Updated 2018-18

WATER TRANSFER WORKING GROUP PROJECT DESCRIPTION

APPLICATION NO./COURT CLAIM NO.		
1) Transfer of CS4-01467@11sb3a(B) to Instream Flow (No. CS4-01467@11sb3a(B)@1) 2) New mitigated water right (No. S4-35967)		
APPLICANT NAME	CONTACT NAME	TELEPHONE NO.
Mack Creek Ranch LLC	Peter Dykstra	206-949-0130
WATER RIGHT HOLDER'S NAME (if different)		EMAIL
1) Harry James Masterson Testamentary Trust; 2) Mack Creek Ranch LLC		peter@plauchecarr.com

DATE OF APPLICATION	PRIORITY DATE
1) October 13, 2017 2) October 13, 2017	1) June 30, 1883 2) October 13, 2017

WATER SOURCE:	CROP:
1) Teanaway River 2) Masterson Water Bank / Teanaway River	1) Timothy Hay 2) Timothy Hay
INSTANTANEOUS QUANTITY:	ANNUAL QUANTITY:
1) 2.21 cfs 2) 0.35 cfs	1) 379.75 af (284.82 af CU) 2) 37.13 af (31.559 af CU from Masterson Water Bank)
PERIOD OF USE:	
1) May 1 through September 15 2) May 1 through September 15	
PLACE OF USE:	PURPOSE OF USE:
1) Teanaway River (see Figure 2) 2) Mack Creek Ranch (see Figure 1)	1) Instream Flow and Mitigation 2) Irrigation of 17.5 acres, not to exceed 31.559 af CU
IRRIGATION METHOD:	
1) None 2) Wheel line, handline, and center pivot	

CONSUMPTIVE USE CALCULATION:

1) No. CS4-01467@11sb3a(B)@1 – In 2012, Ecology approved change application No. CS4-01467@11sb3a. The change application transferred 0.87 cfs and 149.45 ac-ft/yr (fallowing 60 acres) to instream flow. In addition, 0.335 cfs and 49.12 ac-ft/yr (fallowing 20 acres) and 0.045 cfs and 0.075 ac-ft/yr (stock water consumptive use) was transferred to the TWRP for mitigation for out-of-priority water use, which seeded the Masterson Water Bank.

Following the transfer, Masterson retained the authority to irrigate 155 acres from May 1 through September 15, with the water right being provisioned that the ACQ may not exceed 284.82 af CU. This remaining quantity is proposed to be transferred to instream flow and mitigation to the Masterson Water Bank under an updated Trust Water Right Agreement reassigned to Mack Creek Ranch LLC. No out-of-stream use of this portion of water right is proposed at this time.

Using the same Ecology-approved assumptions as described in No. CS4-01467@11sb3a, the monthly trust schedule is as follows:

Table 1 – Consumptive Use (Secondary Reach)

Unit	May	Jun	Jul	Aug	Sep	Total
af	0	52.76	101.94	75.42	54.70	284.82
cfs	0	0.89	1.66	1.23	0.92	-

2) No. S4-3596 - Mack Creek Ranch LLC is seeking a mitigated permit from the Masterson Water Bank, which would only include the trust quantities already authorized for mitigation in the Teanaway River green zone, not to exceed 31.559 ac-ft (consumptive use), for irrigation of 17.5 acres from May 1 to September 15. The purpose of the amended mitigated permit application is to provide for seasonal reliability during times of local curtailment for existing and planned irrigation on Mack Creek Ranch property.

Calculation:

31.559 ac-ft (CU) / %CU (0.85) = 37.13 af / (TIR or CIR/Ea or 1.59/.75) = 17.5 acres

The final water right quantities subject to the purchase and sale agreement are included as Attachment A.

NARRATIVE DESCRIPTION OF PROJECT:

Mack Creek Ranch LLC has entered into a Purchase and Sale Agreement with Kathleen Masterson, individually and as Trustee to the Harry James Masterson Testamentary Trust, and Laura Masterson for Water Right No. CS4-01467@11sb3a(B). The primary purpose of the project is to provide for seasonal reliability during times of local curtailment for existing and planned irrigation on Mack Creek Ranch property, with significant secondary benefits to instream flows and habitat in the Teanaway River.

Mack Creek Ranch

Mack Creek Ranch (as shown in Figure 1) currently irrigates up to 166 acres and

stockwater with water right No. S4-83707-J (Court Claim No. 01042; Attachment B) authorizing a Qi of 2.324 cfs and 755.3 acre-feet/year (Qa). When surplus water is available in excess of the amount needed to satisfy all existing water rights, including the Yakama Nation's minimum instream flow right for fish and other aquatic life, an additional 2.324 cfs may be diverted.

The water right was originally diverted from the 3M Ditch. As part of the Teanaway Restoration Project, the Mack Creek Ranch point of diversion was moved from the upstream 3M Ditch headworks to a newly-constructed pump station located immediately downstream of Red Bridge Road, bank-left of the Teanaway River and directly across from the original Masterson Ditch point of diversion (No. 1). As part of the Teanaway Restoration Project, Mack Creek Ranch LLC transferred 30 percent of its court-confined water right, primarily associated with conveyance loss in the 3M Ditch, to Ecology for purposes of instream flow.

Although senior to the May 10, 1905 priority date of the Yakima River Basin Project, the June 30, 1889 water right is considered junior based on local availability in the Teanaway River. During the 2015 drought year, 1886 (and junior) water rights were curtailed on July 23rd.

The proposed purchase of the senior (1883 priority date) water right currently held in trust would allow Mack Creek Ranch to continue to irrigate during times of local availbility shortages. In addition, during normal water years and until curtailment of 1889 and junior priority in drought years, Mack Creek Ranch would irrigate about 17.5 additional acres that were not confirmed a water right during the adjudication under the 1889 rights.

IMPACT ANALYSIS

Impacts of the proposed transfer are asserted by the applicant to not result in a "net detriment to fish" per WTWG guidelines per the fallowing rationale:

1) No negative impacts to fish or senior water rights will occur from fallowing 155 acres and placing up to 284.82 af CU in the TRWP for instream flow and mitigation.

2) All impacts from the proposed new permit are mitigated in-kind, in-place, and in-time. Impacts will be mitigated by water currently in the Masterson Water Bank for an area define as suitable (i.e., green zone). In addition, the Mack Creek Ranch POD at Red Bridge Road is located directly across the river from the original Masterson Ditch POD. Lastly, no change in period of use will occur. Therefore, the proposal will result in no increase in consumptive use and is TWSA-neutral.

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
Trust Water Right Report of Examination

CS4-01467@11sb3a
WR Doc ID 4731952

Add or Change Purpose of Use
Change Place of Use

PRIORITY DATE	WATER RIGHT NUMBER
June 30, 1883	Yakima Adjudication No. 01467

APPLICANT	MAILING ADDRESS
Washington Water Trust	1530 Westlake Ave Ste 400 Seattle WA 98109

Purpose and Quantity

Primary Reach

To be used for the purpose of **instream flow** in the Teanaway River: 0.85 cubic feet per second (cfs), 147.00 acre-feet per year (ac-ft/yr) from May 1 through September 15; and

To be used for the purpose of **mitigation** for out of priority uses in the Teanaway and Yakima Rivers: 0.335 cfs, 49.035 ac-ft/yr from May 1 through September 15; and 0.045 cfs, 0.075 ac-ft/yr from September 16 through April 30.

Secondary Reach

Purpose	Unit	May	Jun	Jul	Aug	Sept 1-15	Sept 16 - April 30	Total
Instream Flow	af	0	20.42	39.46	29.19	21.17	0	110.25
(average)	cfs	0	0.34	0.64	0.47	0.36	0	-
Mitigation	af	0.002	6.812	13.152	9.732	7.061	0.015	36.77
(average)	cfs	0.001	0.111	0.211	0.161	0.121	0.001	-

Note: The annual consumptive quantity (ACQ) under the trust right may not exceed 147.02 acre-feet.

Trust Water Right Place of Use (See Attachment 1)

Primary Reach – Begins at a point 650 feet south and 1,140 feet west from the northeast quarter corner of Section 34, T. 20 N., R. 16 E.W.M., and ends at a point 2,200 feet south and 420 feet east of the northwest quarter corner, of Section 3, T. 19 N., R. 16 E.W.M.

Secondary Reach (for the instream flow portion)– Begins at a point 2,200 feet south and 420 feet east of the northwest quarter corner, of Section 3, T. 19 N., R. 16 E.W.M. and continues down the Teanaway River to the confluence with the Yakima River, and continues down the Yakima River to the confluence with the Columbia River, and continues downstream to the confluence of the Columbia River and the Pacific Ocean.

Secondary Reach (for the mitigation portion) – Begins at a point 2,200 feet south and 420 feet east of the northwest quarter corner, of Section 3, T. 19 N., R. 16 E.W.M. and continues down the Teanaway River to the confluence with the Yakima River, down to USBR Gage at Parker,Yakima River mile 106.7, in the SW¼SW¼ of Section 17, T. 12 N., R. 19 E.W.M.

REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LATITUDE	LONGITUDE
Begin Primary Reach	Teanaway River	2.0	20N	16E	34	47°11'14.82"N	120°49'9.76"W
End Primary Reach and Begin Secondary Reach	Teanaway River	0.1	19N	16E	3	47°10'7.47"N	120°50'4.08"W
End Secondary Reach	Pacific Ocean						

Provisions Related to the Trust Water Right

Mitigation

When any portion of the mitigation is not being used, quantities will be added to target flows at Parker Dam and continue to the confluence with the Columbia River and downstream to the Pacific Ocean. If the water is used to offset consumptive use contingent on this mitigation, this instream flow right will be considered instream at least to Parker Dam in order to offset impacts to the total water supply available.

Real Estate Excise Tax

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. E-mail: REETSP@DOR.WA.GOV Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477, (360) 570-3265, http://dor.wa.gov/.

PORTION OF WATER RIGHT
NOT PLACED INTO TRUST UNDER
WRTS File #: CS4-01467@11sb3a

PRIORITY DATE	WATER RIGHT NUMBER
June 30, 1883	Yakima Adjudication No. 01467

NAME OF PARTY CONVEYING RIGHT TO TRUST	MAILING ADDRESS
Estate of Harry Masterson; and Laura M. Masterson	381 Masterson Rd, Cle Elum WA 98922; and 16504 63rd Ave W, Lynwood WA 98037

Remarks

A portion of Court Claim No. 01467 (including provision for surplus quantaties) has been transferred to the TWRP under No. CS4-01467@10sb3a, in addition to what is being considered in this report: No. CS4-01467@11sb3a.

Purpose and Quantity

Masterson Portion: 2.21 cfs and 379.75 ac-ft/yr for the irrigation of 155 acres, May 1 through September 15. The annual consumptive quantity (ACQ) under the irrigation right may not exceed 284.82 acre-feet.

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Kittitas	Teanaway River	Yakima River	39

SOURCE FACILITY/DEVICE	PARCEL	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Point of Diversion No. 2	20-16-34010-0009	20	16	34	NE¼NE¼	47°11'14.82"N	120°49'9.76"W

Point of Diversion No. 2 - 650 feet south and 1,140 feet west from the northeast quarter corner of Section 34, being within the northeast quarter of the northeast quarter of Section 34, T. 20 N., R. 16 E.W.M.

Place of Use (See map Attachment 1)

Those portions of the E1/2SW1/4SW1/4 of Section 28, the E1/2NW1/4NW1/4 of Section 33, and the SE1/4SW1/4, SW1/4SE1/4 of Section 28 and NE1/4NW1/4, NW1/4NE1/4 of Section 33, lying southerly and westerly of Masterson Ditch, ALL being within T. 20 N., R. 16 E.W.M., Kittitas County, Washington.

Description of Water System

The point of diversion (No. 2) consists of two 75 horsepower (hp) pumps equipped with a self cleaning intake screen, each capable of diverting approximately 900 gallons per minute (gpm). From the point of diversion, water is conveyed through a 10-inch pipe west to the Masterson Ditch alignment. The conveyance pipe continues in the ditch for a total distance of 2.5 miles to the Masterson property. At the Masterson Property, the mainline bifurcates into a series of laterals with riser connections for the wheel line irrigation system. A series of wheel lines irrigate 4 separate pastures.

Measurement of Water Use

How often must water use be measured?	Monthly
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
What rate should be reported?	Monthly Peak Rate of Diversion in cfs.

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

The Masterson portion of Court Claim No. 01467 shall be reduced to a maximum of 2.21 cfs and 379.75 ac-ft/yr for irrigation of 155 acres, May 1 through September 15. The annual consumptive quantity (ACQ) of the irrigation right shall not exceed 284.82 acre-feet.

Water Diversions under Court Claim No. 01467 shall be done in compliance 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. A copy of the order is included with hard copies. 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). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program.
Phone (360) 902-2534 if you have questions about screening criteria.
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 the requested change of place and purpose of use under Trust Water Right Application No. CS4-01467@11sb3a, be approved subject to existing rights and the limits, rates, purposes, and provisions specified above.

YOUR RIGHT TO APPEAL

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision.** Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures").

The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

The name and mailing address of the appellant;
Name and address of the appellant's attorney, if any;
The name and address of the Department of Ecology;
The specific application number of the decision being appealed;
A copy of the decision;
A brief explanation of Ecology's decision;
Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
Facts that demonstrate the appellant is entitled to obtain judicial review;
The appellant's reasons for believing that relief should be granted; and
A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed.** The appeal must be filed in the same manner as described above.

Signed at Yakima, Washington, this 28 day of MARCH 2012.

Mark Kemner, Section Manger
Water Resources Program/CRO

BACKGROUND

Description and Purpose of Proposed Change

On April 28, 2011, Washington Water Trust (WWT) of Ellensburg, Washington, filed an application with the Washington State Department of Ecology (Ecology) to place a portion of water used under Yakima Adjudication Court Claim No. 01467, Subbasin No. 3, into the State of Washington's Trust Water Right Program (TWRP). WWT requests a permanent transfer to the TWRP for instream flow purposes in the Teanaway River and mitigation for out of priority water use in the Yakima Basin. The application was accepted and assigned Application No. CS4-01467@11sb3a.

Court Claim No. 01467 was confirmed to Harry James Masterson and Mary Lou Masterson (Masterson), and neighboring Wilbur H. Mundy and Mary Ann Mundy (Mundy). Masterson's portion of the claim included a maximum instantaneous diversion rate (Qi) of 4.8 cubic feet per second (cfs) and a cumulative annual quantity (Qa) of 1,527.50 acre-feet per year (ac-ft/yr) for irrigation of 235 acres and stock water, May 1 through September 15. Mundy's portion includes 0.90 cfs (Qi) and 292.50 ac-ft/yr (Qa) for irrigation of 45 acres and stock water, May 1 through September 15. Masterson and Mundy share 1.0 cfs and 5.0 ac-ft/yr (consumptive use) for stock water, September 16 through April 30. In addition, when surplus water is available in excess of what is needed to satisfy all existing rights, the claim is provisioned to allow for the diversion of up to 7.60 cfs (Masterson) and 1.80 cfs (Mundy). These surplus quantities are not additive and the total diversion rate for Court Claim No. 01467 may not exceed 7.60 cfs at any time. The surplus water is typically only available during the spring freshet (May to mid-July).

This report is specific to Application No. CS4-01467@11sb3a, pertaining to Masterson's portion of Court Claim No. 01467. WWT proposes to transfer 0.66 cfs and 149.40 ac-ft/yr (fallowing 61 acres) to instream flows. In addition, WWT proposed to transfer 0.22 cfs and 48.98 ac-ft/yr (fallowing 20 acres) and 0.045 cfs and 0.11 ac-ft/yr (stock water consumptive use) to the TWRP for mitigation for out of priority water use. The application was later admended to include fallowing of only 60 acres for instream flow; quantaties for mitigation and stockwater were unchanged. In the end, the claim will retain quantities required to irrigate 155 acres of timothy hay with wheel lines.

Mundy's portion of Court Claim No. 01467 will not be affected by the proposed transfer.

Table 1: Attributes of Court Claim No. 01467 and Proposed Change

Attributes	Existing*	Proposed
Name	Harry James Masterson and Mary Lou Masterson	Washington Water Trust
Priority Date | Date of Application for Change	**Priority Date** – June 30, 1883	**Application Date** – April 28, 2011
Instantaneous Quantity	3.35 cfs for irrigation; 0.045 cfs stock water*.	**Trust Water Portion:** 0.66 cfs for instream flow; 0.22 (irrigation)+0.045 (stock water) cfs for mitigation. **Remaining Portion:** 2.47 cfs for irrigation.
Annual Quantity	575.75 ac-ft/yr for irrigation; 0.11 ac-ft/yr stock water (consumptive use)*.	**Trust Water Portion:** 149.40 ac-ft/yr for instream flow; 48.98 (irrigation)+0.11 (stock water) ac-ft/yr for mitigation. **Remaining Portion:** 377.18 ac-ft/yr for irrigation.
Source	Teanaway River	Teanaway River
Point of Diversion/Withdrawal	No. 2 - NE¼NE¼ Section 34, T. 20 N., R. 16 E.W.M.	**Trust Water Portion:** N/A **Remaining Portion:** No. 2 - NE¼NE¼ Section 34, T. 20 N., R. 16 E.W.M.
Purpose of Use	Irrigation and stock water	**Trust Water Portion:** Instream Flow and Mitigation **Remaining Portion:** Irrigation
Period of Use	May 1 through September 15 for irrigation; continuous for stock water.	**Trust Water Portion:** May 1 through September 15 for instream flow and mitigation; September 16 through April 30 for mitigation **Remaining Portion:** May 1 through September 15 for irrigation.
Place of Use	See Attachment 1	**Trust Water Portion:** Teanaway and Yakima Rivers. **Remaining Portion:** See Attachment 1

* Quantities based on the tentative determination completed for CS4-01467@10sb3a (a previous change authorization for Masterson issued on August 9, 2011).

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in Water Right Change Application No. CS4-01467@11sb3a.

- **Public Notice**
  Notice of the proposed appropriation was published in the *Daily Record* of Ellensburg, Washington, on April 2 and 9, 2011. No protests were received by Ecology.

- **State Environmental Policy Act (SEPA)**
  This project required a SEPA review under WAC 197-11-800(4). Ecology, acting as the SEPA lead agency for this project, determined that it will not have a probable significant adverse impact on the environment and issued a Determination of Nonsignificance (DNS) on April 2 and 9, 2011.

- **Water Resources Statutes and Case Law**
  A transfer to instream flows in the Yakima Basin is governed by RCW 90.38. RCW 90.38.040(1) states that all trust water rights acquired by the Department of Ecology (Ecology) shall be placed in the Yakima River Basin Trust Water Right Program to be managed by Ecology. Ecology shall issue a Certificate of Water Right in the name of the state of Washington for each trust water right it acquires. RCW 90.42.100(1) states that Ecology is authorized to use the Trust Water Rights Program in the Yakima River basin for water banking purposes. RCW 90.42.100(2)(a) states that water banking may be used to mitigate for any beneficial use under chapter 90.03, 90.44. or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users. RCW 90.42.100(2)(b) states that water banking may be used to document water right transfers to and from the Trust Water Rights Program.

- **Expedited Processing**
  This application qualifies for expedited processing under WAC 173-152-050(3)(a) whereby water right change applications may be processed prior to applications submitted at an earlier date when the proposed water use, if approved, would substantially enhance or protect the quality of the natural environment. This proposed change would increase instream flows, improving fish access to habitat in the upper Teanaway River basin, as well as provide mitigation for future water uses. Based on the provisions of RCW 43.21A.690 and RCW 90.03.265, this application has been processed by Aspect Consulting, LLC (Aspect Consulting) under Ecology Cost-Reimbursement Assignment No. ASP010 (Master Contract No. C1000185).

INVESTIGATION

In consideration of this application, Aspect Consulting reviewed available documents pertaining to the historic use of water, site conditions, WWT's calculations, and the potential effect on existing water rights. This included information submitted by the applicant and pertinent Ecology records including stream gage data, adjudication and water rights records, and water resource policy and guidance documents.

On February 4, 2011, Tyson Carlson of Aspect Consulting met with Jason McCormick of WWT, Kelsey Sinclair Collins (Ecology), and Stan Isley (the Ecology and Court Appointed Water Master for the Teanaway River) to locate the point of diversion, place of use, and observe Masterson's irrigated acreage.

This project was last presented at the Water Transfer Working Group (WTWG) on June 27, 2011. This group represents private, federal, state and tribal groups interested in water right changes in the Yakima Basin. No objections were received from the WTWG.

History of Water Use

A water right with attributes described in Table 1 above was confirmed under Court Claim No. 01467 to Harry James Masterson and Mary Lou Masterson, in the Yakima River Basin Water Rights Adjudication for Subbasin No. 3, Teanaway River drainage basin, with a Conditional Final Order (CFO) signed on February 8, 2001. A water right was also confirmed to Wilbur H. Mundy and Mary Ann Mundy under the same priority date and claim number.

In order to make a water right change decision, Ecology must make a tentative determination on the extent and validity of the right. Under RCW 90.14.160 any portion of a water right or water right claim not exercised for a period of five successive years, without sufficient cause, shall be relinquished and revert to the state.

Court Claim No. 01467 includes a provision that authorizes Masterson and Mundy to divert additional water during the spring freshet. Masterson and Mundy together are limited to an additional 7.60 cfs of which Mundy is limited to 1.80 cfs. Inspection of available flow data from the Bureau of Reclamation for the lower Teanaway River over the last 6 years indicate the spring freshet on the Teanaway River typically begins by late March, peaking at around 650 to 800 cfs, then declining to summer baseflow condition by mid-July (approximately 20 cfs). During the 6-year period, the additional 7.60 cfs is estimated to be available at least 75 days (beginning May 1). 69 days (through July 6) of diverting at 7.60 cfs are required to satisfy the full annual quantities confirmed to Masterson and Mundy. Therefore, the full claim would be satisfied in most water years.

In 2001, Masterson leased 1,527 acre-feet (af) to the Roza Irrigation District to offset their use during the statewide drought emergency. This transaction was authorized in an *Order Pendente Lite (OPL)* signed on May 24, 2001. Since 2001, Masterson's water right has been exercised through leases that placed the right temporarily into the TWRP. In 2005, Ecology leased 1,514.50 acre-feet for instream flow in the Teanaway River, documented by an *OPL* signed on April 28, 2005. Authorization for irrigation of up to 2 acres from a well was subsequently authorized in an Emergency Drought Permit (No. CS4-01467CTCL@3) for 20 gpm (0.04 cfs) and 4.6 acre-feet (dated June 8, 2005). Approximately 8.4 acre-feet was not protected in 2005 (difference between the surface and groundwater adjudicated water duty). In 2009 and 2010, WWT leased the entire 1,527.50 acre-feet for instream flow purposes. The *OPL*(s) were signed on June 11, 2009 and April 8, 2010, respectively.

During the intervening years between leases, the Mastersons irrigated portions of the 235 acre place of use, utilizing a maximum of 267.79 acre-feet as supported by metering records. In 2009, the Teanaway River again flooded and destroyed the electrical service to the pumps, concrete pad, and associated lines and piping for the newly established point of diversion. The damaged infrastructure has since been repaired and the pumps are ready for installation when needed.

Review of aerial photos from the years 2003, 2005, 2006, and 2009 indicate that since issuance of the CFO, Masterson's authorized place of use has either been irrigated or fallowed (under lease) as described above. Irrigation and/or fallowing of the acreage was also supported by the review of Landsat imagery over a similar time span.

Since 1996, the Mastersons used stock water from the surface water diversion from May 1 to September 15, and a well from September 16 to April 30. Over the previous five year period (2006 to present), a maximum of 9 horses have been on farm, year round. Although the Mastersons did not seek to change the point of diversion and add the well (this stock watering use is otherwise consistent with the requirements of the ground water code under the permit exemption). A-de facto change from surface water to groundwater for stock watering from September 16 to April 30 is consistent with Water Resources Program Policy POL-1120.

The withdrawal rate of the well is approximately 20 gallons per minute (or 0.045 cfs). Stock water use estimates are based on the water demand requirements listed in the Washington State Department of Health Water System Design Manual (DOH 2009). The listed stock water requirement for horses is 12 gallons per day per head. Therefore, based on the maximum number of stock on farm (year round) in the last five years, the annual stock water use is estimated at 0.12 acre-feet (or 0.010 acre-feet per month).

In July 2011, WWT purchased the nonconsumptive portion of the claim associated with leakage from the earthen 3.0-mile long Masterson Ditch, and the reduction of on-farm demand by switching from flood to wheel line irrigation. These quantities were transfered to the TWRP to benefit instream flows in the Teanaway River under Application No. CS4-01467@10sb3a.

On April 15, 2011, the Masterson Estate, represented by Kathleen Masterson, entered into an agreement with WWT to sell additional quantities of Court Claim No. 01467. On January 13, 2012, the agreement was amendend to reflect divison of the Masterson Estate, including the 19 acres now owned by Laura M. Masterson. The final agreement included a combined 60 acres of land to be fallowed for instream flow purposes (6.25 acres from Laura M. Masterson; 53.75 from Masterson Estate) and 20 acres to be fallowed for future mitigation, including 0.045 cfs and 0.11 ac-ft/yr (consumptive use) of stockwater (both from the Masterson Estate).

Proposed Use
The applicant proposes to transfer a portion of Court Claim No. 01467 to trust for the purposes of instream flow in the Teanaway River and mitigation of future water use.

Land to be Fallowed
The proposed lands to be fallowed (80 acres) are located in portions of the SW1/4SW1/4 of Section 28 and NW1/4NW1/4 of Section 33, the portions of parcels numbered 293236, 093236, and 063236 in the N1/2SW1/4 of Section 28 lying south of the tree line, and portions of the SE1/4SW1/4, SW1/4SE1/4 of Section 28 and NE1/4NW1/4, NW1/4NE1/4 of Section 33, ALL being within T. 20 N., R. 16 E.W.M., Kittitas County, Washington.

Other Rights Appurtenant to the Place of Use
No other water rights for irrigation purposes are appurtenant to the Masterson's 235 irrigated acres.

However, in addition to the claim described above, additional authorization was confirmed under the same claim number to divert from an unnamed spring in the SW1/4NW1/4 of Section 21, approximately 675 feet north and 450 feet east from the west quarter corner, T. 20 N., R. 16 E.W.M. The claim was confirmed for 0.0022 cfs and 1.6 ac-ft/yr for continuous stock watering. The place of use is approximately that of the spring, limited to the NW1/4SW1/4NW1/4 of Section 21.

Trust Water Right Calculations
This section describes how the nonconsumptive and consumptive water use values were calculated to identify how much water will be transferred into the TWRP from 1) fallowing of 60 acres for the purposes of instream flow; and 2) fallowing 20 acres and reducing stock water for the purposes of future mitigation. These quantities under Court Claim No. 01467 were first evaluated by WWT and later updated by Aspect during this investigation.

Ecology uses various estimation methods such as the Washington Irrigation Guide (WIG) to estimate water use. The WIG data show the estimated average amount of water required by a crop above the portion of the requirement that might be met by antecedent moisture in the root zone under average climatic conditions (the amount of water a crop needs in excess of rainfall). The monthly WIG data indicate that the Crop Irrigation Requirement (CIR) for clover – the surrogate crop used for timothy hay near Cle Elum area – begins June 3 and ends October 7. The CIR for clover is 1.59 ac-ft/yr. Teanaway River adjudicated water rights were confirmed for a period of use from May 1 through September 15.

Using Ecology's *Guidance Document, GUID-1210, Determining Irrigation Efficiency and Consumptive Use, Table 1*, average application efficiency (Ea) for the Masterson's wheel line irrigation system was specified at 65 percent. The total irrigation demand (TIR) was then calculated based on the monthly CIR for clover in the Clem Elum area (TIR = CIR/Ea). The sum of the monthly TIR multiplied by the number of acres to be fallowed (60 acres for instream flow; 20 acres for mitigation) is the total quantity of water available to transfer into the TWRP, equaling 147.00 and 49.00 ac-ft/yr, respectively. The monthly TIR (in acre-feet) is converted to an instantaneous rate (in cfs) by dividing by the number of days in each respective month, then by the conversion factor 1.9834 ac-ft/day/cfs.

Together, the irrigation and stock water quantities (discussed below) available to be transferred into the TWRP for each proposed purpose of use are presented in Table 2 below.

Table 2 – Quantities Eligible for Protection in TWRP (Primary Reach)

Purpose	Unit	May	Jun	Jul	Aug	Sept 15	Sept 16 - April 30	Total
Instream Flow	af	0	27.23	52.62	38.92	28.23	0	147.00
	cfs	0	0.46	0.85	0.63	0.47	0	-
Mitigation	af	0.010	9.090	17.550	12.980	9.410	0.075	49.11
	cfs	0.045	0.195	0.335	0.255	0.205	0.045	-

Monthly consumptive use for irrigation was then calculated by multiplying the TIR by the specified %CU and the area to be fallowed. Total consumptive use is the sum of the monthly consumptive use.

Stock water is mostly consumptive, through respiration and evaporation, but a small portion of return flow is associated with animal waste. Limited data on the consumptive use of stock water have been identified. Provisional stock water use data available from the USGS Washington Water Science Center presents stock water use by county in 1995. Based on this data, consumptive use associated with stock water in Kittitas County is estimated at 87 percent. Therefore, the consumptive use associated with the Masterson nine horses is estimated to be 0.11 ac-ft/yr.

In accordance with RCW 90.03.380(1), Ecology is required to determine that the annual consumptive quantity under a water right proposed for a change to add purposes of use is no greater after the change. Annual Consumptive Quantity (ACQ) means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right.

The most recent five-year period of continuous beneficial use occurred from 2006 through 2010, through a combination of on-farm irrigation and lease. Two of the five years (2009 and 2010) were leased to WWT in full, equating up to 431.81 af of consumptive use assuming wheel line irrigation of 235 acres. During these years, a maximum of 2 horses were kept on farm year round, totaling approximately 0.023 af of consumptive use. Therefore, the ACQ of Court Claim No. 01467 is calculated to be 431.84 ac-ft/yr, of which approximately 147.02 ac-ft/yr (consumptive use) has been proposed for transfer into trust and 284.82 ac-ft/yr (consumptive use) will remain on farm to irrigate up to 155 acres.

Based on this analysis, Table 3 summarizes the amount of consumptive use from fallowing of 60 acres for instream flows and fallowing 20 acres and reducing stock water for mitigation for out of priority use that will be transferred to the TWRP.

Table 3 – Consumptive Use (Secondary Reach)

Purpose	Unit	May	Jun	Jul	Aug	Sept 15	Sept 16 - April 30	Total
Instream Flow	af	0	20.42	39.46	29.19	21.17	0	110.25
	cfs	0	0.34	0.64	0.47	0.36	0	-
Mitigation	af	0.002	6.812	13.152	9.732	7.061	0.015	36.77
	cfs	0.001	0.111	0.211	0.161	0.121	0.001	-

Water Not Placed in Trust

The portion of Court Claim No. 01467 which has not been sold and is not placed in trust will be retained. Therefore, the remaining portion of Court Claim No. 01467 described above will continue to be diverted from the Teanaway River at the current point of diversion (No. 2) for the irrigation of 155 acres of timothy hay with wheel lines.

Trust Water Place of Use

Ecology typically manages its trust water rights by defining a primary and a secondary reach. The primary reach is the length of stream between the point of diversion and where any of the water diverted, not consumed, returns to the stream. The secondary reach begins at the downstream end of the primary reach and is defined as that length of stream which benefits from a reduction in consumptive use.

The primary reach under this application begins from the authorized point of diversion (No. 2) on the Teanaway River being approximately 650 feet south and 1,140 feet west from the northeast quarter corner of Section 34, T. 20 N., R. 16 E.W.M. The portion(s) of the Masterson claim being proposed for transfer into the TWRP trust will benefit the primary reach for the times and purposes to which they were prescribed as presented in Table 2.

Return flow from the Masterson place of use drains in one of two small drainages. The drainages merge, continue toward the southeast, and eventually converge with the Teanaway River immediately upstream of the State Highway 10 bridge, approximately 550 feet upstream from the confluence with the Yakima River. It is assumed that no irrigation water, either surface or shallow groundwater, from the place of use returns back to the Teanaway River upstream of this point. Therefore, the secondary reach begins on the Teanaway River at the State Highway 10 bridge, at a point 2,200 feet south and 420 feet east of the northwest quarter corner, of Section 3, T. 19 N., R. 16 E.W.M. The secondary reach extends downstream on the Teanaway River to the confluence with the Yakima River, and downstream to the confluence of the Yakima and Columbia Rivers, and downstream to the Pacific Ocean.

The consumptive use associated with a right is eligible for protection as a trust water right in the secondary reach as described in Table 3 above. A portion of the trust water right may serve as mitigation for out of priority water use from surface water sources and/or sources in continuity with the Yakima River. Any new appropriations seeking to mitigate with this right must show that they are water budget neutral with respect to the total water supply available (TWSA). Any portion of this claim used as mitigation will be managed in the Yakima River to the USBR Parker Gage.

Trust Water Management
A portion of Court Claim No. 01467 is being changed to instream flow and mitigation for out of priority water use. As a condition of placing this water right into the State Trust Water Rights Program, a portion of the water placed into trust may be available as mitigation to address the issue of impairment consistent with WAC 173-539A. These quantities will be managed by Ecology as outlined in the project's Trust Water Right Agreement.

Instream flows in the Teanaway River in the Primary Reach may be measured at the newly established Bureau of Reclamation's Lambert Road gage.

Impairment Considerations
Under RCW 90.38.040(5)(a), a trust water right may be exercised only if Ecology first determines that the authorization will not impair or injure any other water rights.

From the point of diversion, water is tight-lined to the Masterson place of use, beyond the topographic divide located near Teanaway Heights Drive. Once water was conveyed beyond the subtle change in slope, the topographic divide directs water away from the Teanaway River. Local surface water (and shallow groundwater) west of this divide drains in one of two small drainages toward the southeast. The drainages merge, continue to the southeast, and eventually converge with the Teanaway River immediately upstream of the State Highway 10 bridge, approximately 550 feet from the confluence with the Yakima River.

It is assumed that leakage from the conveyance piping from the point of diversion to the place of use is negligible. In addition, no return flow (surface or shallow groundwater) returns to the Teanaway River within in Primary Reach. Therefore, based on this rational, downriver diverters (or instream flows) will not experience a reduction in the availability of water due to the subject transfer; therefore, transferring a portion of Court Claim No. 01467 to trust will not impair other water rights.

Consideration of Protests and Comments
No protest or comments were received for consideration.

CONCLUSIONS

A portion of Court Claim No. 01467 is appurtenant to the subject property. Review of the evidence provided within this report and proceedings within the Yakima River Basin Adjudication Court indicate that a total of 235 acres have been historically and beneficially used under Court Claim No. 01467.

In accordance with Chapter 90.38 RCW, the author makes a tentative determination that the Masterson portion of Court Claim No. 01467 represents a valid right to divert water from the Teanaway River in quantities up to 3.35 cfs and 575.75 acre-feet for the irrigation of 235 acres, from May 1 through September 15; and 0.045 cfs and 0.11 ac-ft/yr (consumptive use) for stock water, year round.

Approval of this water right change request as provisioned will not enlarge the water right or impair existing water rights.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to CS4-01467@11sb3a be approved in the amounts and within the limitations described on page 1 and subject to the provisions beginning on page 2 of this Report of Examination.

Primary Reach

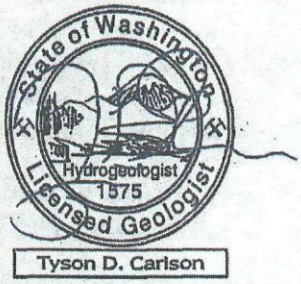
To be used for the purpose of instream flow in the Teanaway River: 0.85 cubic feet per second (cfs), 147.00 acre-feet per year (ac-ft/yr) from May 1 through September 15; and

To be used for the purpose of mitigation for out of priority uses in the Teanaway and Yakima Rivers: 0.335 cfs, 49.035 ac-ft/yr from May 1 through September 15; and 0.045 cfs, 0.075 ac-ft/yr from September 16 through April 30.

Secondary Reach

Purpose	Unit	May	Jun	Jul	Aug	Sept 15	Sept 16 - April 30	Total
Instream Flow	af	0	20.42	39.46	29.19	21.17	0	110.25
	cfs	0	0.34	0.64	0.47	0.36	0	-
Mitigation	af	0.002	6.812	13.152	9.732	7.061	0.015	36.77
	cfs	0.001	0.111	0.211	0.161	0.121	0.001	-

Note: The annual consumptive quantity (ACQ) under the trust right may not exceed 147.02 acre-feet.



Report by: Tyson D. Carlson — 3/27/12

Tyson D. Carlson, LHG, Aspect Consulting, LLC — Date

Reviewed by: Kelsey Sinclair Collins — 3/27/12

Kelsey Sinclair Collins, Water Resources Program — Date

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CITATIONS

State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Report of Referee*, Subbasin No. 3 (Teanaway River). Signed January 25, 1996.

State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Supplemental Report of Referee*, Subbasin No. 3 (Teanaway River). Signed March 29, 1999.

State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, Second *Supplemental Report of Referee*, Subbasin No. 3 (Teanaway River). Signed August 3, 2000.

State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Conditional Final Order*, Subbasin No. 3 (Teanaway River). Signed February 8, 2001.

State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Third Order Approving Roza Irrigation District and Sunnyside Valley Irrigation District Motion for Order Pendente Lite for 2001 Drought Temporary Water Transfers*. Signed May 24, 2001.

State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Order Pendente Lite* Re: Water Right Claim No. 01467, Subbasin No. 3. Signed April 28, 2005.

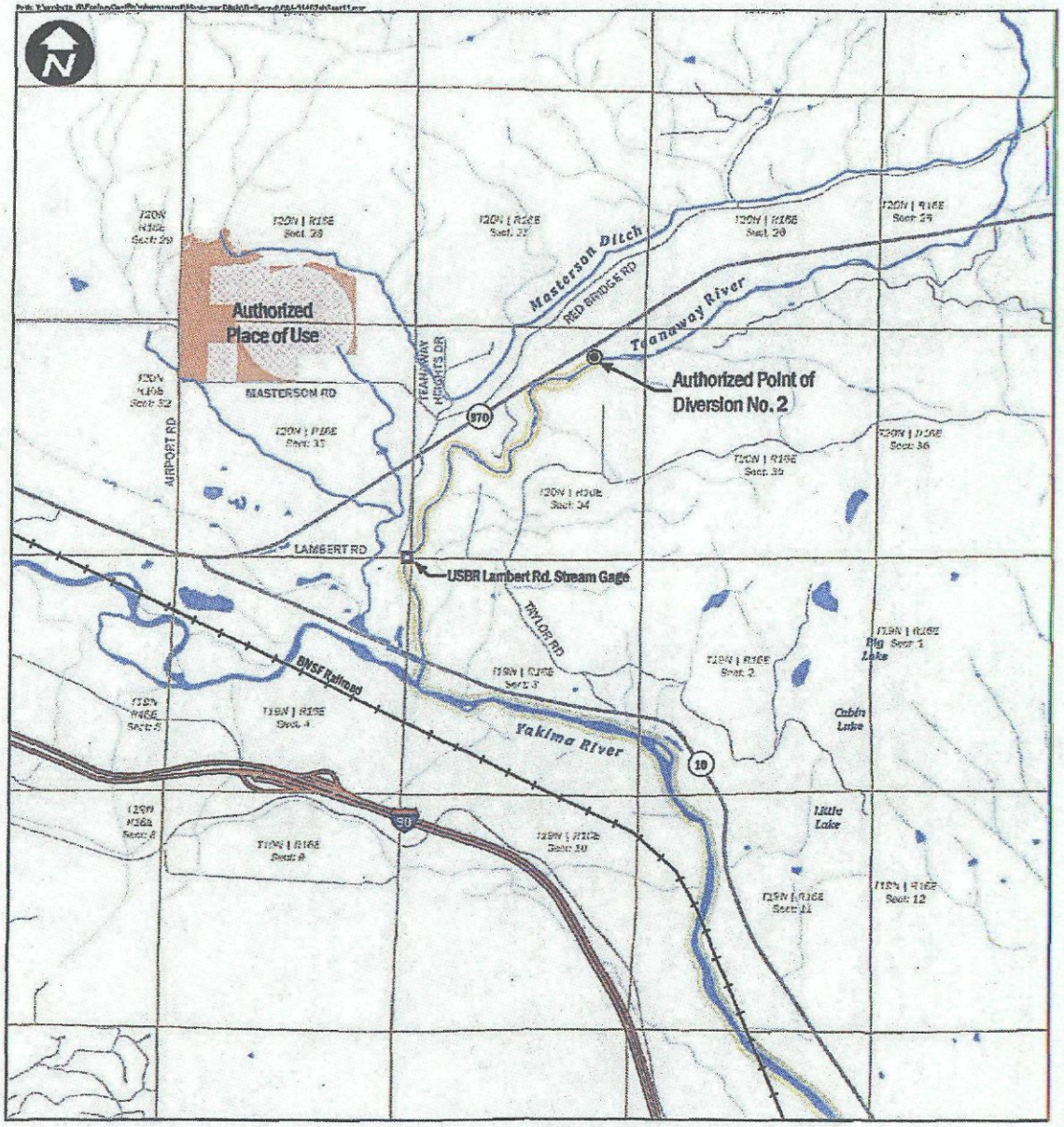
State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Order Pendente Lite* Re: Lease of Masterson Water Right for Instream Flow Re: Court Claim No. 01467, Subbasin No. 3. Signed June 11, 2009.

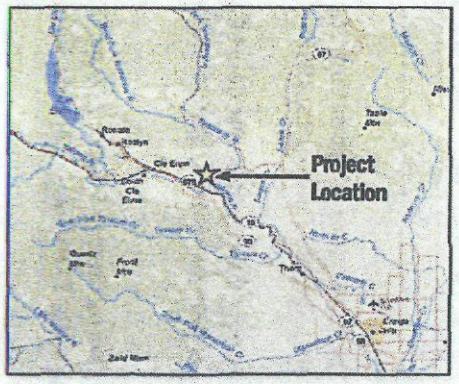
State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Order Pendente Lite* Re: Lease of Masterson Water Right for Instream Flow RE: Court Claim No. 01467, Subbasin No. 3. Signed April 8, 2010.

Washington Department of Ecology, Emergency Drought Change Authorization No. CS4-01467CTCL@3, June 8, 2005.

Washington State Department of Transportation, Lower Teanaway River: Reach and site Assessment. Revised January 31, 2011.

ATTACHMENT 1





Comments: *Place of use and point of diversion are defined on the cover sheet under the heading "LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED."*

- Authorized Place of Use
- Land to be Fallowed
- Authorized Point of Diversion
- Primary Reach
- Secondary Reach *(extends to Wapato Diversion Dam at RM 106.7)*
- USBR Lambert Rd. Gage
- Local Road
- Highway
- Interstate
- Railroad
- Sections (TRS)

0 1,250 2,500 5,000 Feet

No. CS4-01467@11sb3a
(Washington Water Trust)
WRIA 39
Kittitas County, Washington

Aspect Consulting	Aug. 2011	ATTACHMENT NO.
	090180 / TDC / EAH	1

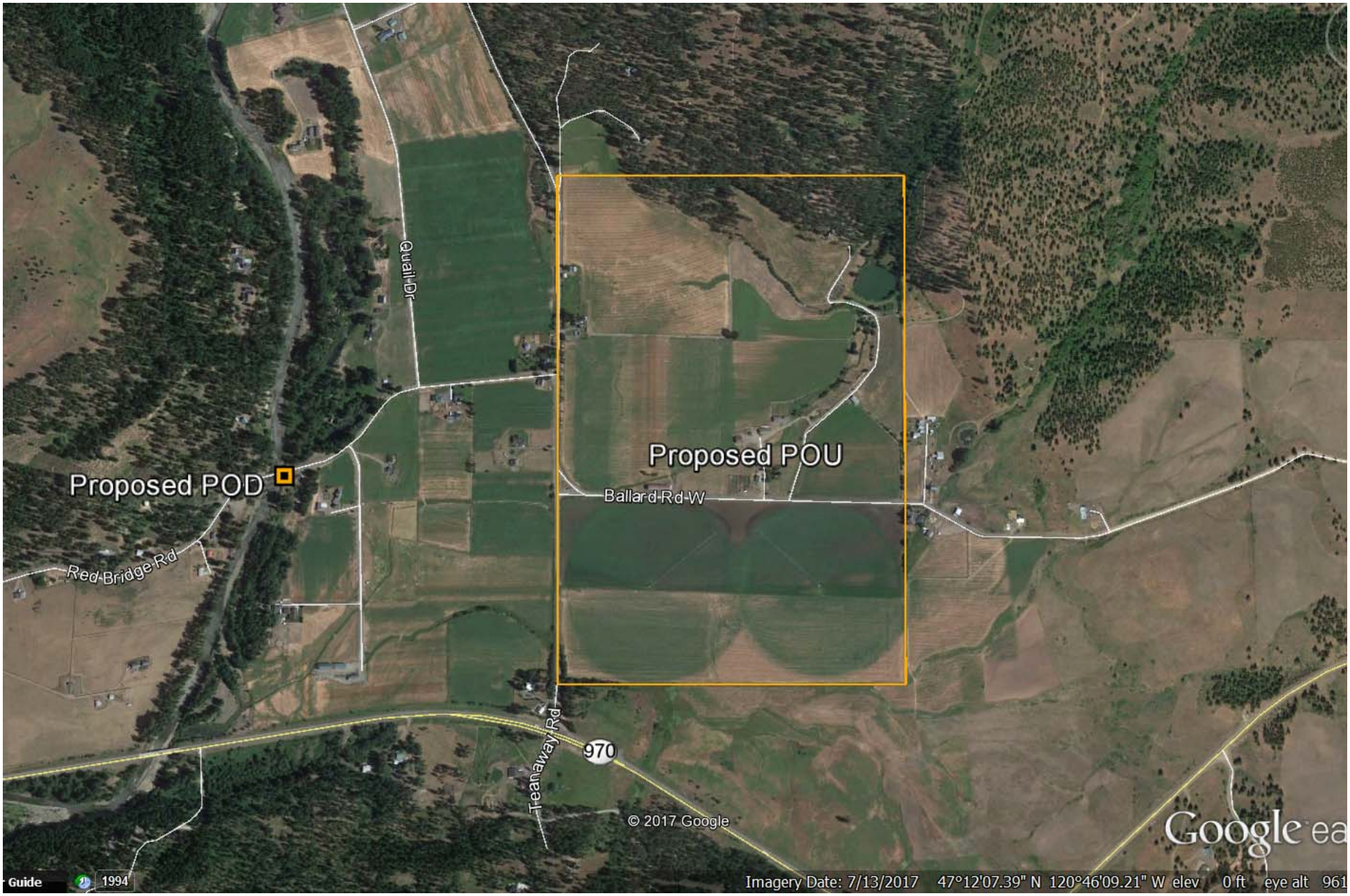


Figure 1
Proposed Place of Use and Point of Diversion
Mack Creek Ranch Water Right Application

Aspect Consulting
January 3, 2018
Project No. 170343

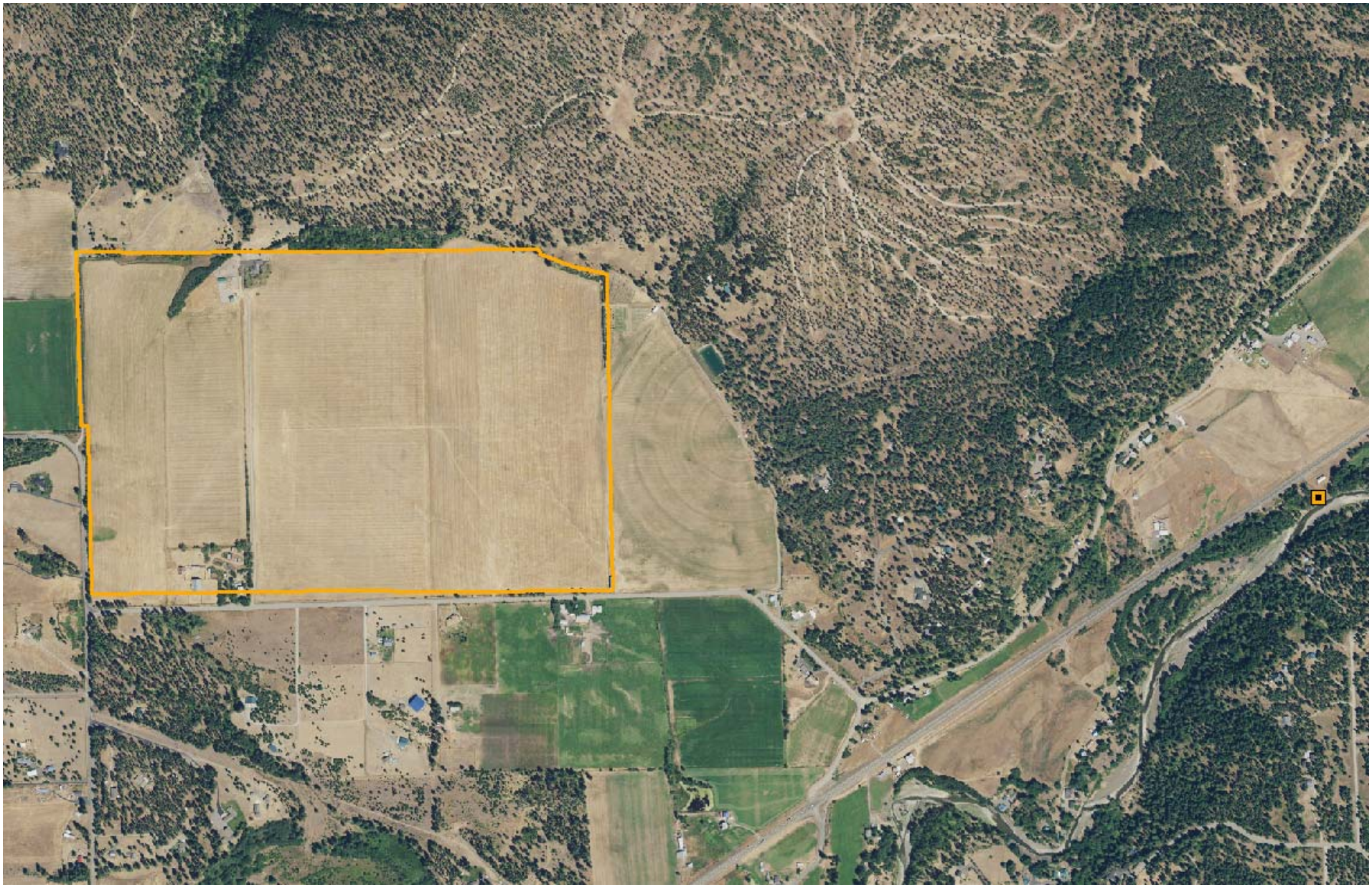


Figure 2
CS4-01467@11sb3a(B) Place of Use and Point of Diversion
Mack Creek Ranch Change Application

Aspect Consulting
January 3, 2018
Project No. 170343

EXHIBIT B: Irrigation Water Right

CLAIMANT NAME:	**Harry James Masterson & Mary Lou Masterson**	COURT CLAIM NO. 01467 (A)03296
Certificate Number:	84-83734-J	
Subbasin:	03 Teanaway River	
Source:	Teanaway River	
Use:	Irrigation of 155 acres	
Period of Use:	May 1 through September 15	
Quantity:	2.21 cubic feet per secnd and 379.75 acre-feet per year for the irrigation of 155 acres, May 1 through September 15. The annual consumptive quantity (ACQ) under the irrigation right may not exceed 284.82 acre-feet.	
Priority Date:	**June 30, 1883**	
Point of Diversion:	650 feet south and 1140 feet west from the northeast quarter corner of Section 34, being within the NENE"'4 of Section 34, T. 20 N., R. 16 E.W.M.	
Place of Use:	Those portions of SSW"'4, SW1SE... of Section 28, and NNW, NWNE of Section 33 lying southerly and westerly of Masterson Ditch, ALL being within T. 20 N., R. 16 E.W.M.	
Limitations Of Use:		
Comments:	This water right reflects changes approved pursuant to Water Right Change Application No. CS4-001467@11sb3a (B).	

EXHIBIT C: Masterson Trust Water Right Agreement

Trust Water Right Agreement
(Estate of Harry Masterson)

This Trust Water Right Agreement ("Agreement") is made and entered into as of the ____ day of _____, 2012, by and between the Washington State Department of Ecology, State Trust Water Right Program ("Ecology") and the Estate of Harry Masterson ("Masterson").

Whereas, Ecology is the trustee of the Yakima River Basin Trust Water Rights Program as authorized under Chapter 90.38 RCW (the "Trust"); and

Whereas, Masterson is the owner of certain water rights on the Teanaway River as more particularly described and quantified in Exhibit A (the "Water") and presently appurtenant to the land that is legally described in Exhibit B (the "Land"); and

Whereas, Masterson submitted a Trust Water Right Application to Ecology, WRTS File Nos. CS4-01467@11sb3a (the "Application"), to place the Water into the Trust for the purpose of enhancing in-stream flows and providing mitigation water to offset and allow for the permitting of new water rights to be used for any lawful purpose within the Yakima River basin in Kittitas County; and

Whereas, Ecology has accepted the Application, has completed its examination of the extent and validity of the Water and is prepared to issue its Trust Water Right Report of Examination concerning the extent and validity of the Water (the "ROE") and its trust water certificate (the "Certificate").

Whereas, subject to the terms of this Agreement and the Application, Ecology is willing, able and authorized to hold the Water in the Trust as provided for herein;

Now, therefore, in consideration of the forgoing, the mutual covenants and undertakings as hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Purpose.** The purpose of this Agreement and the primary reason that Masterson is willing to place the Water into the Trust is to provide a senior water right as off-setting mitigation that will allow Masterson, or third parties acceptable to Masterson, to apply for and receive new ground water withdrawal or surface water diversionary permits within the Yakima River basin, particularly within Upper Kittitas County. These new water rights will be mitigated by way of a permanent designation of such portion of Masterson's beneficial interest in the Water in Trust as reasonably required to ensure no impairment to TWSA or other water rights; provided that any portion of such mitigation may also be provided by other means.

2. **Closing.** This Agreement shall be effective upon its mutual execution, and the Trust shall commence once the statutory warranty deed is executed, recorded, and delivered to Ecology. The term of this Agreement shall then be for so long as any portion of the Water remains in the Trust (the "Term"). Masterson's executed statutory warranty deed shall be in a recordable form of the

May 29, 2012

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Water to the Trust substantially in the form of Exhibit B attached hereto and incorporated herein (the "Deed").

3. **Third Party Sales.** The process for Masterson's sale of any uncommitted Water in Trust to third parties, and the corresponding issuance of mitigated permits or water budget neutrality determinations by Ecology, shall be as follows:

3.1 Masterson will propose or enter into a contract with a third party to provide a portion of the Water in Trust as mitigation on such terms consistent with this Agreement as Masterson may elect, Masterson or such third party shall make applications to Ecology (or, if appropriate, to a water conservancy board) for a water budget neutrality determination or to appropriate surface or ground water at the desired location and for the intended use and quantities, together with all regularly required supporting information (each, hereinafter a "New Application"). As part of the New Application, Ecology will assist in designating the specific quantity of the Water in Trust as required to offset the consumptive loss associated with the uses described on the New Application.

3.2 Ecology will process the New Application in accordance with applicable law, utilizing such portion of the Water in Trust as reasonably needed under the quantity allocation set out in Exhibit D which, together with any other proposed mitigation measures, shall reasonably offset the impacts of such new withdrawal.

3.3 If necessary or appropriate, Ecology will complete a Water Transfer Working Group ("WTWG") project description and will present it to the WTWG. Ecology, in consultation with the U.S. Bureau of Reclamation, will determine if some or all of the Water that Masterson or the third party applicant designates would be assigned to the Reclamation-Ecology storage and delivery exchange contract.

3.4 Ecology will investigate the New Application and recommend issuance or denial of a permit or a determination of water budget neutrality based on applicable policy, rules, and law. Ecology's review of New Application shall also include the following considerations:

3.4.1 In order to develop and confirm performance standards as set forth in any respective report of examination or determination of water budget neutrality, Ecology and such third party shall provide information to reasonably show or estimate, as the case maybe, that the consumptive uses of the proposed project, when offset by the mitigation water allocated from the Trust and any other proposed mitigation measures, do not increase the consumptive use of water.

3.4.2 With regard to domestic uses and so long as withdrawals are metered to users; and the subject project is, or will be made, subject to covenants, conditions and restrictions which impose water use restrictions for both inside and outside purposes which will be recorded against the project; and reasonable water use enforcement provisions are provided; and return flows are provided for through an approved septic or other waste treatment facility reasonably designed to infiltrate treated water in the general area from which it is being withdrawn, the allocation of Trust Water for mitigation shall be at a rate of not more than .392

acre-feet (350 gallons per day on a year round basis) per equivalent residential unit ("ERU"), or such greater amount as required by the Kittitas County Department of Health for serving a residential dwelling.

3.4.3 Ecology's permit or determination of water budget neutrality relative to a New Application will specify the conditions and limitations on the use of water in a manner consistent with the Water held in the Yakima Pilot Water Bank as mitigation. Conditions relating to measuring and reporting water use and for reimbursement of any Ecology costs to administer the Reclamation-Ecology Exchange Contract will also be included in the permit.

3.4.4 If issued, Ecology's permit or determination of water budget neutrality relative to a New Application will specify the conditions and limitations on the use of water in a manner consistent with the Water held in the Yakima Pilot Water Bank as mitigation.

3.4.5 If all or a portion of the Water is deemed adequate to fully mitigate a New Application, then the third party, upon receipt of final approval from Kittitas County of its land use applications for development of the real property that is the intended place and purpose of use of the New Application, and exhaustion of all applicable appeal periods thereof, the third party applicant (beneficiary of the Water) shall execute such documentation as necessary to irrevocably and perpetually commit the Water to Trust for purposes of offsetting the New Application.

3.5 If Ecology intends to issue an ROE for a New Application, it will publish the draft ROE on its internet site. If Ecology intends to issue a determination of water budget neutrality, it shall notify Masterson. If the form and substance of the draft ROE or water budget neutrality determination is acceptable to Masterson or the third party, Masterson or the third party applicant promptly shall cause an escrow to be opened for such transaction with an escrow agent mutually agreeable to both parties (the "Escrow Agent"). All escrow costs shall be borne by Masterson, or as otherwise set forth in the written escrow instructions or sale agreement between Masterson and the third party. Masterson and any third party having the right to do so under an agreement with Masterson, may, at any time prior to closing of escrow and without cause or penalty, withdraw the New Application or otherwise prevent any allocation of any portion of the Water to such transaction.

3.6 Ecology has determined that a proposed sale or transfer to third parties of a portion of the Water in Trust as mitigation for a water budget neutrality determination authorizing year-around residential groundwater use will likely result in a nominal reduction in flow after the end of the irrigation season. This reduction in flow is often concurrent with the lowest natural base flows of the year. Consequently, these nominal flow reductions may negatively affect Teanaway River aquatic resources, including fish production. Ecology and Masterson agree that investing in one or more upstream or headwaters riparian corridor projects would be desirable to address this nominal impact. Masterson shall deposit Five Hundred Dollars ($500.00) per residential connection to an escrow or other account managed by a third party ("Reserve Fund") for each transaction where Ecology determines that mitigation water withdrawals would have a nominal negative impact.

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May 29, 2012

3.7 Within 10 days of written request from Ecology to Masterson or the agent managing the Reserve Fund, all amounts in the Reserve Fund shall be disbursed to the Kittitas Conservation Trust, or other such recipient as Ecology designates in writing, for the exclusive purpose of funding flood plain function and riparian condition improvements in the Teanaway River Basin.

4. Management of Trust Water. During the Term and in its capacity as a fiduciary, Ecology shall hold and manage the Water in trust pursuant to chapter 90.38 RCW and this Agreement as a part of the total water supply available ("TWSA") in the Yakima River. Ecology:

4.1 Shall take no position and make no assertions that the quantities and beneficial use of the Water is other than as stated in the Reports of Examination for Trust Water Right Application No. CS4-01467@I1sb3a, and this representation shall also apply to any Water removed from the Trust;

4.2 Shall, in addition to the protections against relinquishment in RCW 90.14.140(2)(h), at all times during the Term manage, maintain, preserve and protect for the benefit of Masterson and its successors, designees and assigns all aspects and attributes of the Water, including, but not limited to, the priority date, the total diversionary right, instantaneous quantity, and annual consumptive quantity from impairment, challenges, claims and relinquishment;

4.3 Shall, as expeditiously as reasonable, process the Groundwater Application and any New Application where all or a portion of the Water is proposed as mitigation and shall take all steps necessary to comply with any restrictions imposed by other agreements to which Ecology may be subject, including, but not limited to memorandums of agreement and groundwater moratoriums or subsequently enacted water right processing rules; and

4.4 Shall not assess or charge Masterson any costs or fees for maintaining the Water in the Trust. The foregoing shall not be construed to prohibit Ecology from charging: its regular, published costs and fees for water right applications, transfers and investigations; costs attributable to assignment of a portion of the Water to Ecology's USBR contract for storage and exchange contract; and fees associated with assignment of Water in the Trust to offset impacts associated with the Groundwater Application or any New Application.

5. Representations and Warranties. In keeping with the purpose of this Agreement and as a material part of the consideration for this Agreement upon which its execution is dependent:

5.1 Masterson makes the following undertakings, representations and warranties to Ecology:

5.1.1 Kathleen Masterson is the personal representative of the Estate of Harry Masterson and fully able to enter into and perform all its obligations in this Agreement according to its terms.

5.1.2 Upon its full execution, this Agreement is binding upon Masterson in accordance with its terms.

5.1.3 Masterson shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement.

5.2 Ecology makes the following undertakings, representations and warranties to Masterson:

5.2.1 Ecology is a division of the State of Washington duly formed and authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

5.2.2 Each individual executing this Agreement on behalf of Ecology is duly authorized to execute and deliver this Agreement.

5.2.3 Upon its full execution, this Agreement is binding upon Ecology in accordance with its terms.

5.2.4 Ecology shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement.

6. **Termination; Default.** Masterson shall have the right at any time to withdraw the Application, terminate this Agreement and remove from the Trust any portion of the Water that has not been permanently allocated as mitigation of other water uses as set forth in this Agreement. In such event, Ecology shall promptly execute a Statutory Warranty Deed transferring the Water from the Trust to Masterson. If either party defaults in its obligations under this Agreement; or if this Agreement, or a material portion thereof, be declared illegal or unenforceable; or, either party, through no fault or action by such party, should be incapable or prevented from performing any material obligations or actions, the non-defaulting party in the event of a default or either party in any other event shall have the right to the following:

6.1 Declare the Agreement null and void, whereupon the parties shall cooperate to end the trust water right relationship in an orderly manner as follows:

6.1.1 Masterson shall identify all in-process designation agreements and inform Ecology of their status. Masterson shall not make representations regarding in-process designations and shall in each instance work with Ecology to determine whether an assignment should be completed. If Ecology agrees, the permit process will be completed promptly in accordance with applicable policies, rules, and law.

6.1.2 Ecology shall promptly convey to Masterson or its designee the portion of the Water not yet irrevocably designated and assigned as mitigation for individual ground water and surface water permits.

6.1.3 Each party shall be responsible for its own costs associated with terminating this Agreement and ending the trust water right relationship in an orderly manner.

6.2 Pursue any other remedy now or hereafter available.

6.3 In no event shall the termination of this Agreement alter or affect any Water previously allocated for mitigation or permits granted relative to any New Application or the Groundwater Application.

7. Assignment. This Agreement may be assigned by Masterson upon the giving of written notice to Ecology. This Agreement is binding upon and inures to the benefit of the parties to the Agreement as well as upon and to the benefit of their respective heirs, personal representatives, assigns and other successors in interest.

8. Notices. Any notice or communication required by this Agreement between Masterson and Ecology shall be given to the addresses set forth below:

To Ecology:

Water Resources Section Manager
Washington Department of Ecology
Central Regional Office
15 West Yakima Avenue, Suite 200
Yakima, Washington 98902-3452

To Estate of Harry Masterson:

Estate of Harry Masterson
Attn. Kathleen Masterson
381 Masterson Road
Cle Elum, WA 98922

With copy to:
Washington Water Trust
Attn: Susan Adams
1530 Westlake Avenue N, Suite 400
Seattle, WA 98109

11. **Severability.** No provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be unenforceable for any reason outside the control of the parties and subject to the provisions of Paragraph 8.I, the party finding itself unable to enforce the provision may, at its sole discretion, declare this entire Agreement to be null and void.

12. **Waiver.** If either party fails to exercise its rights under this Agreement, it will not be precluded from subsequent exercise of its rights under this Agreement. A failure to exercise

rights will not constitute a waiver of any other rights under this Agreement, unless stated in a letter signed by an authorized representative of the party and attached to the original Agreement.

13. **Amendments.** Amendments to this Agreement must be in writing and signed by an authorized representative of each of the parties.

14. **Reciprocal Indemnification.** Each party shall protect, defend, indemnify, and hold the other hold harmless from and against their respective acts and omissions and for all third party claims arising out of or related to this Agreement.

15. **Applicable Law.** This Agreement will be governed and enforced under the laws of the State of Washington. Venue for any action arising under or related to this Agreement shall be in Kittitas County, Washington.

This Agreement is executed as of the date first above written.

WASHINGTON STATE DEPARTMENT OF ECOLOGY

By: _____
Mark Kemner, Section Manager
Water Resources Program, CRO

ESTATE OF HARRY MASTERSON

By: _____
Kathleen Masterson, Personal Representative

-2012 May 29, 2012
KM

EXHIBIT A
The Water

Note: Water right quantities reflect changes in purpose, and place of use in Ecology's Trust Water Report of Examination (ROE), file no. CS4-01467@11sb3a, dated and signed on March 28, 2012.

Court Claim No.:	#01467
Source:	Teanaway River
Purpose of Use:	Instream flow for mitigation
Period of Use:	Year-round
Instant. Quantity:	0.335 cfs May 1 – September 15; 0.045 cfs from September 16 – April 30
Annual Quantity:	49.035 acre-feet per year from May 1 - September 15; and 0.075 acre-feet per year from September 16 - April 30
Priority Date:	June 30, 1883
Points of Diversion:	A point 650 feet south and 1,140 feet west from the northeast quarter corner of Section 34, being within the NE ¼ NE ¼ of Section 34, T. 20 N., R. 16 E. W.M.
Place of Use:	Instream flow in the Teanaway, Yakima, and Columbia Rivers.

D-28-12 KM May 29, 2012

EXHIBIT D

CONSUMPTIVE QUANTITIES
ASSOCIATED WITH Court Claim No. 01467 as stated as Mitigation purpose of use in Ecology Report of Examination No. CS4-01467@11sb3a

Purpose	Unit	May	June	July	August	Sep 1-15	Sept 16 - April 30	Total
Mitigation	af	0.002	6.812	13.152	9.732	7.061	0.015	36.77
(average)	cfs	0.001	0.111	0.211	0.161	0.121	0.001	-

5-29-12 KM May 29, 2012

EXHIBIT D: Tidwell Trust Water Right Agreement Addendum

Addendum to Trust Water Right Agreement
(Harry J. Masterson Testamentary Trust)

This Addendum to Trust Water Right Agreement ("Addendum") is made and entered into as of the 4th day of June, 2013, by and between the Washington State Department of Ecology, State Trust Water Right Program ("Ecology") and the Harry J. Masterson Testamentary Trust ("Masterson"), and supplements the Trust Water Right Agreement between Ecology and Masterson's predecessor, the Estate of Harry Masterson, dated June 20, 2012, and pertaining to the application submitted by Masterson under WRTS File Nos. CS4-01467@11sb3a ("Application"), and the water rights described therein ("Agreement").

In consideration of the mutual covenants and undertakings as hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree to supplement the Agreement as follows:

1. Add to the Water (as that term is defined in the Agreement) those water rights described in Exhibit E, which water rights were conveyed to the Harry J. Masterson Testamentary Trust from Donald I. and Doris Tidwell on March 25, 2013 under Kittitas County Auditor's file number 201303250036 (the "Tidwell Water Rights"). The Tidwell Water Rights were previously appurtenant to the land described in Exhibit F. The consumptive quantities of the Tidwell Water Rights are shown in Exhibit G. Exhibits E, F, and G are attached hereto and by this reference incorporated herein.
2. The Tidwell Water Rights are subject to all terms and conditions set forth in the Agreement applicable to the Water.

This Addendum is executed as of the date first above written.

WASHINGTON STATE DEPARTMENT OF ECOLOGY

By: _____
Mark Kenner, Section Manager
Water Resources Program, CRO

HARRY J. MASTERSON TESTAMENTARY TRUST

By: _____
Kathleen Masterson, Trustee

EXHIBIT E
The Tidwell Water Rights

Note: Water right is currently designated as instream flow until such time as Ecology issues a final ROE under Yakima County Superior Court, Acquavella Adjudication.

Court Claim No.:	#00914
Source:	Teanaway River
Purpose of Use:	Instream flow for mitigation
Period of Use:	Year-round
Instant. Quantity:	0.041 cfs May 1 – September 15
Annual Quantity:	10.169 acre-feet per year from May 1 - September 15 (3 acre-feet consumptive
Priority Date:	June 30, 1889
Point of Diversion:	150 feet north and 800 feet west from the southeast corner of Section 10, being within the SE ¼ SE ¼ of Section 10, T. 20 N., R. 16 E. W.M.
Place of Use:	Instream flow to the confluence of the Yakima and Columbia Rivers.

WR File No.: CS4-01042sb3
WR Doc ID: 6413554

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington Report of Examination for Water Right Change

PRIORITY DATE
June 30, 1889

WATER RIGHT NUMBER
S4-83707-J (Court Claim No. 01042)

MAILING ADDRESS
Mack Creek Ranch, LLC
c/o Konrad Liegel, Administrative Manager
463 E. Republican Street, Suite 190
Seattle, WA 98112

Total Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AC-FT/YR)
2.324[1]	CFS	755.3

Purpose

PURPOSE	PERIOD OF USE (mm/dd)
Irrigation of 166 acres and stockwater	05/01 – 09/15

Source Location

	COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
1.	Kittitas	Teanaway River	Yakima River	39 – Upper Yakima
2.	Kittitas	Mack Creek	Teanaway River	39 – Upper Yakima

SOURCE FACILITY/DEVICE	TWN	RNG	SEC	QQ Q	LONGITUDE	LATITUDE
Point of Diversion #1	20 N.	16 E.	25	NWNE	-120.78144	47.20093
Point of Diversion #2	20 N.	17 E.	19	SESW	-120.76300	47.20558

Datum: NAD83/WGS84

Place of Use (See Attachment 1)

PARCELS (NOT LISTED FOR SERVICE AREAS)
115535, 605435, and 135435

[1] When surplus water is available in excess of that needed to satisfy all existing water rights confirmed in the Teanaway River subbasin, including water needed to satisfy the Yakama Nation's minimum instream flow right for fish and other aquatic life, an additional 2.324 cubic feet per second (for a total diversion of 4.648 cfs) may be diverted. This water will normally only be available for a 30-day period in May and June.

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

That part of the SE¼SW¼ of Section 19, lying southwesterly of the 3M Ditch, and the NW¼ of Section 30, ALL within T. 20 N., R. 17 E.W.M.

Proposed Works

Applicant maintains two diversions: 1) A pumped diversion located on the downstream side of Red Bridge Road bridge (left bank), with a sump pump and a variable drive turbine pump connected to a mainline running easterly and uphill and discharging to a pond on the uphill (easterly) side of the applicant's place of use where Mack Creek enters the property; 2) a pond collecting Mack Creek water. Watering is done from the Mack Creek pond with a combination of impact sprinklers and gated pipe.

The Red Bridge Road bridge pump site was constructed in 2000 with Bonneville Power Administration funding as part of the Teanaway Restoration Project. The new pumped diversion point, situated at Teanaway River Mile (RM) 4.2, replaces the abandoned 3M Ditch diversion point at Teanaway RM 7.5 that historically supplied irrigation and stock water to the Mack Creek Ranch (MCR) place of use, and which was confirmed as the authorized Teanaway River diversion point for MCR by the Adjudication Court's February 8, 2001 Conditional Final Order for Subbasin No. 3 (Teanaway River).

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Begun	Complete	Complete

The Washington State Department of Ecology's (Ecology) findings as documented by this water right change decision are based on the Schedule of Water Rights presented in the Conditional Final Order, Subbasin No. 3, issued February 8, 2001 by the Yakima County Superior Court, as subsequently modified by the Court's Order to Divide and Partially Substitute Party dated February 24, 2015, and the current Acquavella Draft Schedule of Rights, which is periodically updated when changes are made by the Court. Ecology's decision is subject to any subsequent determination made by the Court, including the Final Decree in *Department of Ecology v. Acquavella*. Any changes to this water right made by the Court will be reflected on the final certificate of adjudicated water right, which will issue subsequent to entry of the Final Decree in *Department of Ecology v. Acquavella*.

Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Diversion (CFS)

Measurements, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use," WAC 173-173.

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

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

Provisions

A. Department of Fish and Wildlife Requirement(s)

The intake(s) must 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).

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

Phone: (360) 902-2534
Email: habitatprogram@dfw.wa.gov
Website: http://wdfw.wa.gov/conservation/habitat/planning/screening/

B. Easement and Right-of-Way

Where the water source and/or water transmission facilities are not wholly located upon land owned by the applicant, issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

C. 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.

Finding 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 the public welfare.

Therefore, I ORDER approval of Change Application No. CS4-01042sb3, subject to existing rights and the provisions specified above.

Your Right To Appeal

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be

served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

- The name and mailing address of the appellant.
- Name and address of the appellant's attorney, if any.
- The name and address of the Department of Ecology.
- The specific application number of the decision being appealed.
- A copy of the decision.
- A brief explanation of Ecology's decision.
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision.
- Facts that demonstrate the appellant is entitled to obtain judicial review.
- The appellant's reasons for believing that relief should be granted, and a request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed.** The appeal must be filed in the same manner as described above.

Please send a copy of your appeal to:
Trevor Hutton, Section Manager
Water Resources Program
Ecology Central Regional Office
1250 West Alder Street
Union Gap, WA 98903

Signed at Union Gap, Washington, this 13th day of May 2016.

Trevor Hutton

Trevor Hutton, Section Manager
Water Resources Program
Central Regional Office

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://www1.leg.wa.gov/CodeReviser.

INVESTIGATOR'S REPORT
Stan Isley, Department of Ecology
Water Right Control Number CS4-01042sb3
S4-83707-J

BACKGROUND

Description and Purpose of Requested Change

On December 17, 2014, Mack Creek Ranch, LLC, (MCR) filed an application with the Washington State Department of Ecology (Ecology) to change the Teanaway River point of diversion (POD) confirmed under Court Claim No. 01042 in *The State of Washington, Department of Ecology v. James J. Acquavella, et al.,* to a point downstream on the Teanaway River. The second MCR diversion point confirmed from Mack Creek will remain unchanged and will continue to be used by MCR. The application was accepted and assigned Control No. CS4-01042sb3.

The MCR proposed diversion point change and similar downstream changes in POD are concurrently being requested by the applicant and the several other Subbasin 3 claimants who are members of the Teanaway River Ranch Owners Association (TRROA) and the Seaton Water Users Association (SWUA), all of whom participated in the Teanaway Restoration Project. The Teanaway Restoration Project, a water use efficiency and water conservation project, was funded by the Bonneville Power Administration (BPA) and was constructed in the year 2000, with the provision that a five-year demonstration period would be required for the TRROA and SWUA members' water rights to determine how much conserved water would be transferred to the Washington State Trust Water Rights Program (Trust) for instream flow augmentation use in the Teanaway River. WAC 173-152-050(2)(c), 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 Trust that provide a substantial environmental benefit. The Teanaway Restoration Project is one large interrelated water conservation project that has generated instream flow Trust water rights that provide substantial environmental benefit. Therefore, Ecology may priority process all of the associated Teanaway Restoration Project water right change applications ahead of other competing applications. For each diversion point change application, a separate application was filed concurrently to place water no longer diverted as a result of this project into Trust, and separate reports evaluate those applications.

Table 1: Existing Water Right Attributes[2]

Water Right Owner:	Mack Creek Ranch, LLC
Priority Date:	June 30, 1889
Place of Use	That part of the SE¼SW¼ of Section 19 lying southwesterly of the 3M Ditch, and the NW¼ of Section 30, ALL within T. 20 N., R. 17 E.W.M.

County	Waterbody	Tributary To	WRIA
Kittitas	1) Teanaway River 2) Mack Creek	1) Yakima River 2) Teanaway River	39 - Upper Yakima

[2] As divided by the Yakima Adjudication Court in 2015 - see pages 10-12 of this report.

Purpose	Rate	Unit	Ac-Ft/Yr	Begin Season	End Season
Irrigation of 166 acres and stock water	2.324[1]	CFS	755.3	May 1	September 15

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Longitude	Latitude
1) Teanaway River	204835	20 N.	16 E.	10	SESE	-120.81810	47.23232 N
2) Mack Creek	295435	20 N.	17 E.	19	SESW	-120.76300	47.20558 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 2: Requested Water Right Attributes

Water Right Owner:	Mack Creek Ranch LLC
Priority Date:	June 30, 1889
Place of Use	That part of the SE¼SW¼ of Section 19 lying southwesterly of the 3M Ditch, and the NW¼ of Section 30, ALL within T. 20 N., R. 17 E.W.M.

County	Waterbody	Tributary To	WRIA
Kittitas	1) Teanaway River 2) Mack Creek	1) Yakima River 2) Teanaway River	39 - Upper Yakima

Purpose	Rate	Unit	Ac-Ft/Yr	Begin Season	End Season
Irrigation of 166 acres and stock water	2.324[1]	CFS	755.3	May 1	September 15

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Longitude	Latitude
1) Teanaway River	910436	20 N.	16 E.	25	NWNE	-120.78144	47.20093 N
2) Mack Creek	295435	20 N.	17 E.	19	SESW	-120.76300	47.20558 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.

Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the proposed change in POD:

Public Notice

Public Notice of the application was given in the Ellensburg Daily Record on January 27, 2016 and February 3, 2016. No letters of protest or comments were received during the 30-day protest period, which expired March 4, 2016.

[1] When surplus water is available in excess of that needed to satisfy all existing water rights confirmed in the Teanaway River Subbasin, including water needed to satisfy the Yakama Nation's minimum instream flow right for fish and other aquatic life, an additional 2.324 cubic feet per second (for a total diversion of 4.648 cfs) may be diverted. This water will normally only be available for a 30-day period in May and June.

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

The MCR water right change application was presented to the Yakima River Basin Water Transfer Working Group (WTWG) during the February 2, 2015 monthly meeting as WTWG Proposal 2015-26. The Department of Fish and Wildlife participates in the WTWG, as does the Yakama Nation, irrigation district representatives, US Bureau of Reclamation (USBR), other agency staff, and interested parties. At the February 2, 2015 WTWG meeting, the WTWG gave the MCR diversion point change application its 'thumbs up' approval recommendation, and also concurrently gave its 'thumbs up' approval recommendation to Ecology's application to transfer the conserved water portion of the originally-confirmed MCR water right to instream flow trust water use in the Teanaway River.

Subsequently, at the April 6, 2015 WTWG monthly meeting, under WTWG Proposal 2015-36, WTWG gave its 'thumbs up' approval recommendation to the entire Teanaway Restoration Project, which includes the several downstream water right diversion point changes for the TRROA members' and the SWUA members' water rights, and the transfers of Ecology's portion of each of the TRROA members' and SWUA members' originally-confirmed water rights to instream flow trust water use in the Teanaway River.

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 are 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.

This water right change application is a part of the larger Teanaway Restoration Project, which includes Ecology's administrative decisions on 26 water right change applications that propose to change the purpose of use of up to 4.886 cfs of surface water rights from irrigation to instream flow trust water right use in the Teanaway River. These administrative actions collectively require SEPA review and compliance. Ecology acted as lead agency, reviewed the 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 January 26, 2016. Notice of Ecology's DNS was published in the SEPA register on January 27, 2016, and also published in the Ellensburg Daily Record on January 27, 2016 and February 3, 2016. The SEPA comment period closed on February 10, 2016, with no comments received by Ecology.

The Bonneville Power Administration (BPA) was the lead agency that completed the initial construction-related SEPA and NEPA environmental review required prior to the actual construction of this Teanaway Restoration Project back in 2000. On August 4, 1999, BPA signed and entered the

"Supplement Analysis for the Watershed Management Program EIS (DOE/EIS-0265/SA-15)", finding "1) That the proposed actions are substantially consistent with the Watershed Management Program EIS (DOE/EIS-0265) and ROD, and 2) that there are no new circumstances or information relevant to environmental concerns and bearing on the proposed actions or their impacts. Therefore, no further NEPA documentation is required."

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) and chapter 90.38 RCW provide that a water right that has been put to beneficial use may be changed. The 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 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, only the Superior Court has such authority.

INVESTIGATION

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

- The State Water Code.
- Report of Referee, Supplemental Report of Referee, and Second Supplemental Report of Referee, Concerning the Water Rights for Subbasin No. 3 (Teanaway River), and the Court's February 8, 2001 Conditional Final Order (CFO) for Subasin No. 3 (Teanaway River).
- Stream flow and diversion data.
- Existing water rights on file for the subject Teanaway Restoration Project water users and other recorded water rights in the project vicinity.
- August 3, 1999 contract agreements (three agreements) between the USBR, the Bonneville Power Administration (BPA) and 1) Teanaway Ranch Incorporated (now Mack Creek Ranch, LLC (MCR)), 2) Teanaway River Ranch Associates (now Teanaway River Ranch Owner's Association (TRROA)) and 3) Seaton Water User's Association (SWUA).
- March 9, 2000 and June 14, 2007 Adjudication Court Orders Pendente Lite assigning portions of the subject Teanaway Restoration Project water rights to instream flow use in the Teanaway River and authorizing the use of the new downstream Teanaway River pump site diversion points for the remainder (i.e., the off-stream use portion) of each subject water right.
- Notes from many site visits conducted by Ecology staff and Teanaway Stream Patroller Stan Isley and others from August 1998 to the present date.
- Topographic and local area maps.
- Aerial photographs of the site.
- Kittitas County Assessor's Office records.

The Teanaway Restoration Project is a major water use efficiency improvement, water conservation, and instream flow augmentation project, funded in major part by BPA, and constructed and implemented in 2000.

1999 Contract Agreements

On August 3, 1999, BPA and the USBR signed and entered three contract agreements with the holders of a total of 26 individual Teanaway River water rights that were ultimately confirmed by the Yakima Adjudication Court's February 8, 2001 Conditional Final Order (CFO) for Subbasin No. 3 (Teanaway River).

- The first 1999 contract agreement was with Teanaway Ranch Incorporated, now owned by MCR, the holder of one Teanaway River irrigation and stock water right subsequently confirmed by the Court's Subbasin No. 3 CFO.
- The second 1999 contract agreement was with the members of the TRROA, whose members held 13 individual irrigation and stock water rights subsequently confirmed by the Court's Subbasin No. 3 CFO.
- The third and last 1999 contract was with the members of the SWUA, and then the parties amended the 1999 contract on February 19, 2002 to add an additional SWUA member water right. These SWUA members' 12 individual irrigation and stock water rights were all confirmed by the Court's Subbasin No. 3 CFO.

These three contract agreements were similar in nature, but had slightly different provisions.

- The 1999 MCR, BPA, and USBR contract provided that MCR would assign 30% of its irrigation water right, including 30% of its surplus water right, to the Washington State's Trust Water Rights Program (Trust) for instream flow use in the Teanaway River, and that MCR would divert its remaining 70% of its water right, including 70% of its surplus water right, from the new pump site diversion point located downstream from its historic 3M Ditch diversion point at Teanaway River mile (RM) 7.5, and from MCR's Mack Creek diversion point. BPA agreed to fund the year-2000 construction of the new downstream pump site and low-pressure water delivery system, which was ultimately sited below the Red Bridge Road bridge at Teanaway RM 4.2.
- The 1999 TRROA, BPA, and USBR contract provided that the TRROA members would immediately assign 30% of their base irrigation water rights to Trust for instream flow use in the Teanaway River, that the TRROA members would permanently retire/relinquish all of their surplus water rights, and that the parties would await the completion of a 5-year demonstration/trial period, excluding any designated drought years, to determine whether SWUA members would transfer a further 20% of their base irrigation water rights to Trust for Teanaway River instream flow use. TRROA members agreed to divert their remaining 'up-to-70%' remainder of their base water rights from the new pump site diversion point located downstream from their historic Haida-Peterson Ditch diversion point at Teanaway RM 5.1. BPA agreed to fund the year-2000 construction of the new downstream pump site and high-pressure on-demand water delivery system, which pump site was ultimately sited below the Red Bridge Road bridge at Teanaway RM 4.2.
- The 1999 SWUA, BPA, and USBR contract, as amended on February 19, 2002, provided that the SWUA members would immediately assign 30% of their base irrigation water rights to Trust for

instream flow use in the Teanaway River, that the SWUA members would permanently retire/relinquish all of their surplus water rights, and that the parties would await the completion of a 5-year demonstration/trial period, excluding any designated drought years, to determine whether SWUA members would transfer a further 20% of their base irrigation water rights to Trust for Teanaway River instream flow use. SWUA members agreed to divert their remaining 'up-to-70%' remainder of their base water rights from the new pump site diversion point located downstream from their historic Seaton Ditch diversion point at Teanaway RM 3.4. BPA agreed to fund the year-2000 construction of the new downstream pump site and high-pressure on-demand water delivery system, which pump site was ultimately sited below the Lambert Road bridge at Teanaway RM 0.6.

Five-year Trial Period

The MCR contract agreement did not include any provision for a five-year demonstration/trial period.

The five-year demonstration/trial period for the TRROA and SWUA members' water systems began at the completion of system construction at the end of the 2000 irrigation season. Both 2001 and 2005 were declared drought years in the Yakima River Basin, and as such did not count as years of record for the five-year trial period according to the provisions of the 1999 TRROA and SWUA (as amended in 2002) contracts. The five-year demonstration concluded at the end of the 2007 irrigation season.

Water diversion records documented by the Teanaway River Stream Patroller, Stan Isley, show that the TRROA and SWUA members did indeed use up to 70% of their base water rights' instantaneous diversion rate limits in cubic feet per second during the five-year trial period (and since), but that the TRROA and SWUA members had used only 50% of their base irrigation water rights' annual duties, in acre-feet per year, during the trial period (and subsequently).

Thus according to the provisions of the 1999 TRROA and SWUA (as amended) contracts, the TRROA and SWUA members were not required to transfer any additional diversion rate, but are required to transfer an additional 20% of their base annual water duty, in acre-feet per year, to Trust for instream flow use in the Teanaway River.

The TRROA and SWUA members retained 70% of their base instantaneous diversion rate in cubic feet per second, and 50% of their base annual water duty, in acre-feet per year, for their continuing off-stream use for irrigation and stock watering.

Water Right Change Applications – 27 POD Change Applications and 26 Trust Water Change Applications

MCR filed with Ecology its one POD change application on December 17, 2014, and Ecology filed its one corresponding trust water right application for the Ecology portion of the original MCR water right concurrently on December 17, 2014.

TRROA members filed with Ecology 11 POD change applications on March 20, 2015; one application on April 1, 2015 (Johnson); and one application on April 8, 2015 (Sole). Ecology filed its 13 corresponding trust water right applications for Ecology's portions of each of the original TRROA members' water rights concurrently with the POD change applications, on March 20, April 1, and April 8, 2015.

NOTE: Five of the 13 TRROA members' POD change applications, all of which were filed with Ecology on March 20, 2015, were subsequently the subject of Adjudication Court Orders to Divide and

Partially Substitute Party entered on May 7, 2015 (4) and June 25, 2015 (Sparks/Blais) – see details in the report section below. These were specifically the POD change applications for the: 1) Hancock water right, 2) Abeyta right, 3) G.D. Enterprises NW, LP, 1885-priority right, 4) Sparks/Blais right and 5) Perkins/Fletcher/Bryan right. In each case the Court Order further divided the retained off-stream use portion of each water right into separate water rights appurtenant to each separate parcel and/or separate ownership within the original water right's POU.

SWUA members filed with Ecology 10 POD change applications on April 27, 2015; one application on June 26, 2015 (McClure); one application on June 30, 2015 (Starkovich); and one application on July 2, 2015 (Riley). Ecology filed its 12 corresponding trust water right applications for Ecology's portions of each of the original SWUA members' water rights mostly concurrently with the POD change applications on April 27, 2015 (10 trust applications); June 30, 2015 (one trust application); and July 2, 2015 (the McClure/Riley combined one trust application).

NOTE: The one McClure/Riley trust application is Ecology's portion of the originally-confirmed McClure water right from the February 8, 2001 Subbasin 3 CFO. Subsequent to filing this McClure/Riley trust application with Ecology, the author discovered that the Court entered an Order of Partition of that water right on January 11, 2007, partitioning the originally-confirmed McClure water right into two portions: one for irrigation of 5.5 acres and stock watering retained by June McClure, and one for irrigation of 3.0 acres and stock watering held by Joe Riley, June's son. Both parties co-signed the one combined Ecology trust water right application.

Court Orders to Divide and Partially Substitute Party

The Yakima Adjudication Court entered a total of 27 Orders to Divide and Partially Substitute Party for each of the subject Teanaway Restoration Project (i.e., MCR, TRROA members, and SWUA members) water rights during 2015.

- The Court entered MCR's Order to Divide and Partially Substitute Party on February 24, 2015. The Order divided the MCR irrigation and stock water right into two portions. The first portion (30% of the MCR right, including 30% of its surplus water) was transferred to Ecology for subsequent placement in Trust for instream flow use in the Teanaway River, and is quantified as 0.996 cfs, or up to 1.992 cfs for up to 30 days when surplus water is available in excess of that needed to satisfy all existing rights (normally in May and June), 323.7 acre-feet per year (ac-ft/yr). The second portion (70% of the MCR right, including 70% of its surplus water) is to be retained by MCR for continuing off-stream irrigation and stock water use, and is quantified as 2.324 cfs, or up to 4.648 cfs for up to 30 days when surplus water is available in excess of that needed to satisfy all existing rights (normally in May and June), 755.3 ac-ft/yr.
- The Court entered: 10 Orders to Divide and Partially Substitute Party for the TRROA members' water rights on May 7, 2015; one Order to Divide and Partially Substitute Party on June 25, 2015 (for TRROA members Sparks/Blais), and two Orders to Divide and partially Substitute Party on September 10, 2015 (TRROA members Sole and Johnson). The Orders divided the TRROA members' water rights into at least two portions. The first portion (30% of each of the TRROA members' confirmed water right's instantaneous diversion rate in cubic feet per second, and 50% of the TRROA members' confirmed base annual water duty (in acre-feet per year) was transferred to Ecology for subsequent placement in Trust for instream flow use in the Teanaway River, for a combined total of 2.08 cfs, 936.9 ac-ft/yr. The Orders recognized that the former surplus water portion of each of the TRROA members' water rights is permanently retired/relinquished, for a combined total of 6.935 cfs, 379.5 ac-ft/yr of relinquished surplus

water rights. The remainder of each of the TRROA members' water rights, 70% of the confirmed base diversion rate in cubic feet per second and 50% of the confirmed annual water duty, in acre-feet per year, remains authorized for continuing off-stream irrigation and stock water use, for a combined total of 4.855 cfs, 936.92 ac-ft/yr. However, the Orders further divided the retained off-stream use portions of several of the TRROA members' water rights as follows:

1) The retained Hancock off-stream irrigation and stock water right was divided into five separate water rights, one appurtenant to each of the five separate parcels/lots they own within the original water right's POU.
2) The retained Abeyta off-stream irrigation and stock water right was divided into two separate water rights, one appurtenant to each of the two separate parcels/lots he owns within the original water right's POU.
3) The retained G.D. Enterprises NW, LP, 1885-priority off-stream irrigation and stock water right was divided into two separate water rights, one appurtenant to each of the two separate parcels/lots within the original water right's POU.
4) The retained Sparks/Blais off-stream irrigation and stock water right was divided into four separate water rights, one appurtenant to each of the four separate parcels/lots within the original water right's POU, one of which is owned by the Blaises, and three of which are owned by the Sparkses.
5) The retained Perkins/Fletcher/Bryan off-stream irrigation and stock water right was divided into three separate water rights within the original water right's POU, each right appurtenant to a different one of the three separate parcels/lots within that original POU. The Perkinses are the sole owners of one lot, the Fletchers are the sole owner of a second lot, and the Bryans are the sole owner of the third and last lot.

- The Court entered 12 Orders to Divide and Substitute Party for the SWUA members' water rights on September 10, 2015 and one Order to Divide and Substitute Party on December 16, 2015 (SWUA member Ivan Osmonovich's 1882-priority water right). The Orders divided the SWUA members' water rights into two portions. The first portion (30% of each of the SWUA members' confirmed water right's instantaneous diversion rate in cubic feet per second, and 50% of the SWUA members' confirmed base annual water duty (in acre-feet per year) was transferred to Ecology for subsequent placement in Trust for instream flow use in the Teanaway River, for a combined total of 0.814 cfs, 366.124 ac-ft/yr. The Orders recognized that the former surplus water portions, of each of the five SWUA members' water rights that were confirmed the right to divert and use surplus water, are permanently retired/relinquished, for a combined total of 1.241 cfs, 68.20 ac-ft/yr of relinquished surplus water rights. The remainder of each of the SWUA members' water rights, 70% of the confirmed base diversion rate in cubic feet per second and 50% of the confirmed annual water duty, in acre-feet per year, remains authorized for continuing off-stream irrigation and stock water use, for a combined total of 1.896 cfs, 365.613 ac-ft/yr.
- NOTE: As explained above, on September 10, 2015, the Court entered a separate Order to Divide and Partially Substitute Party for the McClure 5.5 acre irrigation and stock water right, and a separate Order to Divide and Partially Substitute Party for the Riley 3.0 acre irrigation and stock water right, which had been the subject of a previous Order of Partition entered by the Court on January 11, 2007. That earlier 2007 Order partitioned the original 8.5 acre irrigation and stock water right confirmed to June McClure in the Court's February 8, 2001 CFO into the two separate McClure (irrigation of 5.5 acres and stock water) and Riley (irrigation of 3.0 acres and stock water) water rights.

Legal History

The surface water rights of Subbasin No. 3 (Teanaway River) were the subject of a general adjudication conducted in Kittitas County Superior Court entitled *State of Washington v. Frank Amosso and Minnie Amosso, his wife; et al.*, with Decree No. 6221 entered by the Court on June 16, 1921.

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 began in 1977 and is still in progress at the time of this writing. *Acquavella* is an 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 Water Rights, and Federal Non-Reserved Water Rights. The Teanaway River drainage basin is Subbasin No. 3. The Court's Conditional Final Order (CFO) for Subbasin No. 3 (Teanaway River) was entered on February 8, 2001. A final decree for *Acquavella* has not yet been issued by the Superior Court.

The Court's Subbasin No. 3 (Teanaway River) CFO confirmed a schedule of Teanaway Subbasin surface water rights with priorities that range from 1882 through 1973.

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. 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, noting simply that it is that minimum amount of water necessary to maintain fish and other aquatic life. The Court further provided that the USBR would determine the amount of water necessary to satisfy this water right based on annual prevailing conditions.

The lower Teanaway River is a designated Usual and Accustomed Fishing Site for the Yakama Nation. The Yakama Nation Treaty Reserved Minimum Instream Flow Water Right for Fish and Other Aquatic Life is appurtenant to the Teanaway River and its tributaries and is the oldest water right in Subbasin No. 3 (Teanaway River).

Teanaway River Subbasin Description

The West, Middle, and North Forks of the Teanaway River flow generally southeasterly out of the east-slope of the Cascade Mountains, through Wenatchee National Forest lands, through the Teanaway Community Forest managed by the Washington State Department of Natural Resources and the Washington State Department of Fish and Wildlife, and on to their confluence near the northern end of the privately-owned agricultural lands in the Teanaway Valley. Then the Teanaway River continues flowing generally southerly to its confluence with the Yakima River approximately four miles easterly of the City of Cle Elum.

The majority of irrigation occurs in the middle and lower reaches of the Teanaway Valley, where Timothy Hay and pasture are the predominant irrigated crops. Historically, the nearly 2,000 irrigated acres within the Teanaway River Subbasin were irrigated with diversions of water from the river into

long, unlined, gravity-flow ditches, and inefficient on-farm flood irrigation practices. Water users created in-river push-up diversion berms to divert river water into their irrigation ditches.

Prior to the development of irrigation diversions beginning about 1882, the Teanaway River is believed to have produced a large number of resident and anadromous fish, including steelhead and spring chinook salmon, and likely bull trout and other species. The development of agricultural diversions caused a drastic decline in the number of fish produced in the Teanaway River Subbasin. Irrigation diversion berms, unscreened diversion ditches, and dewatering of river reaches below the diversions, partly or completely blocked upstream and downstream fish passage, and caused fish mortality at critical times of the year.

The Teanaway River has been the focus of fish and flow restoration efforts for several decades, with a concerted effort by the Washington Department of Fish and Wildlife, the USBR, the Yakama Nation, the Bonneville Power Administration, the Kittitas County Conservation District, and many other agencies and entities, to screen all water diversions, and improve fish passage and habitat and instream flows in the Teanaway River and its tributaries.

Beginning about 1995, BPA and Yakama Nation staff sought the assistance of the USBR and Ecology and other water management agencies to implement the Teanaway Restoration Project. BPA's interest was to restore fish habitat and numbers in the Teanaway River and other Columbia River Basin tributary streams as mitigation for lost fish and fish habitat caused by the construction and continuing operation of the Federal Columbia River Power System dams and reservoirs.

BPA and its partner agencies commenced negotiations with the Teanaway River Subbasin water users in late 1995, culminating in the execution and entry of the three Teanaway Restoration Project contract agreements described above.

Additionally, BPA has constructed the Cle Elum Supplementation Facility ('hatchery') and several satellite acclimation and smolt release facilities at various locations in the upper Yakima River basin, including the Jack Creek acclimation facility in the North Fork Teanaway River drainage. Annually, beginning about 2000, BPA and the Yakama Nation release spring chinook salmon fry into the Jack Creek acclimation facility in late winter. Those salmon fry then volitionally leave the facility and enter the North Fork Teanaway River to begin their migration to the Pacific Ocean when the fry begin their smoltification process in the spring.

The efforts of the many agencies and the participating water right holders in the Teanaway River Subbasin have yielded many benefits, including:

- Maintenance of Teanaway Subbasin agricultural irrigation, using much more efficient irrigation systems that require much less diverted water from the Teanaway River to fully irrigate the crops.
- A substantial increase in instream flow water quantities and improved fish habitat in the Teanaway River and its tributaries.
- Elimination of virtually all fish passage barriers caused by agricultural water diversions, and the successful screening of all water diversions in the Teanaway River Subbasin.
- Dramatic increase in the numbers of returning adult spring chinook salmon spawners and other fish to the Teanaway River Subbasin.

Historic numbers of returning adult spring chinook salmon spawners in the Teanaway River Subasin up through 1999 were low and the Teanaway chinook salmon were nearly extirpated. The Yakama Nation began actual counting of spring chinook salmon redds ('nests') in the Teanaway Subbasin in 1981. Counts ranged from zero redds to six redds in the 19 years from 1981 through 1999, but in 13 of those 19 years, the redd count in the entire Teanaway Subbasin was zero.

After the work of the Teanaway Restoration Project and other complementary projects to restore fish passage and improved instream flows, and with the start of operation of the Jack Creek Acclimation Facility, spring chinook redd counts in the Teanaway Subbasin jumped to 21 in 2000 and 2001, 110 in 2002 (when the adults of salmon fry released from the Jack Creek acclimation facility first returned to the Teanaway), and have jumped to as high as 253 redds in 2010.

Actual Water Use of Teanaway Restoration Project Water Rights

The author, Stan Isley, is the Court-appointed Teanaway River Subbasin Stream Patroller, and has monitored, and continues to monitor, the ongoing use of water for all of the water rights involved in the Teanaway Restoration Project since its implementation in 2000. Those water rights are the MCR, TRROA members', and SWUA members' retained irrigation and stock water rights, and Ecology's proposed instream flow use Trust water rights derived from each of the parent MCR, TRROA members', and SWUA members' water rights. The off-stream use POUs for all of these MCR, TRROA members', and SWUA members' water rights have been irrigated each year since project implementation in 2000, with only a few exceptions. Since project implementation in 2000, none of these retained off-stream use portions of the MCR, TRROA members', and SWUA members' water rights has had a five consecutive year period of non-use that would indicate full or partial relinquishment under RCW 90.14.140 and RCW 90.14.160. The instream use portion of each of the MCR, TRROA members', and SWUA members' water rights has been utilized for instream flow use each year since the project implementation in 2000, and has been temporarily authorized for such continuing instream flow use by Court Orders Pendente Lite entered on March 9, 2000, and June 14, 2007.

Proposed Uses

The applicants are proposing to change their PODs confirmed by the Court's 2001 CFO to downstream locations on the Teanaway River and to transfer the Ecology portion of each water right to primary-reach-only instream flow trust water use in the Teanaway River, as follows:

- MCR is proposing to change its Teanaway River diversion point for its retained portion (i.e., its continuing off-stream use portion) of its irrigation and stock water right, from the abandoned 3M Ditch diversion point, downstream to the new MCR/TRROA pump plant. The abandoned 3M Ditch diversion point is located 150 feet north and 800 feet west from the southeast corner of Section 10, being within the SE¼SE¼ of Section 10, T. 20 N., 16 E.W.M. (Kittitas County Parcel No. 204835, Teanaway River Mile (RM) 7.5). The new MCR/TRROA pump plant is located on the left (easterly) bank of the Teanaway River immediately downstream of the Red Bridge Road bridge, located 900 feet south and 2,100 feet west of the NE¼ corner of Section 25, being within the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M. (Kittitas County Parcel No. 910436, Teanaway RM 4.2). MCR will continue to use its authorized Mack Creek diversion point as a second water source under its irrigation and stock water right. The MCR Mack Creek diversion point is located 500 feet north and 150 feet west from the south quarter corner of Section 19, being within the SE¼SW¼ of Section 19, T. 20 N., R. 17 E.W.M. (Kittitas County Parcel No. 295435).

- Ecology is proposing to change its instream flow trust water portion of the former MCR irrigation and stock water right to instream flow trust water use, only in the primary reach of the Teanaway River, from the historic MCR 3M Ditch diversion point (Teanaway RM 7.5), downstream to the MCR/TRROA pump plant (Teanaway RM 4.2), where the instream flow trust water right will terminate.
- The TRROA members are proposing to change their Teanaway River diversion point for their retained portions (continuing off-stream use portions) of their irrigation and stock water rights, from the abandoned Haida-Peterson Ditch diversion point, downstream to the new MCR/TRROA pump plant. The abandoned Haida-Peterson Ditch is located 800 feet north and 800 feet east of the southwest corner of Section 13, being within the SW¼SW¼ of Section 13, T. 20 N., R. 16 E.W.M. (Kittitas County Parcel No. 706336, Teanaway RM 5.1). The new TRROA/MCR pump plant is located on the left (easterly) bank of the Teanaway River below the Red Bridge Road bridge, described above (Kittitas County Parcel No. 910436, Teanaway RM 4.2).
- Ecology proposes to change its instream flow trust water portions of each of the former TRROA members' irrigation and stock water rights to instream flow trust water use, only in the primary reach of the Teanaway River, from the historic Haida-Peterson Ditch diversion point (Teanaway RM 5.1), downstream to the TRROA/MCR pump plant (Teanaway RM 4.2), where the instream flow trust water right will terminate.
- The SWUA members are proposing to change their Teanaway River diversion point for their retained portions (continuing off-stream use portions) of their irrigation and stock water rights, from the abandoned Seaton Ditch diversion point, downstream to the new SWUA pump plant. The abandoned Seaton Ditch diversion point is located 1,200 feet south and 600 feet west of the east quarter corner of Section 26, being within the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M. (Kittitas County Parcel No. 528536, Teanaway RM 3.4). The new SWUA pump plant is located on the right bank of the Teanaway River immediately upstream of the Lambert Road bridge, located 50 feet north and 50 feet west of the SE corner of Section 33, being within the SE¼SE¼ of Section 33, T. 20 N., R. 16 E.W.M. (Kittitas County Parcel No. 514536, Teanaway RM 0.6).
- SWUA member June McClure also proposes to add a POD or point of withdrawal to her retained portion (continuing off-stream use portion) of her irrigation and stock water right: a sump/shallow well located on her property (near the east fenceline), located approximately 1,500 feet south and 1,800 feet east of the northwest corner of Section 34, being within the SE¼NW¼ of Section 34, T. 20 N., R. 16 E.W.M. (Kittitas County Parcels Nos. 735235 and 14524).
- Ecology proposes to change its instream flow trust water portions of each of the former SWUA members' irrigation and stock water rights to instream flow trust water use, only in the primary reach of the Teanaway River, from the historic Seaton Ditch diversion point (Teanaway RM 3.4), downstream to the SWUA pump plant (Teanaway RM 0.6), where the instream flow trust water right will terminate.

Other Water Rights Appurtenant to the Proposed Place of Use

The only other water rights appurtenant to the POUs for these Teanaway Restoration Project off-stream use water rights are permit-exempt domestic well water rights. Several other instream flow trust water rights share the same instream reach POU as these Teanaway Restoration Project instream flow trust water rights.

Hydrologic/Hydrogeologic Evaluation

For the purpose of this evaluation, the region of interest extends from the abandoned 3M Ditch at Teanaway RM 7.5, formerly used to deliver water to the MCR water right's POU, downstream to the new SWUA pump plant on the Teanaway River on the upstream side of the Lambert Road bridge at Teanaway RM 0.6.

The USBR maintains two stream flow gauging stations on the Teanaway River: the Forks Gauge located (in Section 5, T. 20 N., R. 16 E.W.M.) approximately 2.5 miles upstream of the abandoned 3M Ditch diversion point, and the Lambert Road Gauge is located right at the Lambert Road bridge, immediately downstream of the SWUA pump plant water intake. Additionally, Ecology maintains a Teanaway River Gauge immediately below the TRROA/MCR pump plant intake and downstream of the Red Bridge Road bridge.

Previous analyses by Ecology hydrogeologists and other staff have been unable to identify any specific losing or gaining reaches in this subject reach of the Teanaway River. Briefly, a losing reach indicates that the stream has a tendency to discharge water to the aquifer over a given reach. A gaining reach occurs when groundwater is discharging or adding water to a creek over a specific reach.

Impairment Considerations

These Teanaway Restoration Project water rights have been historically managed by the Adjudication Court-appointed Teanaway Stream Patroller, Stan Isley, based on the priority class system established by the Court's February 8, 2001 Subbasin No. 3 (Teanaway River) CFO, and will continue to be thus managed under the forthcoming *Acquavella* Final Decree. These water rights are subject to regulation and curtailment of use when water is unavailable for their specific class of water right, according to that class' specific priority date, in keeping with the Prior Appropriation Doctrine's "first in time is first in right" tenet.

There are several PODs utilized by third-party, non-Teanaway Restoration Project water right holders in the reach of the Teanaway River from the abandoned 3M Ditch diversion point (historically used by MCR) at Teanaway RM 7.5, downstream to the MCR/TRROA pump plant diversion point at Teanaway RM 4.2. This intervening reach from Teanaway RM 7.5 to Teanaway RM 4.2 is the reach that is affected by the proposed MCR and TRROA POD change applications and the Ecology trust water right applications derived from those former MCR and TRROA water rights. The third-party non-project water rights in this reach are as follows:

1884 Priority Water Right

1) Downs, Milton and Geraldine, originally confirmed for 0.16 cfs, 52 ac-ft/yr for irrigation or 8 acres and stock water, from May 1 through September 15, within a portion of the NE¼SW¼ of Section 13, T. 20 N., R. 16 E.W.M. This original 3M Ditch (and Mason and Musser Creeks) water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion points of water from the 3M Ditch on the Teanaway River to pump sites only on Mason and Musser Creeks on the Downses' property within the W½ of said Section 13. This water right also was confirmed surplus water for up to 30 days when available.

1885 Priority Water Rights

1) Teanaway Valley Farms Inc., 0.755 cfs, 245.375 ac-ft/yr for irrigation of 37.75 acres, and 2.0 ac-ft/yr for stock water, both from May 1 through September 15, within a portion of the SW¼ of Section 13, T. 20 N., R. 16 E.W.M. This original 3M Ditch (and Mason Creek and Musser

Creek) water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion/withdrawal points of water from the 3M Ditch (and Mason and Musser Creeks) to two sources: a ring well on his property and also a portable pump on the Teanaway River, both within the SW¼ of said Section 13 (approximately Teanaway RM 5.2). This water right also was confirmed surplus water for up to 30 days when available.

2) Downs, Milton and Geraldine, confirmed for 0.44 cfs, 143 ac-ft/yr for irrigation of 22 acres, and 2.0 ac-ft/yr for stock water, both from May 1 through September 15, within a portion of the E½ of Section 14, T. 20 N., R. 16 E.W.M. This original 3M Ditch water right has been leased for instream flow trust water use in the Teanaway and Yakima Rivers in recent years. The Downses have not found an alternate diversion point for this water use since the 3M Ditch was abandoned. This water right also was confirmed surplus water for up to 30 days when available.
3) Goodwin, Greg (former Evenden), confirmed for 0.55 cfs, 178.75 ac-ft/yr for irrigation of 27.5 acres, and 2 ac-ft/yr for stock water, from May 1 through September 15, within a portion of the SW¼ of Section 13, T. 20 N., R. 16 E.W.M. This original 3M Ditch (and Mason and Musser Creeks) water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion points of water from the 3M Ditch (and Mason and Musser Creeks) to a portable pump on the Teanaway River within the SW¼ of said Section 13 (approximately Teanaway RM 5.2). This water right also was confirmed surplus water for up to 30 days when available.

<u>1889 Priority Water Rights</u>

1) Badda, Robert and Cecilia, originally confirmed for 0.24 cfs, 78.0 ac-ft/yr for irrigation of 12 acres and stock water, from May 1 through September 15, within a portion of the SW¼NE¼ of Section 14, T. 20 N., R. 16 E.W.M. This original 3M Ditch water right has been modified and reduced since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion point of water from the 3M Ditch to a portable pump on the Teanaway River within said Section 14, T. 20 N., R. 16 E.W.M. (approximately Teanaway RM 6.7). This water right also was confirmed surplus water for up to 30 days when available.
2) Carollo, Mike, confirmed for 0.014 cfs, 4.55 ac-ft/yr for irrigation of 0.7 acre and stock water, from May 1 through September 15, within a portion of the SW¼NE¼ of Section 14, T. 20 N., R. 16 E.W.M. This original 3M Ditch water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion point of water from the 3M Ditch to two side-by-side portable pumps on the Teanaway River within the NW¼ of said Section 14 (approximately Teanaway RM 7.1). This water right also was confirmed surplus water for up to 30 days when available.
3) Goodwin, Greg (former Evenden), confirmed for 0.05 cfs, 16.25 ac-ft/yr for irrigation of 2.5 acres, from May 1 through September 15, within a portion of the SW¼SE¼ of Section 13, T. 20 N., R. 16 E.W.M. This original 3M Ditch (and Mason and Musser Creeks) water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion points of water from the 3M Ditch to a portable pump on the Teanaway River within the SW¼ of said Section 13 (approximately Teanaway RM 5.2). This water right also was confirmed surplus water for up to 30 days when available.
4) Teanaway Valley Farms, Inc., confirmed for 0.055 cfs, 17.875 ac-ft/yr, for irrigation of 2.75 acres, from May 1 through September 15, within a portion of the NE¼SE¼ of Section 14, T. 20 N., R. 16 E.W.M. This original 3M Ditch (and Mason Creek) water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion/withdrawal points of water from the 3M Ditch (and Mason Creek) to two sources: a ring well on his property and also a portable pump on the Teanaway River, both within the SW¼ of said Section 13 (approximately

Teanaway RM 5.2). This water right also was confirmed surplus water for up to 30 days when available.

5) Tidwell, Don, originally confirmed for 0.30 cfs, 97.5 ac-ft/yr, for irrigation of 15 acres and stock watering, from May 1 through September 15, within a portion of the SW¼NE¼ of Section 14, T. 20 N., R. 16 E.W.M. This original 3M Ditch water right has been modified and reduced since the 2001 entry of the Teanaway Subbasin CFO, and has largely been transferred to instream flow use in the Teanaway River and water bank mitigation use. This water right also was confirmed surplus water for up to 30 days when available.

1903 Priority Water Right

1) Teanaway Valley Farms, Inc. (former Grywacz), confirmed for 0.25 cfs, 67.5 ac-ft/yr, for irrigation of 13.5 acres, and 0.01 cfs, 1.0 ac-ft/yr, for stock water, both from May 1 through September 15, within portions of Sections 13 and 14, T. 20 N., R. 16 E.W.M. This original Mason Creek water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion/withdrawal points of water from Mason Creek to two sources: a ring well on his property and also a portable pump on the Teanaway River, both within the SW¼ of said Section 13 (approximately Teanaway RM 5.2).

June 30, 1905 Priority Water Right

1) Fruhling, James and Sheryl, originally confirmed for 0.40 cfs, 110 ac-ft/yr, for irrigation of 20 acres and stock water from May 1 through September 15, within a portion of the SW¼SW¼ of Section 11, T. 20 N., R. 16 E.W.M. This original Ballard Ditch water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion point of water from the upstream abandoned Ballard Ditch diversion to a portable pump site located approximately 1,000 feet downstream of the abandoned 3M Ditch diversion point (approximately Teanaway RM 7.3) and approximately 200 feet south of the NW corner of Section 14, T. 20 N., R. 16 E.W.M.

   NOTE: The Ballard Ditch was historically located within the NE¼NE¼ of Section 8, T. 20 N., R. 16 E.W.M., approximately 2.5 miles upstream of the historic 3M Ditch diversion point, and outside the subject affected reach of the Teanaway River.

1910 Priority Water Right

1) Carollo, Mike, confirmed for 0.226 cfs, 73.45 ac-ft/yr for irrigation of 11.3 acres and stock watering from May 1 through September 15, within a portion of the E½NW¼ of Section 14, T. 20 N., R. 16 E.W.M. This original 3M Ditch water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion point of water from the 3M Ditch to two side-by-side portable pumps on the Teanaway River within the NW¼ of said Section 14 (approximately Teanaway RM 7.1). This water right also was confirmed surplus water for up to 30 days when available.

There are several water rights confirmed to third-party non-Teanaway-Restoration-Project water right holders in the reach of the Teanaway River from the abandoned Seaton Ditch at Teanaway RM 3.4, downstream to the SWUA pump plant diversion point at Teanaway RM 0.6. This intervening reach from Teanaway RM 3.4 to Teanaway RM 0.6 is the reach that is affected by the proposed SWUA POD change applications and the Ecology trust water right applications derived from the former SWUA water rights. The third-party non-project water rights in this reach are as follows:

1882 Priority Water Right

1) Maggs, Clifford and Rene (former Bonetto), 0.09 cfs, 13.8 ac-ft/yr for irrigation of 4.6 acres from May 1 through September 15, within the NW¼NW¼SW¼ of Section 34, T. 20 N., R. 16 E.W.M., from a pump located within the NW¼SW¼ of said Section 34 (approximately Teanaway RM 1.0).

1883 Priority Water Rights

1) Harry Masterson Estate, originally confirmed for 4.8 cfs, 1,527.50 ac-ft/yr for irrigation of 235 acres and stock watering from May 1 through September 15, 1.0 cfs, 5 ac-ft/yr (consumptive) for stock water from September 16 through April 30, within portions of Sections 28 and 33, T. 20 N., R. 16 E.W.M. The originally-confirmed diversion point was the abandoned Masterson Ditch diversion downstream of Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2. This water right also was confirmed surplus water for up to 30 days when available. This water right has been modified and changed several times since the Teanaway CFO issued in 2001, and in 2015 was entirely assigned to instream flow and water banking mitigation uses.
2) Mundy, Wilbur and Mary Ann, originally confirmed for 0.90 cfs, 292.5 ac-ft/yr for irrigation of 45 acres and stock watering from May 1 through September 15, 1.0 cfs, 5.0 ac-ft/yr (consumptive use) for stock watering from September 16 through April 30, within portions of Sections 28 and 33, T. 20 N., R. 16 E.W.M. The originally-confirmed diversion point was the abandoned Masterson Ditch diversion downstream of Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2. This water right was confirmed surplus water for up to 30 days when available. This water right has been modified and changed several times since the Teanaway CFO was entered in 2001, and in 2015 was entirely assigned to instream flow use.
3) Suncadia (former Walker), three water rights, originally confirmed for a total of 2.74 cfs, 739.8 ac-ft/yr for irrigation of 137 acres, and 2.0 ac-ft/yr for stock watering, both from May 1 through September 15, within portions of Sections 25 and 26, T. 20 N., R. 16 E.W.M. The originally-confirmed two diversion points were the abandoned Masterson Ditch in the NW¼NE¼ of said Section 25, at Teanaway RM 4.2, and/or the abandoned Seaton Ditch in the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M., at Teanaway RM 3.4. These three rights have been modified and changed several times since the Teanaway CFO was entered in 2001, and in 2015 were entirely assigned to instream flow use in the Teanaway River and mitigation for consumptive water use at the Suncadia Resort near Roslyn.

1884 Priority Water Rights

1) Maggs, Clifford and Rene (former Bonetto), two water rights, confirmed for a total of 0.60 cfs, 90 ac-ft/yr, for irrigation of 30 acres from May 1 through September 15, within portions of Section 34, T. 20 N., R. 16 E.W.M., from a pump located within the NW¼SW¼ of said Section 34 (approximately Teanaway RM 1.0).

1885 Priority Water Right

1) Bugni, Estate of (now owned by Teanaway Ridge/Pat Deneen), confirmed for 1.5 cfs, 410.4 ac-ft/yr for irrigation of 76 acres from May 1 through September 15, within a portion of the NW¼ of Section 3, T. 19 N., R. 16 E.W.M., from the abandoned Bugni Ditch in the NE¼SW¼ of Section 34, T. 20 N., R. 16 E.W.M. (approximately Teanaway RM 1.4). This right has been modified and changed since the Teanaway CFO was entered in 2001, and has been transferred to a POU outside the Teanaway River Subbasin on the Olson Ditch via the Ellensburg Water Company Canal.

1889 Priority Water Rights

1) Monroe, Gary, and Judith Torgeson, originally confirmed for 0.20 cfs, 54 ac-ft/yr, for irrigation of 10 acres, from May 1 through September 15, within a portion of the NE¼ of Section 4, T. 19 N., R. 16 E.W.M. This right was originally confirmed to the abandoned Masterson Ditch diversion point downstream of the Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2, and the abandoned Seaton Ditch diversion point in the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M., at Teanaway RM 3.4. This water right has been

modified and divided since the entry of the Teanaway Subbasin CFO in 2001. The authorized diversion points are now portable pumps on the lower Teanaway River below Lambert Road bridge, at approximately Teanaway RM 0.4, outside (downstream) of the subject affected reach of the Teanaway River.

2) U.S. Bureau of Reclamation (former Istvan), two water rights, confirmed for a total of 0.40 cfs, 108 ac-ft/yr, for irrigation of a total of 20 acres, from May 1 through September 15, within a portion of the NE¼ of Section 4, T. 19 N., R. 16 E.W.M. These rights were originally confirmed to the abandoned Masterson Ditch diversion point downstream of the Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2, and the abandoned Seaton Ditch diversion point in the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M., at Teanaway RM 3.4. These water rights have been modified since the entry of the Teanaway Subbasin CFO in 2001 (actually by the Court's March 9, 2000 Order Pendente Lite, which continues in force) to transfer these rights to instream flow use in the Teanaway and Yakima Rivers.

1890 Priority Water Rights

1) Blackburn, Penny, three rights, originally confirmed for a total of 1.22 cfs, 394.3 ac-ft/yr, for irrigation of 61 acres, and 2 ac-ft/yr for stock watering, both from May 1 through September 15, within portions of Sections 27 and 34, T. 20 N., R. 16 E.W.M. These rights were originally confirmed to the abandoned Seaton Ditch diversion point in the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M., at Teanaway RM 3.4, or the abandoned Grubesich/Geiger Ditch diversion point located in the SW¼SW¼ of Section 26, T. 20 N., R. 16 E.W.M., approximately at Teanaway RM 2.6. These water rights have been modified since the entry of the Teanaway Subbasin CFO in 2001 to change the diversion point from the abandoned Seaton and Grubesich/Geiger Ditches to a pump site diversion point located in the SE¼ of said Section 34. These water rights also were confirmed surplus water for up to 30 days when available.

2) SwiftWater Ranch LLC (former Blackburn), originally confirmed for 0.32 cfs, 86.4 ac-ft/yr for irrigation of 16 acres, 1 ac-ft/yr for stock water, both from May 1 through September 15, within a portion of the SW¼SW¼ of Section 26, T. 20 N., R. 16 E.W.M. This right was originally confirmed to the abandoned Masterson Ditch diversion point downstream of the Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2, and the abandoned Seaton Ditch diversion point in the NE¼SE¼ of said Section 26, at Teanaway RM 3.4. This water right has been modified since the entry of the Teanaway Subbasin CFO in 2001 to change its use to instream flow use and water banking mitigation use. This water right also was confirmed surplus water for up to 30 days when available.

3) Suncadia (former Walker), originally confirmed for 0.68 cfs, 183.6 ac-ft/yr for irrigation of 34 acres, from May 1 through September 15, within a portion of Section 26, T. 20 N., R. 16 E.W.M. The originally-confirmed two diversion points were the abandoned Masterson Ditch diversion point downstream of the Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2, and the abandoned Seaton Ditch diversion point in the NE¼SE¼ of said Section 26, at Teanaway RM 3.4. This right has been modified and changed several times since the Teanaway CFO was entered in 2001, and in 2015 was entirely assigned to instream flow use in the Teanaway River and mitigation for consumptive water use at the Suncadia Resort near Roslyn.

1898 Priority Water Rights

1) Suncadia (former Walker), water rights (two rights), originally confirmed for a total of 0.34 cfs, 90.72 ac-ft/yr for irrigation of 16.8 acres, from May 1 through September 15, within portions of Section 26, T. 20 N., R. 16 E.W.M. The originally-confirmed diversion point was the abandoned Masterson Ditch diversion point downstream of the Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2. These two rights have been modified

and changed several times since the Teanaway CFO was entered in 2001, and in 2015 were entirely assigned to instream flow use in the Teanaway River and mitigation for consumptive water use at the Suncadia Resort near Roslyn.

The above list documents the numerous water rights, some junior in priority to the Teanaway Restoration Project water rights, located in the intervening river reaches between the originally-confirmed and now-abandoned ditch diversion points for the Teanaway Restoration Project water rights and their proposed downstream pump site diversion points. Because water availability is expected to be equally as reliable at the new pump sites further downstream as at the original ditch diversion points, approval of the POD changes to the pump sites located further downstream is not anticipated to adversely affect junior upstream users by "calling" (i.e., regulating) them more frequently.

Indeed, this Teanaway Restoration Project's water right changes were initially implemented over 15 years ago under the temporary authorization of the Court's March 9, 2000 and June 14, 2007 Orders Pendente Lite. In these 15 years of operation, the downstream changes in POD and the protection of the primary-reach-only instream flow water uses in the intervening reaches between historic abandoned ditch diversion points and the new downstream pump site diversions have not caused any adverse impact to any third-party non-Teanaway-Restoration-Project water rights.

The Ecology primary-reach-only instream flow trust water rights created from this Teanaway Restoration Project enjoy the same priority dates as the parent water rights from which they are derived. These instream flow trust water rights have been, and will continue to be, managed according to their relative water right priority dates within the Teanaway River Subbasin schedule of rights confirmed by the Adjudication Court. They will be exercised and protected only when all potentially-affected senior-priority water rights are fully satisfied.

CONCLUSIONS

In accordance with chapters 90.03 and 90.38 RCW, the author makes the tentative determination that surface water right S4-83707-J, confirmed under Court Claim No. 01042 with a priority date of June 30, 1889, represents a valid water right that authorizes the diversion of up to 2.324 cfs, or up to 4.648 cfs for up to 30 days (normally in May and June) when surplus water is available to satisfy all existing Teanaway River Subbasin water rights, from May 1 through September 15, up to 755.30 acre-feet per year, of water from the Teanaway River and Mack Creek, for irrigation of 166 acres and stock watering. Approval of this water right change, as conditioned, will not cause impairment of other existing water rights. Approval of this water right change will not enhance or enlarge the subject water right.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a change in the POD be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

Purpose of Use and Authorized Quantities

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:

- 2.324 cubic feet per second[1]
- 755.30 acre-feet per year
- Irrigation of 166 acres and stock watering from May 1 through September 15

Points of Diversion:

1. MCR's Teanaway River pump site diversion point: situated on the left (easterly) bank of the Teanaway River immediately downstream of the Red Bridge Road bridge, described as "900 feet south and 2,100 feet west of the NE¼ corner of Section 25, being within the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M." Kittitas County Parcel No. 910436, Teanaway RM 4.2.
2. MCR's Mack Creek diversion point: "500 feet north and 150 feet west from the south quarter corner of Section 19, being within the SE¼SW¼ of Section 19, T. 20 N., R. 17 E.W.M.", Kittitas County Parcel No. 295435.

Place of Use:

That part of the SE¼SW¼ of Section 19 lying southwesterly of the 3M Ditch, and the NW¼ of Section 30, ALL within T. 20 N., R. 17 E.W.M., Kittitas County Parcel Nos. 115535, 605435, and 135435.

Stan Isley

May 5, 2016

Stan Isley, Permit Writer — *Date*

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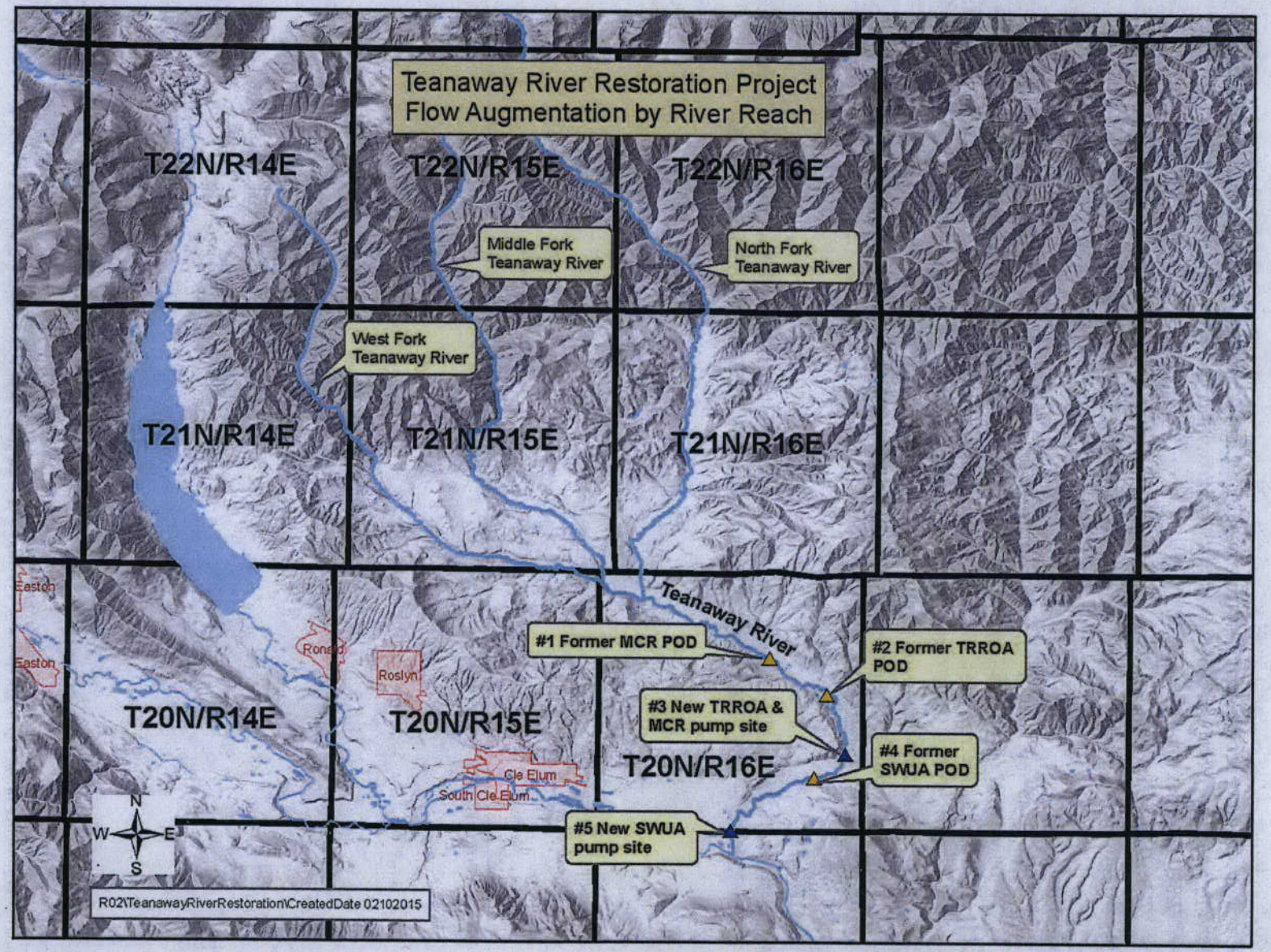
[1] When surplus water is available in excess of that needed to satisfy all existing water rights confirmed in the Teanaway River Subbasin, including water needed to satisfy the Yakama Nation's minimum instream flow right for fish and other aquatic life, an additional 2.324 cubic feet per second (for a total diversion of 4.648 cfs) may be diverted. This water will normally only be available for a 30-day period in May and June.


Teanaway River Restoration Project
Flow Augmentation by River Reach
T22N/R14E
T22N/R15E
T22N/R16E
Middle Fork Teanaway River
North Fork Teanaway River
West Fork Teanaway River
T21N/R14E
T21N/R15E
T21N/R16E
Teanaway River
#1 Former MCR POD
#2 Former TRROA POD
#3 New TRROA & MCR pump site
#4 Former SWUA POD
#5 New SWUA pump site
Easton
Roslyn
Cle Elum
South Cle Elum
T20N/R14E
T20N/R15E
T20N/R16E
N
W
E
S
R02\TeanawayRiverRestoration\CreatedDate 02102015

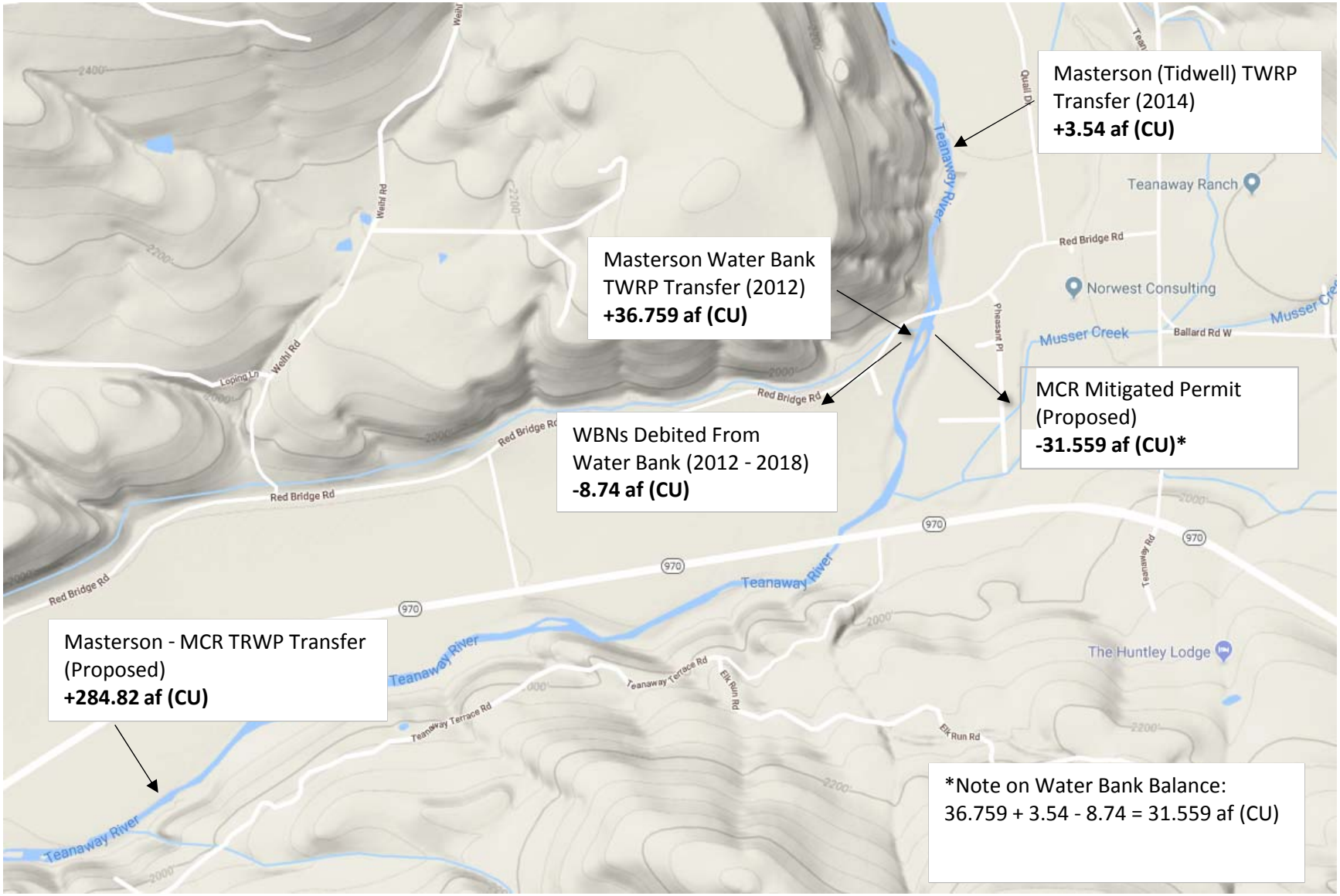


Figure 3
Conceptual Water Right Balance
Mack Creek Ranch - Masterson Water Right Transfer
Cle Elum, WA

Aspect Consulting
5/29/2018
C:\Users\tcarlson\Documents\Projects - U Drive\Mack Creek Ranch\WTWG\Revised\Figures.xlsx