationing) for general TWSA augmentation Trust water use from April 1 through October 31, not for instream flow Trust water use. This 9,712 ac-ft/yr block of water is a portion of the 51,083 ac-ft/yr of total conserved water addressed by Reclamation's 12 water right change/Trust applications No. CS4-01752@6 through No. CS4-01752@17.

This 51,083 ac-ft/yr of instream flow Trust water is derived from the YRBWEP-funded Sunnyside Phase I, Sunnyside Phase II, and Benton ID, water conservation projects, and is derived from YRBWEP-funded water use efficiency improvements on the USBR and Sunnyside Division water rights' place of use, including the Benton Irrigation District service area.

- These projects provide a total of 51,083 ac-ft/yr of conserved water for instream flow Trust water use in full water supply years, and as reduced in total quantity by applicable prorationing, also in minor water supply shortfall years in the Yakima Basin when May 10, 1905-priority proratable Yakima Basin water rights are prorated from 99.9% down to 70.1% of their full water supply.
- During serious drought years, when Reclamation declares 70% or worse prorationing for Yakima Basin proratable water rights, these projects continue to provide the prorated remainder of the 41,371 ac-ft/yr addressed by water right change/Trust applications No. C4-01752@6 through No. CS4-01752@11 (6 applications) for instream flow Trust water use in the Yakima River system from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.]
- During those serious drought years when Reclamation declares 70% or worse prorationing for Yakima Basin proratable water rights, Reclamation will apply the prorated remainder of the 9,712 ac-ft/yr block of water (i.e., the Sunnyside Phase I 'one-third block' of conserved water)

addressed by water right change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 (6 applications) to general TWSA augmentation Trust water use, to benefit existing irrigation water rights and all other existing authorized water uses supplied by the Yakima Basin TWSA, from April 1 through October 31.

#### Other Water Rights Appurtenant to the Proposed Place of Use

There are many other water rights, mostly groundwater rights, appurtenant to lands within the Sunnyside Division service area, including the Benton ID service area, where the confirmed 'irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses' purposes of use for the retained off-stream use portions of these 6 USBR and Sunnyside Division water rights will continue to be exercised.

Several other instream flow Trust water rights share the same instream reach POU as would the 51,083 ac-ft/yr total portions of these 6 USBR and Sunnyside Division water rights that are proposed to be changed to instream flow Trust water right use in the Yakima River system from April 1 through March 31 or later of the following year [See Footnote No. 2 on page 1.], as an added purpose of use, an added place of use, and an extended season of use under Adjudicated Surface Water Certificates No. S4-84611-J through No. S4-84616-J (6 certificates).

The proposed TWSA augmentation Trust water use for the prorated remainder of the 9,712 ac-ft/yr total block of Trust water under these 6 USBR and Sunnyside Division water rights (which for example reduces to 8,806 ac-ft/yr at 70% prorationing), during 70% or worse prorationing years in the Yakima Basin, addressed by water right change/trust applications No. CS4-01752@12 through No. CS4-01752@17 (6 applications), would augment the water supply for the many and varied existing court-confirmed surface water rights and other existing authorized water uses supplied by the Yakima Basin TWSA as managed by Reclamation. The places of use for this Trust water during 70% or worse prorationing years would be the many and various water use locations throughout the Yakima River Basin for all currently-existing authorized water uses supplied by the Yakima Basin TWSA, generally located within the Federal Yakima Reclamation Project's exterior boundaries. There are many other surface and groundwater rights appurtenant to this Yakima Basin-wide place of use for this TWSA augmentation Trust water use block of water.

#### Hydrologic/Hydrogeologic Evaluation

For the purpose of this evaluation of potential impairment of other existing water rights, the primary region of interest extends from the Sunnyside Main Canal POD on the left bank of the Yakima River, at Yakima RM 103.8, downstream to the Kiona Canal Wasteway's discharge point to the Yakima River at Yakima RM 23.8. However, the region of interest also includes the portion of the entire Yakima River system from the outlets of each of the 5 Federal Yakima River Basin Reservoirs, downstream to Kiona Canal Wasteway's discharge point to the Yakima River at Yakima River 23.8, where the proposed instream flow Trust water rights terminate. Kiona Canal Wasteway is the last point where return flows flowing off the Sunnyside Division service area, specifically the Benton ID portion, return to the Yakima River.

The Yakima River has both gaining reaches, where groundwater discharges to the river, and losing reaches, where river water is lost into the groundwater system, in the region of interest.

Reclamation maintains two key stream flow gaging stations on the lower Yakima River: the Parker Gage located downstream of the Sunnyside Diversion Dam, and the Prosser Gage located downstream of the

Prosser Diversion Dam. Reclamation maintains instream target flows in the Yakima River at these two gaging stations throughout the irrigation season each year, from April 1 through October 31. Title XII established base YRBWEP target flows at these two gaging stations. Reclamation maintains those base YRBWEP target flows at the Parker and Prosser gages, plus the additional fallowed consumptive use of the water rights acquired under Title XII YRBWEP Phase 2 authority for instream flow use. Additionally, Reclamation adds other State Trust Water Rights, acquired by Ecology and others, whose secondary reaches carry down the lower Yakima River past the Parker and Prosser gages, to these instream target flows managed by Reclamation. Reclamation also adds conserved water derived from YRBWEP-funded water conservation projects, like the subject Sunnyside Phase I and Phase II and Benton ID water conservation projects, to the base YRBWEP target flows at the Parker and Prosser gages, according to the authority, formulas, and provisions of Title XII. These subject USBR 'Sunnyside' Trust water rights, derived from the YRBWEP-funded Sunnyside Phase I and Phase II and Benton ID water conservation projects, are primary-reach-only Trust water rights that carry downstream past the Parker and Prosser stream flow gaging stations to their termination at the Kiona Canal Wasteway's discharge point to the Yakima River at Yakima RM 23.8. The subject 12 water right change/Trust applications do not create any secondary reach Trust water rights from the 6 USBR and Sunnyside Division water rights that would extend below Yakima RM 23.8.

An undefined portion, likely a major proportion, of the 6 USBR and Sunnyside Division water rights' total conserved water that is proposed to be used, when available, for instream flow Trust water use in the Yakima River system and/or general augmentation of the Yakima Basin TWSA Trust water use, historically returned to the Yakima River above the Prosser Diversion Dam as return flows leaving the Sunnyside Division service area. That portion of the Sunnyside Division return flows that returned to the Yakima River above Prosser Dam was historically available for Kennewick Irrigation District (KID) to divert at its Prosser Dam diversion point and use as a part of KID's water supply.

Both Reclamation staff and the author (Ecology staff) have monitored the physical availability of water to satisfy these 6 USBR and Sunnyside Division water rights since 2003, since the execution of the May 12, 2003 Sunnyside Division Water Right Settlement Agreement among Reclamation, Ecology, Yakama Nation, and the Sunnyside Division and its member entities. Water has always been available in this time period to satisfy these 6 USBR and Sunnyside Division surface water rights at the Sunnyside Main Canal's Yakima River diversion point and at the Benton ID pumpsite that was completed and operational by 2014, except during the 2003, 2004, 2005, 2015, 2016, and 2019 water supply shortfall years, when the proratable portions of these 6 water rights, which in total are 31.1% proratable, were prorated to 92%, 92%, 42%, 47%, 95%, and 72%, respectively, of full Federal water supply contract 'entitlement' quantities/limits. In 2018, Reclamation declared 96% prorating of Yakima Basin proratable water rights, including the proratable 31.1% portions of these 6 USBR and Sunnyside Division water rights, effective June 11, 2018, the 2018 'storage control' date. However on July 1, 2018, Reclamation upgraded the 2018 water supply to a 100% water supply for Yakima Basin proratable water rights for the entire 2018 irrigation season. This continuing monitoring by the author and Reclamation staff since 2003 has ensured that these water rights have been tracked and exercised in the period since the execution of the 2003 Sunnyside Division Water Right Settlement Agreement, with its first Sunnyside Division Diversion Reduction Agreement in Sections 6 and 17. Reclamation proposes to add this 51,083 ac-ft/yr total of Trust water portions of these 6 subject USBR and Sunnyside Division water rights to instream flow augmentation use in the Yakima River system, managed at the Parker and Prosser streamflow gages on the lower Yakima River. The full 51,083 ac-ft/yr, subject to applicable water supply shortfall-year prorating, will be fully available for such use upon completion of the Sunnyside Phase II water conservation project in 2042. During serious Yakima Basin drought years with 70% or worse prorating, Reclamation will use a portion of this 'up to 51,083 ac-ft/yr' total block of Trust water,

specifically the prorated remainder of the 9,712 ac-ft/yr of Trust water addressed by water right change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 (6 applications), not for instream flow Trust water use, but instead for general TWSA augmentation Trust water use in the Yakima Basin.

### Trust Water Rights Place of Use

#### *When Used for Instream Flow Trust Water Use*

The primary reach place of use for these 12 USBR 'Sunnyside Division' primary-reach-only instream flow Trust water rights will be either:

- 1) as its default, instream flow Trust water use within the Yakima River and its side channels, from the Sunnyside Main Canal POD from the Yakima River at Yakima RM 103.8, being within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M. (Yakima County Parcel No. 19122899989), downstream to the primary reach's end at Kiona Canal Wasteway's discharge point to the Yakima River at Yakima RM 23.8, being within the SW¼NW¼ of Section 30, T. 10 N., R. 27 E.W.M. (Benton County Parcel No. 130072000006000);
- 2) or alternatively, instream flow Trust water use within the Yakima River system, from the outlets of each of the 5 Federal Yakima Basin Reservoirs (Keechelus, Kachess, Cle Elum, Bumping, and Tieton/Rimrock Reservoirs), downstream to the primary reach's end at the Kiona Canal Wasteway's discharge point to the Yakima River at Yakima RM 23.8, being within the SW¼NW¼ of Section 30, T. 10 N., R. 27 E.W.M. (Benton County Parcel No. 130072000006000).

These 12 primary-reach-only Trust water rights terminate at Yakima RM 23.8.

There is no secondary reach for these 12 USBR 'Sunnyside Division' instream flow Trust surface water rights.

#### *When Used for General TWSA Augmentation Trust Water Use in the Yakima Basin*

The proposed TWSA augmentation Trust water use for the prorated remainder of the 9,712 ac-ft/yr total block of Trust water under these 6 USBR and Sunnyside Division water rights (which for example reduces to 8,806 ac-ft/yr at 70% prorationing), during 70% or worse prorationing years in the Yakima Basin, addressed by water right change/trust applications No. CS4-01752@12 through No. CS4-01752@17 (6 applications), would be to augment the water supply for the many and varied existing court-confirmed surface water rights and other existing authorized water uses supplied by the Yakima Basin TWSA as managed by Reclamation. The places of use for this Trust water block during 70% or worse prorationing years would be the many and various water use locations throughout the Yakima River Basin for all currently-existing authorized water uses supplied by the Yakima Basin TWSA, generally located within the Federal Yakima Reclamation Project's exterior boundaries.

### Trust Water Right Calculations

Sunnyside Division contractors and staff completed a Water Conservation Plan for the Sunnyside Division, and subsequent detailed engineering studies specifically for the Sunnyside Division Phase I and Phase II water conservation projects. Benton ID contractors and staff completed a Water Conservation Plan for the Benton ID, and subsequent detailed engineering studies specifically for the Benton ID water conservation project. Reclamation and Sunnyside Division and Benton ID have entered Diversion Reduction Agreements in 2003, 2008, and 2010; and Reclamation, Sunnyside Division Board of Control, Benton ID, and Ecology subsequently entered 3-party funding agreements, agreeing to provide YRBWEP

grant funding for construction and implementation of the Sunnyside Phase I and Phase II and Benton ID water conservation projects. These documents defined the quantities of total conserved water that would be generated by each water conservation project, defined the exact quantities of Sunnyside Division's, and Benton ID's, diversion reductions from the Yakima River upon each project's completion, defined the exact quantities of conserved water that would be available for Sunnyside Division and Benton ID to use to augment their water supply shortfall-year water supplies, and also defined the exact quantities of conserved water that each of the projects would make available for Reclamation's use for instream flow Trust water use from April 1 through March 31 or later of the following year [See Footnote No. 2 on page 1.] in the Yakima River system (primary-reach-only Trust water rights) and/or for general TWSA augmentation Trust water use from April 1 through October 31 in the Yakima Basin during 70% or worse prorationing years.

There is no fallowed consumptive use, and therefore no secondary reach, for these surface water rights when used for instream flow Trust water use.

### Impairment Considerations

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Continuing use of the retained majority portion of these 6 USBR and Sunnyside Division (including Benton ID) water rights for irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses will not cause any impairment of any third-party water rights.

Sunnyside Division's, and Benton ID's, implementation of these Sunnyside Division Phase I and Phase II and Benton ID water conservation projects, has allowed both Sunnyside Division and Benton ID to more efficiently supply and satisfy all of their confirmed 'irrigation and related uses' water uses with less water diverted from the Yakima River, without causing any impairment of Sunnyside Division, including Benton ID, water users' water rights.

Sunnyside Division will use a one-third portion (8,250 ac-ft/yr, subject to applicable prorationing) of the total conserved water generated by the Sunnyside Division Phase II water conservation project to augment and firm up Sunnyside Division's drought/prorationing-year water supply, and Benton ID will use a one-third portion (1,449 ac-ft/yr, subject to applicable prorationing) of the total conserved water generated by the Benton ID water conservation project to augment and firm up Benton ID's drought/prorationing-year water supply, thus improving the reliability of the 6 USBR and Sunnyside Division, including Benton ID, 'irrigation and related uses' water rights for the Sunnyside Division's and Benton ID's existing service areas.

Reclamation's use of the prorated remainder of the total 9,712 ac-ft/yr block of Trust water addressed by water right change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 (6 applications), during serious drought years with 70% or worse prorationing of Yakima Basin prorable water rights, for general TWSA augmentation Trust water use, will augment water supplies during serious drought years for irrigation and all other authorized existing water uses supplied by the Yakima Basin TWSA managed by Reclamation.

Reclamation's use of the 51,083 ac-ft/yr (or as prorated and as available) total Trust water portions of the 6 USBR and Sunnyside Division water rights for instream flow Trust water right use will add instream flow Trust water to the Yakima River system.

The proposed instream flow Trust water rights would travel downstream in the Yakima River system to the end of their primary reach and their termination at the discharge point for the Kiona Canal Wasteway at Yakima RM 23.8, below KID's Prosser Diversion Dam. This would reduce by a currently-



undefined amount, the quantity of Sunnyside Division, including Benton ID, return flow water available for KID's future use, as compared to the quantity that KID has historically been able to divert at Prosser Dam and utilize as a part of KID's drought/prorating-year water supply.

KID, Reclamation, Ecology, the Yakama Nation, Sunnyside Division, Benton ID, and other interested parties, are currently discussing how to resolve any potential future diminishment of KID's drought/prorating-year water supply that would be caused by carrying this YRBWEP-funded instream flow Trust water past the KID Prosser Dam diversion point. The parties are exploring several alternatives to ensure no involuntary diminishment of KID's water supply results from upstream YRBWEP-funded water conservation work.

Section 1205(a)(4)(B)(i) of the 1994 YRBWEP Act states that instream target flow increases authorized by the Act "shall not further diminish the amount of water that otherwise would have been delivered by an entity to its water users in years of water proration." Further, Section 1208(d) of the YRBWEP Act states that "[t]he Secretary [of Interior] shall ensure that the irrigation water supply for the Kennewick Irrigation District shall not be negatively affected by conservation...pursuant to this title and any reduction in its irrigation water supply resulting from conservation measures adopted or implemented by other entities pursuant to this title shall be replaced by water developed through subordination, electrification or water exchange, or a combination thereof." KID has historically benefited, during prorating years, from its ability to divert and use return flows. Under state law, KID has no legal right to the continued availability of return flows. Reclamation will continue to work with KID and other parties to ensure compliance with Federal law.

Washington State law does not permit approval of a water right change, if such change causes involuntary impairment, or detriment or injury, to existing third-party water rights.

If future detriment or injury, under Washington State law, of KID's water rights, or any other third-party water right, as a result of these 12 water right change/Trust approvals becomes apparent and is proven in the future, Reclamation shall take such steps as are required, if any, by it under Federal law and state law.

These 12 Reclamation instream flow and/or general TWSA augmentation Trust water rights will be managed according to the Prior Appropriation Doctrine's "first in time is first in right" tenet, and will be subject to a priority call (i.e., regulation and curtailment of use) to satisfy senior-priority water rights, any time when water is determined to not be available to satisfy these rights' specific water right priorities or classes.

These USBR 'Sunnyside Division', including Benton ID, instream flow and/or general TWSA augmentation Trust water rights enjoy the same priority dates as the original water rights confirmed by the court, from which they were derived. These instream flow and/or general TWSA augmentation Trust water rights have been, and will continue to be, exercised and protected only when all potentially-affected senior-priority water rights are fully satisfied.

Approving the requested changes of this 51,083 ac-ft/yr total portion of these 6 USBR and Sunnyside Division surface water rights to primary-reach only instream flow Trust water use in the Yakima River system from April 1 through March 31 or later of the following year [See Footnote No. 2 on page 1.], and/or to general TWSA augmentation Trust water use in the Yakima River Basin from April 1 through October 31, is not anticipated to result in impairment of existing third-party water rights, as defined by Washington State law, or to adversely affect any third-party water rights by "calling" (i.e., regulating) them more frequently. These Trust water rights are subject to future regulation to satisfy any impaired third-party water rights.

Under RCW 90.42.040(4)(a), transfer of these portions of these water rights into the Trust, and their exercise, will not cause impairment of the public interest. These transfers will benefit stream flows and aquatic resources, while not causing impairment of any existing water rights.

## **CONCLUSIONS**

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In accordance with Chapters 90.03, 90.14, 90.38, and 90.42 RCW, the author makes the tentative determination that the 51,083 ac-ft/yr total conserved water portions of the 6 USBR and Sunnyside Division (including Benton ID) Surface Water Rights No. S4-84611-J through No. S4-84616-J (6 certificates), with priority dates ranging from June 29, 1878 through May 10, 1905, represent valid water rights that authorize the diversion and use of:

- a maximum total of 51,083 ac-ft/yr (120.34 cfs), from April 1 through October 31 each year, of surface water from the Yakima River via the Sunnyside Main Canal and the Benton ID pumpsite POD, for use for irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses, that is eligible for transfer to: 1) (for all 12 of the Trust water rights addressed by the 12 USBR water right change/Trust applications No. CS4-01752@6 through No. CS4-01752@17) instream flow Trust water use in the Yakima River system from April 1 through March 31 or later [See Footnote No. 2 on page 1.] of the following year (primary reach only); and 2) (specifically and only for the prorated remainder of the total 9,712 ac-ft/yr of Trust water addressed by the 6 USBR water right change/Trust applications No. CS4-01752@12 through No. CS4-01752@17) general TWSA augmentation Trust water use in the Yakima River Basin from April 1 through October 31 during serious drought years with 70% or worse prorationing of Yakima Basin proratable water rights.
- There is no fallowed consumptive use of water associated with these 6 USBR and Sunnyside Division surface water rights that can be applied to secondary reach Trust water use. There are no secondary reach Trust water rights.

Approval of this Trust water right change will not enhance or enlarge the subject water right.

Approval of these 12 Trust water right changes for this 51,083 ac-ft/yr total portion (subject to applicable prorationing) of the 6 USBR and Sunnyside Division water rights, as conditioned, will not cause impairment, under Washington State law, of other existing water rights, nor will it be detrimental to the public interest.

Approval of these 12 Trust water right changes (Trust applications No. CS4-01752@6 through No. CS4-01752@17) will not enhance or enlarge the subject 6 USBR and Sunnyside Division water rights (Adjudicated Certificates No. S4-84611-J through No. S4-84616-J).

The remainders of the 6 USBR and Sunnyside Division water rights confirmed under Water Right Certificates Nos. S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J, will remain with USBR and Sunnyside Division for continuing off-stream use for irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses from April 1 through October 31.

## **RECOMMENDATIONS**

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Based on the above investigation and conclusions, I recommend that the requests under these 12 water right change/Trust applications, to change this 51,083 ac-ft/yr total portion (subject to applicable prorationing) to instream flow Trust water use in the Yakima River system from April 1 through March 31 or later [See Footnote No. 2 on page 1.] of the following year (under all 12 applications No. CS4-01752@6 through No. CS4-01752@17), and to change the prorated remainder of the

9,712 ac-ft/yr portion during 70% or worse prorationing years for Yakima Basin proratable water rights to general TWSA augmentation Trust water use in the Yakima River Basin from April 1 through October 31 (under only the 6 applications No. CS4-01752@12 through No. CS4-01752@17), of these 6 USBR and Sunnyside Division water rights:

- 1) Certificate No. S4-84611-J, June 29, 1878 date of priority, under water right change/Trust applications No. CS4-01752@6 and No. CS4-01752@12;
- 2) Certificate No. S4-84612-J, June 30, 1878 priority, applications No. CS4-01752@7 and No. CS4-01752@13;
- 3) Certificate No. S4-84613-J, September 3, 1890 priority, applications No. CS4-01752@8 and No. CS4-01752@14;
- 4) Certificate No. S4-84614-J, July 18, 1893 priority, applications No. CS4-01752@9 and No. CS4-01752@15;
- 5) Certificate No. S4-84615-J, May 9, 1905 priority, applications No. CS4-01752@10 and No. CS4-01752@16; and,
- 6) Certificate No. S4-84616-J, May 10, 1905 priority, applications No. CS4-01752@11 and No. CS4-01752@17;

be approved in the amounts and within the limitations listed below and subject to the provisions listed above:

*Purpose of Use and Authorized Quantities – Portions of the 6 USBR and Sunnyside Division Water Rights Numbers S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J, Placed in Trust under WRTS File Nos. CS4-01752@6 through CS4-01752@17 (12 Water Right Change/Trust Applications)*

The amount of water recommended is a maximum limit and the water user may only use the amount of water within the specified limit that is reasonable and beneficial.

The 12 water right change/Trust applications No. CS4-01752@6 through No. CS4-01752@17 transfer conserved water portions of Adjudicated Surface Water Right Certificates numbers S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J, confirmed to the United States of America on behalf of Sunnyside Division (Sunnyside), totaling 51,083 ac-ft/yr of water during full water supply years in the Yakima Basin (but subject to applicable prorationing during Yakima Basin water supply shortfall years), to instream flow Trust water right use in the Yakima River system. During 70% or worse prorationing years/periods for May 10, 1905-priority proratable Yakima Basin water rights, the prorated remainder of the 9,712 ac-ft/yr total of Sunnyside conserved water addressed by the 6 water right change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 would not be used for instream flow Trust use, but instead will be used as TWSA augmentation Trust water to generally meet the water supply needs for all of the currently-existing authorized Yakima Basin surface water rights and water uses satisfied out of the TWSA managed by Reclamation, and located generally within the Federal Yakima Reclamation Project exterior boundaries.

These conserved water portions are derived from water savings created during the April 1 through October 31 Sunnyside Division irrigation season, and are generated by implementation of the Sunnyside Phase I and Benton Irrigation District water conservation projects (both completed) and the ongoing Sunnyside Phase II water conservation project (scheduled for completion in 2042), funded with Yakima River Basin Water Enhancement Project (YRBWEP) funding. These conserved water portions create primary-reach-only instream flow Trust water rights in the Yakima River system, with a season of use extending from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.]

Since these Sunnyside and BID water conservation projects did not create any reduction in the consumptive use of water, there are no secondary reach instream flow Trust water rights associated with these USBR and Sunnyside Division water rights. And as noted above, during serious drought years/periods in the Yakima Basin when Reclamation declares 70% or worse prorationing, the prorated remainders of the total 9,712 ac-ft/yr of conserved water addressed by the 6 applications No. CS4-01752@12 through No. CS4-01752@17 would not be applied to instream flow Trust water use, but rather will be applied to general TWSA augmentation Trust water use in the Yakima Basin.

The subject 6 Sunnyside water rights (S4-84611-J through S4-84616-J) enjoy 68.9% non-proratable (senior-priority) standing, and 31.1% proratable (May 10, 1905-priority) standing, in the Yakima Basin TWSA as managed by Reclamation. The Trust water portions of these 6 water rights enjoy the same priority status as the retained continuing off-stream use portions of these 6 water rights.

### **Primary Reach**

#### **- Full Water Supply Years and Years of Better than 70% Proratable Water Rights Supply**

The 12 water right change/Trust applications No. CS4-01752@6 through No. CS4-01752@17 transfer conserved water portions of 6 adjudicated USBR and Sunnyside Surface Water Right Certificates Nos. S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J, totaling 51,083 ac-ft/yr in full water supply years (31.1% of which is subject to applicable prorationing during water supply shortfall years in the Yakima Basin), to instream flow Trust water right use in the Yakima River system during full water supply years and during minor water supply shortfall years when Reclamation declares prorationing of May 10, 1905-priority proratable Yakima Basin surface water rights at levels from 99.9% down to 70.1% of full 'entitlement' (aka full Federal water supply contract water quantities). This 51,083 ac-ft/yr total block of instream flow Trust water, as prorated, will enhance/augment Yakima River instream flows, either at the constant rate of 120.34 cfs (in full water supply years) from April 1 through October 31 each year, or alternatively as its usage is shaped to maximize biological benefits by larger quantity (in cfs) releases of portions of this water reserved in storage in the 5 Federal Yakima Basin reservoirs (i.e., Keechelus, Kachess, Cle Elum, Bumping, and Tieton/Rimrock Reservoirs) from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.]

#### **- Serious Water Supply Shortfall Years with Prorationing Levels of 70% or Worse**

During serious drought years in the Yakima River Basin, when Reclamation declares 70% or worse prorationing for May 10, 1905-priority Yakima Basin proratable water rights:

- 1) the prorated remainders of the 41,371 ac-ft/yr total of conserved water addressed by water right change/Trust applications No. CS4-01752@6 through No. CS4-01752@11 (6 applications) will continue to be applied to instream flow augmentation Trust water use in the Yakima River system [For example, at 70% prorationing, the prorated remainder of the 41,371 ac-ft/yr total of conserved water addressed by the 6 water right change/Trust applications No. CS4-01752@6 through No. CS4-01752@11 reduces to just 37,511 ac-ft/yr (88.37 cfs, or as usage is shaped)]; but,
- 2) the prorated remainders of the 9,712 ac-ft/yr total of conserved water addressed by water right change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 (6 applications) would no longer be applied to instream flow Trust water use in the Yakima River system, but instead will be used as Trust water to generally augment the Yakima River Basin's TWSA as managed by Reclamation, to assist in meeting the water supply needs of all of the currently-existing authorized surface water rights and water uses satisfied out of the TWSA, and generally located within the Federal Yakima Reclamation Project exterior boundaries [For example, at 70% prorationing, the

prorated remainder of the 9,712 ac-ft/yr total of conserved water addressed by the 6 water right change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 reduces to just 8,806 ac-ft/yr (20.75 cfs, or as usage is shaped)].

**Secondary Reach**

NOT APPLICABLE, there is no secondary reach.

Purpose – Instream Flow Trust Portions of Water Rights Nos. S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, & S4-84616-J [under CS4-01752@6 through CS4-01752@17 (12 Change/Trust Apps)]	Rate (CFS)	Unit	Ac-Ft/Yr	Begin Season	End Season
<p>Primary Reach:</p> <p>1) Instream flow Trust water use, only in the primary reach, in the Yakima River system, from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.]</p> <p>[In 70% or worse prorationing years, the prorated remainders of the total 9,712 ac-ft/yr of water in change/Trust applications No. CS4-01752@12 through No. CS4-01752@17 are not available for instream flow Trust water use, but instead are used for general TWSA augmentation Trust water use.]</p>	<p>[Subject to applicable prorationing]</p> <p><u>1.</u> S4-84611-J (CS4-01752@6): 0.43 cfs from 4/01-10/31, or as its usage is otherwise shaped by USBR from 4/01-3/31 or later</p> <p><u>2.</u> S4-84612-J (CS4-01752@7): 3.15 cfs, or as usage is shaped</p> <p><u>3.</u> S4-84613-J (CS4-01752@8): 32.63 cfs, or as usage is shaped</p> <p><u>4.</u> S4-84614-J (CS4-01752@9): 2.84 cfs, or as usage is shaped</p> <p><u>5.</u> S4-84615-J (CS4-01752@10): 0.03 cfs, or as usage is shaped</p>	<p>CFS</p>	<p>[Subject to applicable prorationing]</p> <p><u>1.</u> S4-84611-J (CS4-01752@6): 182.90 ac-ft/yr from 4/01-3/31 or later [See Footnote No. 2 on page 1.]</p> <p><u>2.</u> S4-84612-J (CS4-01752@7): 1,338.65 ac-ft/yr from 4/01-3/31 or later</p> <p><u>3.</u> S4-84613-J (CS4-01752@8): 13,850.70 ac-ft/yr from 4/01-3/31 or later</p> <p><u>4.</u> S4-84614-J (CS4-01752@9): 1,206.48 ac-ft/yr from 4/01-3/31 or later</p> <p><u>5.</u> S4-84615-J (CS4-01752@10): 13.11 ac-ft/yr from 4/01-3/31 or later</p>	<p>April 1</p>	<p>March 31 or later of the following year [See Footnote No. 2 on page 1.]</p>

Table continued on page 45.

Table from page 44 – *continued*.

Purpose – <i>continued</i>	Rate (CFS)	Unit	Ac-Ft/Yr	Begin Season	End Season
	<u>6.</u> S4-84616-J (CS4-01752@11): 58.38 cfs, or as usage is shaped		<u>6.</u> S4-84616-J (CS4-01752@11): 24,779.16 ac-ft/yr from 4/01-3/31 or later		
	<u>7.</u> S4-84611-J (CS4-01752@12): 0.10 cfs, or as usage is shaped		<u>7.</u> S4-84611-J (CS4-01752@12): 42.94 ac-ft/yr from 4/01-3/31 or later		
	<u>8.</u> S4-84612-J (CS4-01752@13): 0.74 cfs, or as usage is shaped		<u>8.</u> S4-84612-J (CS4-01752@13): 314.25 ac-ft/yr from 4/01-3/31 or later		
	<u>9.</u> S4-84613-J (CS4-01752@14): 7.66 cfs, or as usage is shaped		<u>9.</u> S4-84613-J (CS4-01752@14): 3,251.50 ac-ft/yr from 4/01-3/31 or later		
	<u>10.</u> S4-84614-J (CS4-01752@15): 0.67 cfs, or as usage is shaped		<u>10.</u> S4-84614-J (CS4-01752@15): 283.23 ac-ft/yr from 4/01-3/31 or later		
	<u>11.</u> S4-84615-J (CS4-01752@16): 0.01 cfs, or as usage is shaped		<u>11.</u> S4-84615-J (CS4-01752@16): 3.08 ac-ft/yr from 4/01-3/31 or later		
	<u>12.</u> S4-84616-J (CS4-01752@17): 13.70 cfs, or as usage is shaped		<u>12.</u> S4-84616-J (CS4-01752@17): 5,817.00 ac-ft/yr from 4/01-3/31 or later		

Table continued on page 44.

Table from page 45 – continued.

Purpose – continued	Rate (CFS)	Unit	Ac-Ft/Yr	Begin Season	End Season
	<b>TOTAL:</b> 120.34 cfs from 4/01 to 10/31, or as usage is shaped from 4/01 to 3/31 or later [See Footnote No. 2 on page 1.]		<b>TOTAL:</b> 51,083 ac-ft/yr from 04/01 to 3/31 or later [ See Footnote No. 2 on page 1.]		
Secondary Reach: Not applicable. There is no secondary reach.	—	—	—	—	—

Purpose – General TWSA Augmentation Trust Portions of Water Rights Nos. S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J [Under CS4-01752@12 through CS4-01752@17 (6 Change/Trust Apps), during 70% or Worse Prorating Periods for Proratable Water Rights]	Rate (CFS)	Unit	Ac-Ft/Yr	Begin Season	End Season
General TWSA augmentation Trust water use at the many water use locations for all currently-existing authorized water uses supplied by the Yakima Basin TWSA, from April 1 through October 31, during 70% or worse prorating periods	<u>The prorated remainders of:</u>  1. S4-84611-J (CS4-01752@12): 0.10 cfs [e.g., 0.09 cfs at 70% prorating]  2. S4-84612-J (CS4-01752@13): 0.74 cfs [e.g., 0.67 cfs at 70% prorating]	CFS	<u>The prorated remainders of:</u>  1. S4-84611-J (CS4-01752@12): 42.94 ac-ft/yr [e.g., 38.95 at 70% prorating]  2. S4-84612-J (CS4-01752@13): 314.25 ac-ft/yr [e.g., 284.95 ac-ft/yr at 70% prorating]	April 1	October 31

Table continued on page 47.

Table from page 46 - *continued*.

Purpose - <i>continued</i>	Rate (CFS)	Unit	Ac-Ft/Yr	Begin Season	End Season
	<u>3.</u> S4-84613-J (CS4-01752@14): 7.66 cfs [e.g., 6.95 cfs at 70% prorationing]		<u>3.</u> S4-84613-J (CS4-01752@14): 3,251.50 ac-ft/yr [e.g., 2,948.17 ac-ft/yr at 70% prorationing]		
	<u>4.</u> S4-84614-J (CS4-01752@15): 0.67 cfs [e.g., 0.60 cfs at 70% prorationing]		<u>4.</u> S4-84614-J (CS4-01752@15): 283.23 ac-ft/yr [e.g., 256.82 ac-ft/yr at 70% prorationing]		
	<u>5.</u> S4-84615-J (CS4-01752@16): 0.01 cfs [e.g., 0.01 cfs at 70% prorationing]		<u>5.</u> S4-84615-J (CS4-01752@16): 3.08 ac-ft/yr [e.g., 2.81 ac-ft/yr at 70% prorationing]		
	<u>6.</u> S4-84616-J (CS4-01752@17): 13.70 cfs [e.g., 12.43 cfs at 70% prorationing]  <b>TOTAL:</b> the prorated remainder of 22.88 cfs [e.g., 20.75 cfs at 70% prorationing]		<u>6.</u> S4-84616-J (CS4-01752@17): 5,817.00 ac-ft/yr [e.g., 5,274.30 ac-ft/yr at 70% prorationing]  <b>TOTAL:</b> the prorated remainder of 9,712 ac-ft/yr [e.g., 8,806 ac-ft/yr at 70% prorationing]		

CFS = Cubic Feet per Second; Ac-Ft/Yr = Acre-Feet per Year; Sec. = Section; Q/Q = Quarter-quarter of a Section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.



Source Location – Portions of the USBR and Sunnyside Division Water Rights Placed in Trust			
COUNTIES	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREAS
Kittitas, Yakima, and Benton Counties	The Yakima River, its tributaries, & its side channels	Columbia River	39 – Upper Yakima 38 – Naches 37 – Lower Yakima

<p><b>Place of Use – Trust Water Portions of the 6 USBR and Sunnyside Irrigation Season Water Rights</b></p>	<p><b><u>When these USBR Trust Water Rights, Created under the 12 Water Right Change/Trust Applications #CS4-01752@6 through #CS4-01752@17, as Prorated, Are Available for Instream Flow Trust Water Right Use</u></b></p> <p><b>INSTREAM FLOW TRUST WATER USE PRIMARY REACH –</b></p> <p>Reclamation will manage this 51,083 ac-ft/yr (subject to applicable prorationing) block of instream flow Trust water rights, subject to its availability for instream flow use as described below under ‘Purpose and Quantity’, in one of two ways (or in a combination thereof), either:</p> <p><u>1)</u> as normal, or default, constant rate instream flow augmentation Trust water rights in the Yakima River and its side channels from April 1 through October 31, from Sunnyside Dam at Yakima River Mile (RM) 103.8 (Yakima County Parcel No. 19122899989), downstream to the discharge of Spring/Snipes Creek to the Yakima River at Yakima RM 41.8 (Benton County Parcel No. 127953013247002), which is the last return flow point from the Sunnyside Valley Irrigation District (SVID) service area, then downstream past the new Benton Irrigation District (BID) Yakima River pump plant at Yakima RM 32.5 (Benton County Parcel No. 111964000004000), and continuing downstream to the primary reach’s end and these instream flow use Trust water rights’ termination at the discharge of the Kiona Canal Wasteway to the Yakima River at Yakima RM 23.8 (Benton County Parcel No. 130072000006000), the last/end spill for the BID service area; or,</p> <p><u>2)</u> alternatively, as shaped usage instream flow augmentation Trust water rights, at varying rates of flow in cfs, from April 1 through March 31 or later of the following year. [See Footnote No. 2 on page 1.] Under this alternate shaped usage option #2, Reclamation may choose to retain the storable portions of these instream flow use Trust water rights in the 5 Federal Yakima Basin reservoirs to make shaped releases of the stored instream flow use Trust water, in varying rates of flow in cfs, from April 1 through March 31 or later of the following year [See Footnote No. 2 on page 1.], to maximize fisheries and habitat benefits. The place of use for this alternate usage option #2 would be from the outlets of each of the 5 Federal Yakima Basin reservoirs, downstream to the primary reach’s end and these Trust water rights’ termination at the discharge of the Kiona Canal Wasteway to the Yakima River at Yakima RM 23.8 (Benton County Parcel No. 130072000006000); or,</p> <p><u>3)</u> in some combination of the above 2 usage patterns.</p> <p><b><u>Option #1: Normal or Default Constant-Rate Instream flow Trust Water Rights Primary Reach Place of Use (from April 1 through October 31)</u></b></p> <p>Within the Yakima River and its side channels, with the primary reach beginning at the Sunnyside Canal diversion point (POD) from the Yakima River, located 130 feet south and 1500 feet west of the east quarter corner of Section 28, being within the NW¼SE¼</p>
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Table continued on page 49.

Table from page 48 – continued.

<p><b>Place of Use – continued</b></p>	<p>of Section 28, T. 12 N., R. 19 E.W.M. (Yakima RM 103.8, Yakima County Parcel No. 19122899989); and travelling down the Yakima River and its side channels, downstream to the discharge of Spring/Snipes Creek to the Yakima River, located approximately 1,560 feet north and 2,170 feet east of the southwest corner of Section 27, being within the NE¼SW¼ of Section 27, T. 9 N., R. 25 E.W.M. (Yakima RM 41.8, Benton County Parcel No. 127953013247002), which is the last return flow point from the Sunnyside Valley Irrigation District (SVID) service area; then downstream past the new BID Yakima River pump plant POD, located approximately 480 feet west and 3,989 feet south of the northeast corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M. (Yakima RM 32.5, Benton County Parcel No. 111964000004000); and continuing downstream to the primary reach’s end and these instream flow Trust water rights’ termination point at the discharge of the Kiona Canal Wasteway to the Yakima River, located approximately 1,830 feet south of the northwest corner of Section 30, being within the SW¼NW¼ of Section 30, T. 10 N., R. 27 E.W.M. (Yakima RM 23.8, Benton County Parcel No. 130072000006000), the last/end spill for the BID service area. When used this way (i.e., Option #1), these instream flow use Trust water rights augment instream flows in a total of 80.0 Yakima River miles.</p> <p><u><b>Option #2: Alternate Shaped Usage Instream Flow Trust Water Rights Primary Reach Place of Use (from April 1 through March 31 or later of the Following Year) [See Footnote No. 2 on page 1.]</b></u></p> <p>Within those portions of the entire Yakima River system beginning immediately downstream of each of the 5 Federal Yakima Basin reservoirs [Keechelus Reservoir Dam: at Yakima RM 214.5, within the SE¼NE¼ of Section 12, T. 21 N., R. 11 E.W.M. (Kittitas County Parcel No. 906535); Kachess Reservoir Dam: at Kachess RM 1.2, within the NW¼SW¼ of Section 34, T. 21 N., R. 13 E.W.M. (Kittitas County Parcel No. 386935), then downstream to Yakima RM 203.5, within the NW¼SE¼ of Section 3, T. 20 N., R. 13 E.W.M.; Cle Elum Reservoir Dam: at Cle Elum RM 8.2, within the NE¼NE¼ of Section 10, T. 20 N., R. 14 E.W.M. (Kittitas County Parcel No. 102434), then downstream to Yakima RM 185.6, within the SW¼SE¼ of Section 32, T. 20 N., R. 15 E.W.M.; Bumping Reservoir Dam: at Bumping RM 17.0, within Section 23, T. 16 N., R. 12 E.W.M. (Yakima County Parcel No. 12162399989), then downstream to Naches RM 44.6, within the NE¼SE¼ of Section 4, T. 17 N., R. 14 E.W.M., and then downstream to Yakima RM 116.3, within the SE¼NE¼ of Section 12, T. 13 N., R. 18 E.W.M.; and Rimrock Reservoir/Tieton Dam: at Tieton RM 21.3, within the NE¼SW¼ of Section 31, T. 14 N., R. 14 E.W.M. (Yakima County Parcel No. 14143199989), then downstream to Naches RM 17.5, within the SW¼NE¼ of Section 35, T. 15 N., R. 16 E.W.M.], and ending downstream at the primary reach’s end and these instream flow use Trust water rights’ termination point at the discharge of the Kiona Canal Wasteway to the Yakima River, located approximately 1,830 feet south of the northwest corner of Section 30, being within the SW¼NW¼ of Section 30, T. 10 N., R. 27 E.W.M. (Yakima RM 23.8, Benton County Parcel No. 130072000006000), the last/end spill for the BID service area. When used this way (i.e., Option #2), this instream flow Trust water right would potentially augment instream flows in a total of 283.0 river miles in the Yakima River Basin.</p> <p><b>INSTREAM FLOW TRUST WATER USE SECONDARY REACH</b> – Not applicable. There is no secondary reach.</p>
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Table continued on page 50.

Table from page 49 – continued.

<p><b>Place of Use – continued</b></p>	<p><b><u>When the Prorated Remainders of these USBR Trust Water Rights, Created under the 6 Water Right Change/Trust Applications #CS4-01752@12 through #CS4-01752@17, Are Used to Augment Drought-Year Irrigation Water Supply and for General TWSA Use during 70% or Worse Prorationing Years</u></b></p> <p><b>IRRIGATION AND GENERAL TWSA TRUST WATER USE –</b></p> <p>Reclamation will manage the prorated remainder of these 9,712 ac-ft/yr of TWSA augmentation Trust water rights (which for example reduces to 8,806 ac-ft/yr at 70% prorationing) to generally meet the water supply needs of all of the existing authorized Yakima Basin surface water rights and water uses satisfied out of the TWSA managed by Reclamation, and located generally within the Federal Yakima Reclamation Project exterior boundaries. The places of use for these TWSA augmentation Trust water rights would be the many and various water use locations throughout the Yakima River Basin for all currently-existing authorized water uses supplied by the Yakima Basin TWSA.</p>
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LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE – INSTREAM FLOW TRUST WATER PORTIONS OF WATER RIGHTS Nos. S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J							
REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LONGITUDE	LATITUDE
Begin Normal or Default Primary Reach Option #1	<b>Option #1:</b> Within the Yakima River and its side channels	Yakima RM 103.8	12 N.	19 E.	28	-120.44410° W	46.49859° N
Begin Alternate Primary Reach Option #2	<b>Option #2:</b> Within the Yakima River system and its side channels, beginning at the outlets of each of the 5 Federal Yakima Basin reservoirs	<b>a. Keechelus Dam:</b> Yakima RM 214.5	21 N.	11 E.	12	-121.34060 W	47.32243 N
		<b>b. Kachess Dam:</b> Kachess RM 1.2, then to Yakima RM 203.5	21 N.	13 E.	34	-121.20599 W	47.26497 N
		<b>c. Cle Elum Dam:</b> Cle Elum RM 8.2, then to Yakima RM 185.6	20 N.	14 E.	10	-121.07306 W	47.24790 N

Table continued on page 51.

Table from page 50 – continued.

REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LONGITUDE	LATITUDE
		d. Bumping Dam: Bumping RM 17.0, then to Naches RM 44.6, then to Yakima RM 116.3	16 N.	12 E.	23	-121.30013 W	46.86882 N
		e. Rimrock/Tieton Dam: Tieton RM 21.3, then to Naches RM 17.5	14 E.	14 E.	31	-121.12828 W	46.65637 N
End of Both Primary Reaches (Options #1 and #2)	At Kiona Canal Wasteway's discharge point to the Yakima River	Yakima RM 23.8	10 N.	27 E.	30	-119.49298 W	46.32539 N
No Secondary Reach	N/A - none	N/A	—	—	—	—	—

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE – GENERAL TWSA AUGMENTATION TRUST WATER PORTIONS OF WATER RIGHTS Nos. S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J, DURING 70% OR WORSE PRORATIONING YEARS (Water Right Change/Trust applications No. CS4-01752@12 through No. CS4-01752@17)**

During 70% or worse prorationing years, Reclamation will manage the prorated remainder of these 9,712 ac-ft/yr of TWSA augmentation Trust water rights (which for example reduces to 8,806 ac-ft/yr at 70% prorationing) to generally meet the water supply needs of all of the existing authorized Yakima Basin surface water rights and water uses satisfied out of the TWSA managed by Reclamation, and located generally within the Federal Yakima Reclamation Project exterior boundaries. The places of use for these TWSA augmentation Trust water rights would be the many and various water use locations throughout the Yakima River Basin for all currently-existing authorized water uses supplied by the Yakima Basin TWSA.

Counties	Waterbody	Tributary To	WRIA's
Kittitas, Yakima, and Benton	The Yakima River, its tributaries, & its side channels	Columbia River	39 - Upper Yakima 38 - Naches 37 - Lower Yakima

**NOTE:** The remainders of each of the USBR and Sunnyside Division irrigation season Water Rights S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J, remain unchanged. These quantities have not been evaluated for their extent and validity as detailed above (RCW 90.42.040(9)), and therefore this report should not be used as evidence towards future changes to these water rights relying upon a simplified tentative determination. The unchanged portions are NOT placed in Trust, and remain with Reclamation and Sunnyside Division (including Benton ID) for

continuing off-stream use for irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses from April 1 through October 31, as follows (NOT PLACED IN TRUST):

<b>Water Right Owner:</b>	United States of America on behalf of Sunnyside Division
<b>Priority Dates:</b>	<ol style="list-style-type: none"> <li>1. S4-84611-J: June 29, 1878 [as changed/reduced by CS4-01752@6 &amp; CS4-01752@12]</li> <li>2. S4-84612-J: June 30, 1878 [as changed/reduced by CS4-01752@7 &amp; CS4-01752@13]</li> <li>3. S4-84613-J: September 3, 1890 [as changed/reduced by CS4-01752@8 &amp; CS4-01752@14]</li> <li>4. S4-84614-J: July 18, 1893 [as changed/reduced by CS4-01752@9 &amp; CS4-01752@15]</li> <li>5. S4-84615-J: May 9, 1905 [as changed/reduced by CS4-01752@10 &amp; CS4-01752@16]</li> <li>6. S4-84616-J: May 10, 1905 [as changed/reduced by CS4-01752@11 &amp; CS4-01752@17]</li> </ol>
<b>Place of Use</b>	<p>"Irrigable acres within the Sunnyside Division exterior boundaries as of the date of this Stipulation (July 31, 2003) as described in the Attachment 1 metes and bounds legal description and the Attachment 2 map which are incorporated herein. Attachment 1 is controlling as the description of the Sunnyside Division's place of use."</p> <p>Multiple Yakima County and Benton County Tax Parcels.]</p>

Counties	Waterbody	Tributary To	WRIA's
Yakima and Benton	Yakima River	Columbia River	37 - Lower Yakima

Purpose and Quantities – Portions of Water Rights Nos. S4-84611-J, S4-84612-J, S4-84613-J, S4-84614-J, S4-84615-J, and S4-84616-J, Not Placed in Trust					
Purpose	Rate (CFS)	Unit	Ac-Ft/Yr	Begin Season	End Season
Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses.	1. S4-84611-J (as changed/reduced by CS4-01752@6 & CS4-01752@12): 23.39 [23.13 cfs at POD #1 (Sunnyside Canal POD) + 0.26 cfs at POD #2 (BID Pumpsite) = 23.39 cfs]	CFS	1. 1,699.16 ac-ft/yr [1,630.09 at POD #1 + 69.07 at POD #2 = 1,699.16 ac-ft/yr]	April 1	October 31
	2. S4-84612-J (as changed/reduced by CS4-01752@7 & CS4-01752@13): 29.57 [27.63 cfs at POD #1 + 1.94 cfs at POD #2 = 29.57 cfs]		2. 12,436.11 ac-ft/yr [11,930.59 at POD #1 + 505.52 at POD #2 = 12,436.11 ac-ft/yr]		
	3. S4-84613-J (as changed/reduced by CS4-01752@8 & CS4-01752@14): 491.13 [471.04 cfs at POD #1 + 20.09 cfs at POD #2 = 491.13 cfs]		3. 128,673.80 ac-ft/yr [123,443.34 at POD #1 + 5,230.46 at POD #2 = 128,673.80 ac-ft/yr]		

Table continued on page 51.


Table from page 52 – continued.

Purpose	Rate (CFS)	Unit	Ac-Ft/Yr	Begin Season	End Season
	4. S4-84614-J (as changed/reduced by CS4-01752@9 & CS4-01752@15): 26.00 [24.25 cfs at POD #1 + 1.75 cfs at POD #2 = 26.00 cfs]		4. 11,208.29 ac-ft/yr [10,752.68 at POD #1 + 455.61 at POD #2 = 11,208.29 ac-ft/yr]		
	5. S4-84615-J (as changed/reduced by CS4-01752@10 & CS4-01752@16): 1.96 [1.94 cfs at POD #1 + 0.02 cfs at POD #2 = 1.96 cfs]		5. 121.80 ac-ft/yr [116.85 at POD #1 + 4.95 at POD #2 = 121.80 ac-ft/yr]		
	6. S4-84616-J (as changed/reduced by CS4-01752@11 & CS4-01752@17): 606.95 [571.01 cfs at POD #1 + 35.94 cfs at POD #2 = 606.95 cfs]		6. 230,199.84 ac-ft/yr [220,842.45 at POD #1 + 9,357.39 at POD #2 = 230,199.84 ac-ft/yr]		
	<b>TOTAL RETAINED:</b> 1,179 cfs [1,119 cfs at POD #1 + 'up to 60 cfs' at POD #2 = 1,179 cfs]		<b>TOTAL RETAINED:</b> 384,339 ac-ft/yr [368,716 at POD #1 + 15,623 at POD #2 = 384,339 ac-ft/yr]		

**Note:** USBR/Sunnyside Division water rights are subject to prorationing during Yakima River Basin water supply shortfall years when Reclamation declares prorationing of May 10, 1905-priority proratable water rights, in the ratio of 31.1% proratable and 68.9% non-proratable senior-priority water rights.

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Longitude	Latitude
Yakima River #1: (via Sunnyside Main Canal POD):	#1: 19122899989 (Yakima County)	12 N.	19 E.	28	NWSE	-120.44410° W	46.49859° N
#2: (via Benton ID pump plant POD):	#2: 111964000004000 (Benton County)	9 N.	26 E.	11	SE	-119.51717° W	46.27479° N

CFS = Cubic Feet per Second; Ac-Ft/Yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a Section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

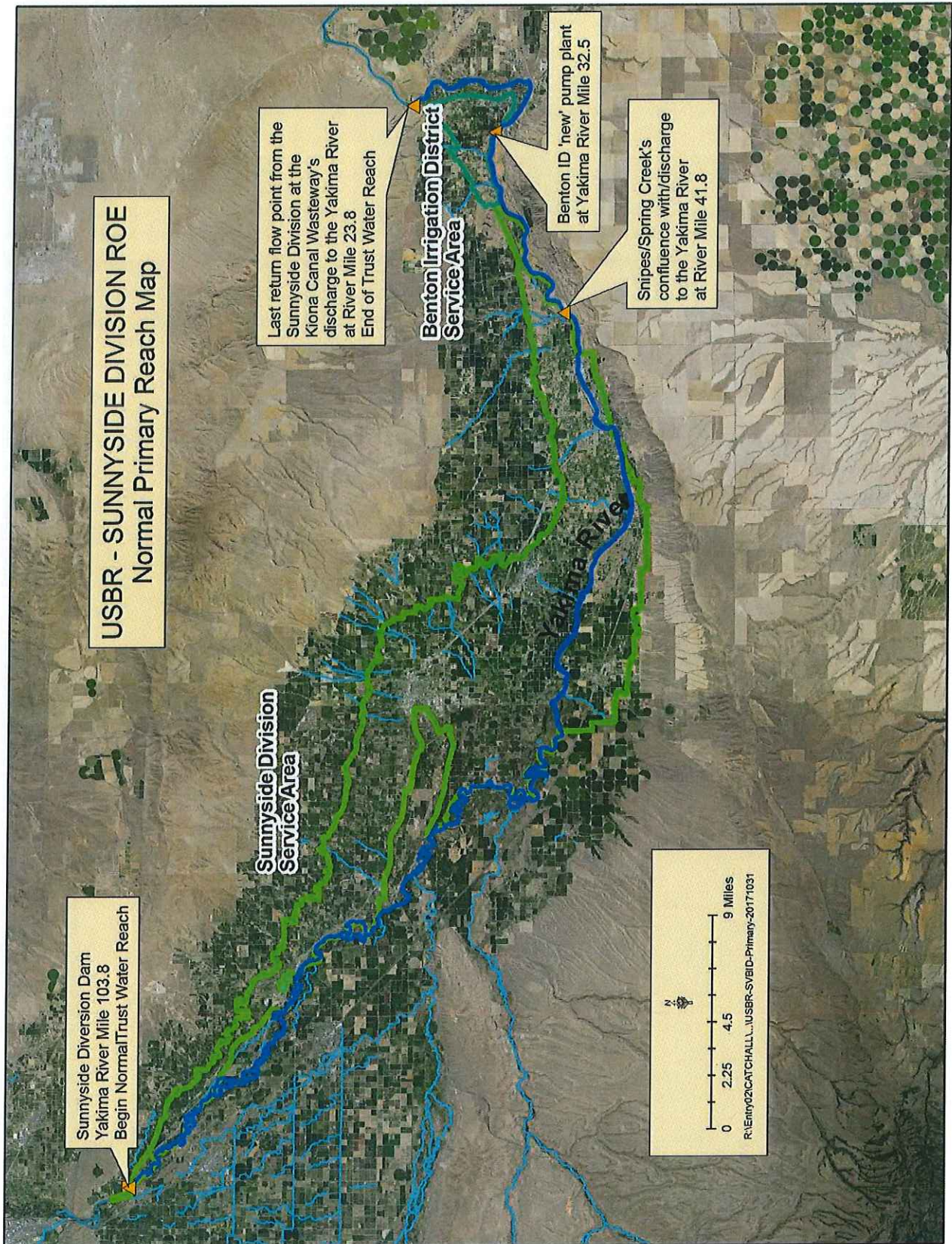
  
 \_\_\_\_\_  
 Stan Isley, Permit Writer

December 23, 2019  
 \_\_\_\_\_  
 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.

Attachment 1

USBR 'Sunnyside Division' TRUST – Normal or Default Instream Flow Trust Water POU



Attachment 2

USBR 'Sunnyside Division' TRUST - Alternate Instream Flow Trust Water POU,  
 also Generally Showing TWSA Augmentation Trust Water POU (Yakima Basin Project Irrigated Lands)

