

GUIDANCE FOR PROCESSING AND MANAGING TRUST WATER RIGHTS

Resource Contact: **Trust Water Right Coordinator**

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References: [RCW 90.03.380](#) Chapter 90.14 RCW
 [RCW 90.03.390](#) Chapter 90.38 RCW
 [RCW 90.44.100](#) Chapter 90.42 RCW
 [POL-1020](#) [PRO-1000](#)
 [PRO-1050](#) [POL-1120](#)
 [GUID-1210](#) [POL-1200](#)
 [Washington Water Acquisition Program Strategy](#)
 [Trust Water Right Program Guidelines](#)
 [Rettkowski v. Dept. of Ecology](#)

Purpose: To provide guidance to the Water Resources Program staff processing trust water rights under Chapters 90.38 and 90.42 RCW and ensure statewide consistency and efficiency.

Application: This guidance should be followed when Water Resources Program staff:

- Provides advice to the public
- Processes trust water right applications
- Processes applications for change or transfer of a water right that includes a trust water right proposal.

This guidance supersedes any previous guidance for processing or managing trust water rights. The guidance may be supplemented periodically as the Water Resources Program gains experience in the acquisition, processing, and management of trust water rights, or when the one of the governing statutes is amended.

To use this guidance effectively, it is critical to properly identify the type of trust water transaction you are working with. Trust water transactions can be very complex, particularly when combined with other water right changes or transfers.

Table of Contents

Section 1 - Frequently Asked Questions	1
Section 2 - Managing a Trust Water Right	6
Section 3 - Trust Water Agreements and Trust Water Right Applications	8
Section 4 - Acquisition Resulting from a Publicly Funded Water Conservation Project	10
Section 5 - Acquisition by Short-Term Lease (five years or less)	13
Section 6 - Acquisition by Long-Term Lease (greater than five years)	16
Section 7 - Purchase by the State or with Other Public Funds	19
Section 7A – Transfer of Water Rights Accepted by the Walla Walla Watershed Management Partnership Bank on a Permanent Basis to the State Trust Water Program	21
Section 8 - Donation of a Water Right	22
Section 9 - Water Right Acquisitions through Water Savings Incidental to Processing an Application for Permit or Application for Change	27
Section 10 - Modification or Extension of an Existing Trust Water Right:	28
Section 11 - Trust Water Right Data	29
Appendix A: Checklist for Trust Water Right Application Review	A-1
Appendix B: Matrix of Trust Water Right Processes and Considerations	B-1
Appendix C: Definitions	C-1
Appendix D: Progress Sheet for Trust Water Right Applications	D-1
Appendix E: Public Notices	E-1
Appendix F: Model letter for Acceptance of a Trust Water Right Donation	F-1
Appendix G: Trust Water Right Report Form	G-1
Appendix H: Template for Certificate of Trust Water Right Acquisition	H-1
Appendix I: Pre-Trial Order #6	I-1
Appendix J: Pre-Trial Order #12	J-1
Appendix K: Pre-Trial Order #17	K-1
Appendix L: Motion To Be Joined	L-1
Appendix M: Order To Join	M-1
Appendix N: Quit Claim	N-1

Section 1 - Frequently Asked Questions

Q1. What is a trust water right? There are two types of trust water rights, distinguished by the controlling statutes. A trust water right, as defined in Chapter 90.42 RCW, is any water right acquired by the state for management in the State's Trust Water Right Program. This can include portions of water rights acquired by the state's funding of irrigation projects through programs such as the Irrigation Efficiencies Grants Program.

The definition in Chapter 90.38 RCW for the Yakima River basin is slightly different. There, a trust water right is the portion of a water right no longer required because of water conservation improvements to an existing system [[RCW 90.42.020\(3\)](#)]. It may also be any other water right acquired by Ecology for the Yakima River Basin Trust Water Right Program [[RCW 90.38.010\(3\)](#)].

Q2. What statutes govern trust water rights? Primary authority is in Chapters 90.38 and 90.42 RCW. Related authorities are in [RCW 90.03.380](#) (Changes/Transfers), [RCW 90.3.390](#) (Temporary Changes), and [Chapter 90.66 RCW](#) (Family Farm Water Act).

Q3. Are trust water rights only for instream purposes? No. Trust water rights can be for many purposes [[RCW 90.38.040\(3\)](#) and [RCW 90.42.040\(1\)](#)].

Q4. If a water right is to be used for instream flow purposes, is Ecology required to change the purpose of use of the water right? Yes. However, the authority for performing the change of purpose varies. A change of purpose of use is reviewed under [RCW 90.03.380](#) and [RCW 90.03.390](#); or under specific requirements of [RCW 90.38.040\(6\)](#); or under Chapter 90.42 RCW in either of the two following circumstances:

- a) Temporary or permanent donations for instream flow purposes [[RCW 90.42.080\(5\)](#)].
- b) Trust water rights acquired by the state through funding conservation projects [[RCW 90.42.040\(7\)](#)].

Q5. Are there water rights that cannot be placed into the Trust Water Right Program?

Some rights cannot be accepted into the Trust Water Right Program:

1. Family Farm Water Act (Chapter 90.66 RCW) permits and certificates, unless ONE OR MORE of the following conditions are met:
 - a) It is acquired under a lease agreement.
 - b) The place of use is within the boundaries of an urban growth area designated under Chapter 36.70A RCW.
 - c) The place of use is within a city, town, or area designated for urban growth under Chapter 36.70 RCW if not planning under Chapter 36.70A RCW.
 - d) Water is made surplus through physical or operational water use efficiency improvements associated with water rights that existed on or before July 28, 1991.
 - e) The trust water right is retained and authorized for beneficial use within the same Water Resource Inventory Area (WRIA) or urban growth area.

- Q6. What kinds of water rights may be held by the Trust Water Right Program, but Ecology would normally not acquire using public funds?**
1. Water rights subject to interruption due to instream flow rule provisions will generally not be acquired through the expenditure of public funds or for mitigation purposes.
 2. Water rights with severe limitations or lack of seniority that, as a result, would not sufficiently benefit fisheries. Ecology will normally consult with Washington Department of Fish and Wildlife fisheries biologists to make this determination.
 3. Supplemental or stand-by rights, unless they are acquired in conjunction with the primary water right.
- Q7. Is a [Trust Water Right Application form](#) required to accept a water right into the Trust Water Right Program?** Yes. However, the [Irrigation Efficiency Grants Program](#) (IEGP) uses a consolidated application form that replaces the trust water right application form.
- Q8. Are there additional forms or steps needed to place water in the Yakima River Basin Trust Water Right Program before the adjudication is complete?** Yes. Until the Yakima River Adjudication ends, short-term leases in the Yakima River basin require that either the water right holder or Ecology petition the Superior Court to change the purpose of use of a Court Claim. If approved, the Court will issue an Order Pendente Lite. (Pre-Trial Orders #6 and #12 in Appendices I and J). If Ecology approves a permanent change of a Court Claim, a Pre-Trial Order #17 Notice (Appendix K) must be filed by Ecology giving notice to the Court and other parties. Also, Ecology must file a motion and then receive an Order Joining a Party (Appendices L and M are examples) from the Superior Court to acknowledge that Ecology is the owner of the trust water right.
- Q9. How does relinquishment apply to trust water rights?** Trust water rights are exempt from relinquishment [[RCW 90.38.040\(6\)](#), [RCW 90.42.040\(6\)](#), and [RCW 90.14.140\(2\)\(h\)](#)].
- Q10. What happens to the water right when the term of a temporary donation or lease ends?** When a temporary donation or lease ends or expires, the water right reverts to the donor or lessor in the same amount accepted into the Trust Water Right Program. For rights that will go through a subsequent change or transfer, Annual Consumptive Quantity (ACQ) is not affected. However, because an extent and validity review under [RCW 90.03.380](#) was not performed by Ecology when the water right was accepted into the Trust Water Right Program, the right that reverts to the donor may not reflect its actual validity or quantity [[RCW 90.42.080\(9\)](#) and [RCW 90.38.020\(7\)](#)].
- Q11. Does placing a water right into the Trust Water Right Program by lease or donation “reset” or “suspend” the five-year relinquishment clock?** Under 90.42.040 (4)(c), trust water rights accepted into the trust program are considered to be exercised, so the water right’s relinquishment clock is reset. **This does not mean that relinquished rights have been revived.**
- Q12. How is a trust water right exercised?** Exercising a water right means putting the water to an actual beneficial use. For an out-of-stream use, exercising the right is obvious by the

physical diversion of water from a stream and applying it to a beneficial use, such as irrigation of a crop. For an instream or groundwater preservation use, the water is instead used for incremental enhancement of instream, groundwater resources and riparian habitat. Exercising an instream flow trust water right occurs when the first three actions (see the following list) have occurred. It is irrefutable when the fourth action occurs:

1. The state acquires the water right through donation, lease, or purchase.
2. The state makes public notice of the trust water right.
3. The historical use of the water right stops or is reduced.
4. The water master or stream patrolman curtails or regulates a junior diversion in favor of the senior instream flow trust water right.

Even if an acquired trust water right is not put to actual beneficial use, trust water rights are considered exercised when acquired into the trust water rights program.

Q13. How can the Trust Water Right Program be used to prevent relinquishment of a water right? Trust water right statutes allow a water right holder to donate all, or a portion, of a water right to the Trust Water Right Program for instream flow or groundwater preservation purposes. Ecology must accept a donation to the Trust Water Right Program for instream flow or groundwater preservation purposes unless the donor places unreasonable conditions on the donation. The donated trust water right, plus any portion of the right that would continue to be used by the donor, cannot exceed the amount of water used in the previous five years. [\[RCW 90.42.080\(4\)\]](#)

A donation for instream flow or groundwater preservation purposes is not subject to an extent and validity review. Therefore placement in the Trust Water Right Program is not evidence of the validity or quantity of the water right [\[RCW 90.42.080\(1\)\(b\), \(4\), \(5\), and \(9\), RCW 90.42.040\(8\), and RCW 90.38.020\(1\)\(b\), \(4\), and \(7\)\]](#).

Q14. How will Ecology decide whether to accept a donated water right into the Trust Water Right Program? Ecology will review the Trust Water Right Application form, available aerial photography, publicly available county assessor's information, and the supplemental materials the donor provides showing proof of the amount of water used during the previous five years.

In cases where water use has not occurred in the most recent five year period, and the applicant claims an exemption or sufficient cause for non-use under [RCW 90.14.140\(1\)](#), Ecology will review materials provided by the applicant showing;

1. sufficient cause for non-use, OR
2. that an exemption from relinquishment applies.

If Ecology concurs with applicability of the claimed sufficient cause or exception, it will review water use information provided for the five year period preceding the exempted or excused period of non-use. The letter accepting the trust water donation will also explicitly state that acceptance of the water right into trust is not evidence of the validity or extent of the water right. (See Appendix F)

In cases where municipal and hydropower rights have not been used within the most recent five year period under RCW 90.14.140(2)(a) or (d), the amount of water eligible to be acquired shall be based on historical beneficial use.

Q15. How does Ecology quantify the amount of water that can be accepted into the trust program? Ecology determines the amount of water that can be accepted into trust by:

- 1) An extent and validity review (required if [RCW 90.03.380](#) applies), OR
- 2) The highest use within the previous five years before the acquisition, [[RCW 90.42.080\(4\)](#)], OR
- 3) For rights subject to non-use exceptions under 90.14.140(1), the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [[RCW 90.42.080\(10\)](#)], OR
- 4) For municipal and hydropower rights under RCW 90.14.140(2)(a) or (d), the amount of water eligible to be acquired shall be based on historical beneficial use. [[RCW 90.42.080\(11\)](#)]

In some instances, the legislature has identified more than one method for calculating the amount of water eligible for acceptance into the trust water rights program. In such instances, Ecology calculates the amount of water eligible for acceptance using each method and then uses the smaller of the values.

Q16. What is an “extent and validity review?” It is a review required by [RCW 90.03.380](#) to support a conclusion that the water use was lawfully originated and determine the amount of water applied to beneficial use. It involves assessing historical records, maps, aerial photography, and other available documents. The purpose and nature of the review was clarified by the Washington State Supreme Court in *Okanogan Wilderness League v Twisp* and *R.D Merrill v Pollution Control Hearings Board*. The review evaluates the water right (not only the portion proposed for change) to determine the maximum amounts of water used as described in the claim, permit, or certificate. The review also determines if there are any periods of non-use greater than five successive years. If so, Ecology may then consider whether an exemption or sufficient cause for non-use applied (avoiding relinquishment). The determinations required by [RCW 90.03.380](#) are not final; they are tentative and only a Superior Court can make a final determination of a water right’s extent and validity.

Q17. How is the place of use of a trust water right described?

Surface Water. The place of use of a trust water right for instream flows is defined within a primary reach and, if applicable, a secondary reach. The primary reach is the portion of a water body that benefits from both the former consumptive use and return flow waters of a trust water right. It is the reach between the original diversion point and the point where the last return flows reenter the stream or river. The secondary reach is the portion of a water body that received return flow waters while the water right was exercised for its original out-of-stream purpose. The secondary reach, therefore, only benefits from the former consumptive portion of the trust water right. It is downstream from the point where return flows from the historic use under the water right reentered the stream or river. [[RCW 90.42.020\(2\)](#) and [RCW 90.38.010\(2\)](#)]

Ground Water. The place of use for groundwater preservation trust water rights is defined as the body of public groundwater from which the original right entitles water use. [\[RCW 90.42.040 \(2\)\]](#)

Q18. How are the instantaneous and annual quantities of an instream flow trust water right protected? Ecology may enforce against junior water uses in the primary reach to protect the full instantaneous and annual quantities under the water right or portion of the water right placed in the Trust Water Right Program. In the secondary reach, only the consumptive quantities associated with the previous use of the water right may be protected against other water right holders. In the Yakima River basin, the Trust Water Right is to be exercised on the same schedule as the historic use, unless storage is used to reschedule delivery of the water. In other basins, we recommend resolving the schedule of historic use to avoid claims that exercising the trust water right would impair other water rights. You can determine the schedule by calculating the consumptive and non-consumptive fractions of the water right on a month-by-month basis [\[RCW 90.38.040\(4\)\]](#). See [Trust Water Program Guidelines](#), and [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#).

See the [Trust Water Rights Program Guidelines](#) for an example calculation of the primary and secondary reach quantities associated with using an irrigation right in the Trust Water Right Program for instream flow purposes.

Q19. How are the instantaneous and annual quantities of a groundwater right protected? Ecology may enforce against junior groundwater users within the same body of public groundwater to protect the full instantaneous and annual quantities under the water right or portion of the water right placed in the Trust Water Right Program. [\[WAC 173-150\]](#)

Q20. Can a water right that has been in a water bank established under Chapter 90.92 RCW be accepted into the state trust water right program?

Yes. Ecology interprets the term “exercised” in RCW 90.42.080(4) and (8) to apply to rights that have been placed in a water bank established under Chapter 90.92 RCW. Accepting a water right into a water bank established under Chapter 90.92 RCW does not revive all or any portion of the water right that may have relinquished prior to acceptance into the water bank.

Section 2 - Managing a Trust Water Right

Ecology's ability to exercise and, if necessary, protect a trust water right is an important factor when using public funds to acquire a water right. Staff capability, agency priorities, available resources, and legal authority to regulate other water users determine our ability to protect a trust water right. These matters are of only limited concern when adequate water is available for all users.

The conditions and provisions of the Trust Water Right Report of Examination and any agreement with the owner or seller determine how we may exercise a trust water right. If public funding is used to acquire the water right, the trust water right will be used to satisfy a public purpose. Most often that public purpose is instream flow enhancement.

It is common for only a portion of a water right to be conveyed to the Trust Water Rights Program (TWRP). In those cases, the state holds the trust portion and the original water right holder retains any remaining portion of the water right. To ensure that the water right is not enlarged to the detriment or injury of other water rights competing for the same stream, added care should be taken when exercising the trust water right. The trust water agreement should clearly reflect the instantaneous and annual quantities of each portion of the water right, including any limitations on use of either portion during periods when use of both portions of the water right may conflict.

Managing one or more trust water rights typically comprises the following tasks:

A. Post-acquisition Verification Inspections

1. Ecology should confirm the acquisition or conservation project is complete prior to exercising the trust water right. For projects not under the Irrigation Efficiencies Grant Program (IEGP), Ecology staff should verify completion by inspecting the site. We should also confirm compliance with conditions of the funding agreement.
2. A Conservation District technician or other staff will typically inspect and verify projects funded by the IEGP were constructed as designed prior to the Conservation Commission releasing final funding. Their verification confirms that the funding agreement specifications have been satisfied.
3. Ecology should conduct periodic compliance checks through the life of the trust water right acquisition. The Irrigation Efficiencies Grant Program and the Columbia Basin Water Transaction Program include post-implementation project assessments. Compliance checks are frequently performed by the Department of Fish and Wildlife in conjunction with post implementation habitat assessments. Regulation of Other Water Rights to Protect a Trust Water Right.
4. Public notice: Ecology must give public notice of the trust water right before we may regulate junior diversionary water rights to protect a trust water right. Public notice at the time of acquisition that included the authorized beneficial use(s) of the trust water right is sufficient.
5. Regulating adjudicated or state-issued rights: An Ecology water master or appointed stream patrolman can regulate junior water rights if the junior water rights and the water

right held in trust were confirmed in a Superior Court Adjudication of water rights or are state-issued permits and certificates. ([Rettkowski v. Department of Ecology](#)).

6. Regulating un-adjudicated claims and federal reserved rights: Ecology must seek an alternative means of relief where the trust water right and junior water rights have not been adjudicated and are not state-issued permits or certificates. We must file a petition or motion with the local Superior Court seeking relief from impairment of the trust water right by the junior water right claim.
7. Regulating illegal or wasteful uses: Ecology may regulate where unauthorized water use or wasteful practices interfere with or impair the trust water right ([RCW 90.03.005](#) and [RCW 90.03.400](#)). Inform the regional section manager and program enforcement staff if you become aware of such a case. See [Enforcement Policy](#).
8. Protecting trust water rights in primary and secondary reaches: Ecology may regulate a junior water user within the primary reach who impairs the instantaneous rate of a trust water right. In the secondary reach or upstream of it, Ecology may regulate a junior user who interferes with maintenance of the consumptive quantity outlined in the schedule in the trust water right.

B. Claims of Impairment when Exercising a Trust Water Right.

1. Filing claims: Other water right holders may file claims of impairment against a trust water right when exercised [[RCW 90.42.040\(4\)](#), [RCW 90.42.080\(4\)](#), and [RCW 90.42.080\(8\)](#)].
2. Investigating claims: Ecology must investigate all claims that a trust water right is impairing other water rights.
3. Eliminating impairment: Ecology must modify or terminate the trust water right authorization if it is determined that use of a trust water right has impaired another water right that existed at the time of first exercising the trust right. [[RCW 90.42.040\(4\)](#)].
4. Modifying a trust water right: Ecology will modify the trust water right, when necessary to resolve impairment of an existing water right, consistent with the procedure in Section 10.

Section 3 - Trust Water Agreements and Trust Water Right Applications

A trust water right is created when a water right is both conveyed to the state by purchase, lease, gift, donation, or means other than condemnation, and accepted into the Trust Water Right Program (TWRP). In some cases, a single process can meet both requirements. In other cases, two sequential steps occur: The water right is conveyed to the TWRP through an agreement and an associated trust water right application, followed by acceptance of the water right by the state.

A. The general steps associated with processing trust water right agreements and applications are as follows:

1. An agreement to convey a water right to the TWRP may be documented in a letter of instruction, contract, or other instrument.
2. A completed Trust Water Right Application signed and submitted by the water right holder.
3. In the case of a donation or gift of a water right, a letter of acceptance indicates the state's acceptance of the water right into the TWRP, subject to the terms in the acceptance letter. The trust water application may serve as the letter of instruction if the only condition specified by the donor is the period of the donation. See Appendix F.
4. A Trust Water Right Report of Examination documents the change of the water right's purpose of use and the conditions placed upon the trust water right.
5. In the Yakima River basin, an Order Pendente Lite documents approval of the change of purpose of use and conditions of the short-term or temporary trust water right.

B. Prior to the close of negotiations with the right holder, the following should be identified and included in any required public notice:

1. The conditions of use, including the instantaneous quantities that may be exercised in trust.
2. A schedule for the use of the water right.
3. The potential for impairment of other rights.
4. Any other conditions that must be imposed upon the water right holder.

If acquired with public funds, rather than by donation, Ecology should give careful consideration to how to manage the trust water right to benefit the citizens of the state. Particular issues of concern relate to our legal and administrative ability to exercise the trust water right during periods of low flow that may require regulating junior users. See Section 2, Subsection B.

C. Trust water agreements should describe the intent and conditions under which a water right is available to the TWRP. Trust water agreements will generally take one of three forms:

1. The trust water right application can be used as a trust water right agreement if the right is donated for instream flow or groundwater preservation purposes and the conditions are limited to the period of the donation.

2. The agreement may be in the form of a letter identifying reasonable conditions that the donor of the right may place upon the donation or gift.
3. The agreement may be in the form of a contract, grant or loan agreement, or other instrument which describes all the terms and conditions of the conveyance of the water right from the owner of the water right to Ecology.

D. A completed trust water application should accompany an agreement:

1. The [Application to Enter a Water Right into the Trust Water Right Program](#) form is used for all trust water right acquisitions except for those funded through the state Irrigation Efficiencies Grants Program (IEGP).
2. The trust water right application form is to be completed even if the acquisition is associated with an application to change the remaining portion of water right that will continue to be exercised by the right holder.
3. The completed trust water right application form is used for initial data entry of the trust water right acquisition into the Water Right Tracking System (WRTS) and the Trust Water Right database. See Section 11.

Appendix A contains specific instructions for reviewing an application for trust water right to ensure completeness.

Trust water right applications associated with leases and purchases are generally related to state and federal grants or loans that have associated deadlines. Staff should consider processing trust water applications as a matter of high priority for the Water Resources Program.

Section 4 - Acquisition Resulting from a Publicly Funded Water Conservation Project

A. General processing of a trust water right application for a publicly funded water conservation project is as follows:

1. Application:
 - a) Within the Irrigation Efficiencies Grants Program (IEGP), local conservation districts prepare the Consolidated Application Form, with assistance from Ecology if requested, and then submit it to the appropriate Ecology regional office.
 - b) If the project is not funded through the IEGP, the [Application to Enter a Water Right into the Trust Water Right Program](#) is used.
2. Trust water right acquisitions through publicly funded water conservation projects are not subject to [RCW 90.03.380](#) [see [RCW 90.42.040\(7\)](#) and [RCW 90.38.040\(6\)](#)]. Ecology processes the IEGP application under Chapter 90.38 RCW (in the Yakima River basin), or Chapter 90.42 RCW (statewide).
3. Outside the Yakima River basin, only water rights existing prior to July 28, 1991 may be acquired into trust through water conservation projects [[RCW 90.42.020\(5\)](#)].
4. Typically the net water savings created by the publicly-funded water conservation project is acquired into the Trust Water Rights Program (TWRP). The length of a trust water acquisition under IEGP is specified in the contract between Ecology and the water right holder.
5. Public notice is required at the time of acquisition:
 - a) Ecology publishes public notice for IEGP projects. The applicant is responsible for publishing the public notice for projects not funded through IEGP.
 - b) Ecology is responsible for sending notice to:
 - (1) Potentially affected local governments. Local governments are defined as a “city, town, public utility district, irrigation district, public port, county, sewer district, or water district.”
 - (2) Appropriate state agencies.
 - (3) Federally recognized tribal governments within the area.
 - (4) Other interested parties.
 - c) If required, public notice of the SEPA threshold determination for the project should (when possible) be combined with public notice of the trust water right application.
6. Affidavits of publication regarding trust water rights should be given the same priority for review as the trust water transaction.
7. Public notice should identify the quantity of water, expressed in acre-feet per year, but is not mandatory for trust water right transactions that may be:

- a) Initiated during the engineering phase of conservation or irrigation efficiency projects; or,
- b) Subject to continuing negotiations or investigation.

Consistent with funding and construction deadlines, timely action requires making public notice at the earliest possible date. Due to the potential complexities in parallel planning, design and funding processes, it is hard to know the precise quantity of water that may be ultimately placed into trust at the appropriate time for public notice. Although not mandatory, it is recommended that the public notice identifies the reasonable maximum rate and volume of water conservation based on the estimated net water savings.

8. Use the Trust Water Right Report form (Appendix G) to document the evaluation of the water conservation project and the associated water right to be considered for acceptance into the TWRP.

9. Evaluation Considerations:

- a) Extent and Validity: The state may require evidence of a valid water right [[RCW 90.42.030\(2\)](#)]. In practice, no conservation project should be funded if the use of water isn't legally authorized by a valid water right.
- b) Quantifying the Right for Use in Trust: Use the [Trust Water Rights Program Guidelines](#) (Ecology Publication #92-88) developed under [RCW 90.42.050](#) and [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#) to determine the net water savings. The quantity of water accepted into trust must represent "net water savings" from the conservation project
- c) Impairment: An impairment analysis is required prior to exercising the trust water right [[RCW 90.42.040\(4\)](#), [RCW 90.38.040\(5\)\(a\)](#)].
- d) Public Interest Considerations: Acquisitions through water conservation projects shall not be detrimental to the public interest [[RCW 90.42.040\(4\)](#)].

10. Documenting Permanent Trust Water Rights

- a) Record a Water Right Conveyance and Assignment (Quit Claim) or Statutory Warranty Deed at the appropriate County Auditor's Office. This serves as evidence of conveyance of the water right from the holder of the water right to the state. If the right is under the jurisdiction of the Court as part of the Yakima River Adjudication, a Motion to Join Ecology to the Court Claim is also required.
- b) Issue a Superseding Certificate to document the permanent trust water right acquisition [[RCW 90.42.040\(2\)](#), [RCW 90.38.040\(1\)](#)].
- c) Issue a superseding water right document to the right holder reflecting any portion of the water right not acquired by the state.
 - (1) For Certificates of Water Right: Issue Superseding Certificates.
 - (2) For rights documented by a Water Right Claim or Certificate of Change: Issue a Certificate of Trust Water Right Acquisition. (see Appendix H
 - (3) Template for Certificate of Trust Water Right Acquisition)

- d) The Certificate(s) are then recorded with the County Auditor in accordance with [RCW 90.03.330](#) and [PRO-1000, WATER RIGHTS ADMINISTRATION PROCEDURE](#).
 - (1) The Trust Water Right Certificate is recorded at the state's expense.
 - (2) Any Certificate issued for a portion of a water right remaining with the private right holder is recorded at the right holder's expense.
- e) Certificate(s) should be:
 - (1) Recorded in the appropriate water right file.
 - (2) Used to update the Water Right Tracking System (WRTS) and Trust Water Right database.

11. Tax Liability for Permanent Acquisitions:

Permanent acquisition of water rights in exchange for some consideration, whether monetary or otherwise, should be processed in accordance with [PRO-1050, PROCEDURE FOR NOTIFICATION OF WATER RIGHT ACTIONS TO THE DEPARTMENT OF REVENUE](#).

12. Documentation of a Temporary Trust Water Right:

- a) For water rights subject to the Yakima River Adjudication, file the Order Pendente Lite approving the trust water transfer and enter the relevant data into WRTS and the trust water database. This file should include the following:
 - (1) Information on the acquisition of the water right.
 - (2) Any authorized beneficial water use while the right is in trust.
 - (3) The date or conditions under which the trust period will expire.
- b) For rights not subject to the Yakima River Adjudication, an Order or other instrument may be issued to document the temporary trust water right acquisition [[RCW 90.42.040\(2\)](#)]:
 - (1) Issue a trust water right report (see Appendix G) and order including the following information:
 - Information on the acquisition of the water right.
 - Any authorized beneficial water use while the right is in trust.
 - The date or conditions under which the trust period will expire.
 - (2) The trust water right report and order are added to the existing record of the water right.
 - (3) The trust water right data are added to the trust water database and WRTS.

Section 5 - Acquisition by Short-Term Lease (five years or less)

For short-term leases of surface water within the Yakima River basin, the trust water acceptance/approval process must include an Order Pendente Lite pursuant to Pre-Trial Order # 12 of the Yakima Superior Court (Appendix I).

A. The general processing of a short-term lease trust water right acquisition is as follows:

1. A short-term trust water acquisition is proposed using the [Application to Enter a Water Right into the Trust Water Right Program](#),
2. Water rights held exclusively under Chapter 90.38 RCW (Yakima River Basin Trust Water Right Program) are not subject to RCW 90.03.380 [\[RCW 90.38.040\(6\)\]](#).
3. Water rights not held exclusively under Chapter 90.38 RCW and acquired by lease are subject to [RCW 90.03.380](#) and [RCW 90.03.390](#) [\[RCW 90.42.080\(5\)\]](#).
4. Public notice:
 - a) Public notice must be consistent with [RCW 90.03.280](#).
 - b) For leases of duration of five years or less, notice may be made on Ecology's website instead of in a newspaper. [\[RCW 90.42.040\(5\)\(c\)\]](#)
 - c) If a SEPA public notice is required, combine public notice of the SEPA determination with public notice of the trust water right application whenever possible.
 - e) Ecology must send notice to:
 - (1) Potentially affected local governments. Local governments are defined as a "city, town, public utility district, irrigation district, public port, county, sewer district, or water district." [\[90.42.020 \(2\)\]](#)
 - (2) Appropriate state agencies.
 - (3) Federally recognized tribal governments within the area.
 - (4) Other interested parties.
 - f) For leases of duration of five years or less, governmental notice can be sent electronically. [\[90.42.040\(5\)\(c\)\]](#)
 - g) Affidavits of publication for the trust water rights should receive the same priority for review as the trust water transaction.
5. Evaluation Considerations:
 - a) Extent and Validity
 - (1) Trust water right leases are subject to [RCW 90.03.380](#). [POL-1200, EVALUATION OF CHANGES AND TRANSFERS TO WATER RIGHTS](#), provides policy for changing the water right, UNLESS they are Yakima River basin trust water rights held exclusively under Chapter 90.38 RCW, which are not subject to [RCW 90.03.380](#). [\[RCW 90.38.040\(6\)\]](#).

- (2) When leasing a portion of a right to help meet an instream flow set in rule, then an extent and validity evaluation is not performed on the portion of the right remaining with the water right holder [[RCW 90.42.040\(9\)](#)].
 - (3) [POL-1120, WATER RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS](#), provides guidance for conducting extent and validity evaluations.
 - (4) [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#), provides guidance and examples helpful for quantifying water rights in the secondary reach of the trust water right.
- b) Quantifying rights to accept into the trust program.

When leasing a water right for five years or less, Ecology places the full water quantity diverted or withdrawn into trust. The right is considered exercised while in the trust program, and is available for exercising. [[RCW 90.42.080\(9\)](#) and [RCW 90.38.020\(7\)](#)].

Ecology determines the amount of water that can be accepted into trust by:

- (1) An extent and validity review (required if [RCW 90.03.380](#) applies), OR
- (2) The highest use within the previous five years before the lease [[RCW 90.42.080\(4\)](#)], OR
- (3) If there has been nonuse of water in the last five years, and the applicant claims sufficient cause for non-use, Ecology will review information provided by the applicant, to determine if the right is eligible to be excused from relinquishment under [RCW 90.14.140\(1\)](#). If the nonuse is excused under a qualifying exception, then the amount of water that can be accepted into trust is calculated by looking at the highest use in the most recent five year period preceding establishment of a qualifying relinquishment exception (if the exempt period is less than 5 years, look back from the date the qualifying exception was established) [[RCW 90.42.080\(10\)](#)]; OR
- (4) If there has been nonuse of water in the last five years, and the applicant claims a qualifying exemption, Ecology will review information provided by the applicant to determine if the right is eligible for a qualifying exemption from relinquishment under [RCW 90.14.140\(2\)](#) a or d. Ecology will calculate the amount of water eligible to be acquired into trust based on historical beneficial use [[RCW 90.42.080\(11\)](#)]
- (5) Water rights that have been in the bank established under RCW 90.92 are considered exercised to the extent that they were accepted into the bank. Quantities accepted into the bank may not correspond to the actual quantities associated with the extent and validity of the right. Accepting a water right into a water bank established under Chapter 90.92 RCW does not revive all or any portion of the water right that may have relinquished prior to acceptance into the water bank.

c) Impairment

- (1) For short-term leases (five years or less) for instream flow purposes OUTSIDE the Yakima River basin, an impairment analysis is NOT REQUIRED, [[RCW 90.42.040\(8\)](#)].

- (2) Within the Yakima River basin, an impairment analysis IS ALWAYS REQUIRED. Further, no water rights may be “impaired as to their exercise” or “injured in any manner whatever” by the authorization, [[RCW 90.38.040\(5\)\(a\)](#)].

d) Public Interest Considerations

- (1) Short-term leases for instream flow purposes are not subject to public interest considerations except where a ground water right benefits a stream. [[RCW 90.42.040\(8\)](#)].
- (2) Ground water rights leased for the preservation of groundwater are subject to a public interest test.

6. Documentation

- a)** For water rights subject to the Yakima River Adjudication, file the Order Pendente Lite approving the trust water transfer and enter the relevant data into WRTS and the trust water database. The file should include the following:

- (1) Information regarding the acquisition of the water right.
- (2) Any authorized beneficial water use while the right is in trust, and
- (3) The date or conditions under which the trust period will expire.

- b)** For rights not subject to the Yakima River Adjudication, an Order or other instrument may be issued to document the short-term trust water right acquisition, [[RCW 90.42.040\(2\)](#)].

- (1) Issue an Order accompanied by a trust water right report (see Appendix G) describing:

- Information regarding the acquisition of the water right.
- Any authorized beneficial water use while the right is in trust.
- The date or conditions under which the trust period will expire.

- (2) Add the Trust Water Right Report and Order to the existing water right record.
- (3) Add the trust water right data to the trust water database and WRTS.

Section 6 - Acquisition by Long-Term Lease (greater than five years)

A. To process a lease that is longer than five years:

1. The right holder completes the [Application to Enter a Water Right into the Trust Water Right Program](#).
2. Water rights acquired by leases of five years or greater duration are subject to [RCW 90.03.380](#) and [RCW 90.03.390](#) [[RCW 90.42.080\(5\)](#)], UNLESS they are Yakima Basin trust water rights held by Ecology exclusively under RCW Chapter 90.38 RCW, which are not subject to [RCW 90.03.380](#) [[RCW 90.38.040\(6\)](#)].
3. Public notice:
 - a) Must be consistent with [RCW 90.03.280](#).
 - b) The applicant pays to publish notice under [RCW 90.03.280](#).
 - c) Public notice is required prior to creating a trust water right [[RCW 90.42.040\(5\)](#)] unless the long-term lease is processed exclusively under Chapter 90.38 RCW. [RCW 90.38.040\(5\)\(b\)](#) requires public notice occur prior to exercise of the trust water right.
 - d) If SEPA is required, combine public notice of the SEPA determination with notice of the trust water right application, whenever possible.
 - e) In all instances when such notice is required, Ecology must send notice to:
 - (1) Potentially affected local governments. Local governments are defined as a “city, town, public utility district, irrigation district, public port, county, sewer district, or water district.” [[90.42.020 \(2\)](#)]
 - (2) Appropriate state agencies.
 - (3) Federally recognized tribal governments within the area.
 - (4) Other interested parties.
 - f) Affidavits of publication regarding trust water rights should receive priority for review consistent with the priority given the trust water transaction.
4. Evaluation Considerations:
 - a) Extent and Validity
 - (1) Trust water right leases are subject to [RCW 90.03.380](#), UNLESS they are Yakima Basin trust water rights held by Ecology exclusively under RCW 90.38, which are not subject to [RCW 90.03.380](#). [[RCW 90.38.040\(6\)](#)]. [POL-1200, EVALUATION OF CHANGES AND TRANSFERS TO WATER RIGHTS](#), provides policy for changes of water right.
 - (2) If a lease is to assist in achieving an established instream flow and is for a portion of a water right, then an extent and validity evaluation is not performed on the portion of the right remaining with the water right holder. [[RCW 90.42.040\(9\)](#)] An established instream flow is a minimum or base flow adopted by rule.

- (3) [POL-1120, WATER RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS](#), provides guidance for conducting extent and validity evaluations.
- (4) [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#), provides guidance and examples helpful for calculating the quantities of water associated with the secondary reach of the trust water right.

b) Quantifying a right to accept into the trust program:

When a water right is acquired on a temporary basis, Ecology places the full water quantity diverted or withdrawn into trust. The right is considered exercised while in the trust program, and is available for exercising. [\[RCW 90.42.080\(9\) and RCW 90.38.020\(7\)\]](#).

Ecology determines the amount of water that can be accepted into trust by:

- (1) An extent and validity review (required if [RCW 90.03.380](#) applies), AND
- (2) The highest use within the previous five years before the lease [\[RCW 90.42.080\(4\)\]](#), OR
- (3) If there has been nonuse of water in the last five years, and the applicant claims sufficient cause for non-use, Ecology will review information provided by the applicant, to determine if the right is eligible to be excused from relinquishment under [RCW 90.14.140\(1\)](#). If the nonuse is excused under a qualifying exception, then the amount of water that can be accepted into trust is calculated by looking at the highest use in the most recent five year period preceding establishment of a qualifying relinquishment exception (if the exempt period is less than 5 years, look back from the date the qualifying exception was established) [\[RCW 90.42.080\(10\)\]](#); OR
- (4) If there has been nonuse of water in the last five years, and the applicant claims a qualifying exemption, Ecology will review information provided by the applicant to determine if the right is eligible for a qualifying exemption from relinquishment under [RCW 90.14.140\(2\) a or d](#). Ecology will calculate the amount of water eligible to be acquired into trust based on historical beneficial use [\[RCW 90.42.080\(11\)\]](#)
- (5) Water rights that have been in the bank established under RCW 90.92 are considered exercised to the extent that they were accepted into the bank. Quantities accepted into the bank may not correspond to the actual quantities associated with the extent and validity of the right. Accepting a water right into a water bank established under Chapter 90.92 RCW does not revive all or any portion of the water right that may have relinquished prior to acceptance into the water bank.

This amount cannot be greater than the amount beneficially used in the five years prior to the lease [\[RCW 90.42.080\(8\) and RCW 90.38.020\(6\)\]](#). Also, the amount cannot be greater than the extent and validity determination.

c) Impairment:

An impairment analysis IS REQUIRED for all long-term leases. In the Yakima River basin, no water rights may be “impaired as to their exercise” or “injured in

any manner whatever” by the authorization [\[RCW 90.38.040\(5\)\(a\)\]](#). Within the rest of the state, no water right existing at the time the trust water right is created may be impaired [\[RCW 90.42.040\(4\)\]](#).

d) Public Interest Considerations:

Long-term leases exercised for any purpose are subject to public interest considerations [\[RCW 90.42.040\(4\)\]](#).

5. Documentation:

- a) Issue an Order accompanied by a Trust Water Right Report of Examination (Appendix G) describing:**
 - (1)** Information regarding the acquisition of the water right.
 - (2)** Any authorized beneficial water use while the right is in trust.
 - (3)** The date or conditions under which the trust period will expire.
- b) Add the Order and Trust Water Right Report to the existing record of the water right.**
- c) Add the trust water right data to the trust water database and WRTS.**

Section 7 - Purchase by the State or with Other Public Funds

1. The application used for purchases is the [Application to Enter a Water Right into the Trust Water Right Program](#).
2. Purchases are subject to [RCW 90.03.380](#) UNLESS they are Yakima Basin trust water rights held by Ecology exclusively under RCW 90.38, which are not subject to [RCW 90.03.380](#). [\[RCW 90.38.040\(6\)\]](#). See Subsection 5 below for considerations and procedures specific to permanent Yakima Basin trust water rights not subject to [RCW 90.03.380](#).
 - a) [POL-1200, EVALUATION OF CHANGES AND TRANSFERS TO WATER RIGHTS](#), applies to trust water right acquisitions that are subject to [RCW 90.03.380](#).
 - b) [POL-1120, WATER RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS](#), applies to the investigation of the validity and extent of water rights.
 - c) [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#) applies to calculating the quantities for the secondary reach of the trust water right.
3. Public Notice:
 - a) Must be consistent with [RCW 90.03.280](#).
 - b) Applicant pays for publishing notice under [RCW 90.03.280](#).
 - c) In the Yakima River basin, [RCW 90.38.040\(5\)\(b\)](#) requires that public notice occur prior to exercising a trust water right processed exclusively under Chapter 90.38 RCW.
 - d) Public notice is required prior to creating a trust water right [\[RCW 90.42.040\(5\)\]](#) unless processed exclusively under Chapter 90.38 RCW.
 - e) When notice is required, Ecology must send notice to:
 - (1) Potentially affected local governments. Local governments are defined as a “city, town, public utility district, irrigation district, public port, county, sewer district, or water district.” [\[90.42.020 \(2\)\]](#)
 - (2) Appropriate state agencies.
 - (3) Federally recognized tribal governments within the area.
 - (4) Other interested parties.
 - f) All proposed changes to adjudicated water rights in the Yakima River basin require public notice pursuant to Pre-Trial Order #12 of the Yakima County Superior Court (Appendix J).
4. Affidavits of publication for trust water rights should receive the same priority for review as the trust water transaction.
5. Trust water rights within the Yakima River basin processed exclusively under Chapter 90.38 RCW:
 - a) Extent and Validity:

No water right acquisition should be funded if the use of water is not legally authorized by a valid water right [\[RCW 90.38.030\(2\)\]](#). [POL-1120, WATER](#)

RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS, provides guidance for conducting extent and validity evaluations.

b) Quantifying the Right for Use in Trust:

Use the Trust Water Rights Program Guidelines (Ecology Publication #92-88) and GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE to determine the non-consumptive and consumptive quantities in the primary and secondary reaches, respectively.

c) Impairment:

An impairment analysis is required. In the Yakima River basin, no water rights may be “impaired as to their exercise” or “injured in any manner whatever” by the authorization [RCW 90.38.040(5)(a)].

6. Documentation.

a) Use the Trust Water Right Report of Examination form (Appendix G) to document the trust water right acquisition.

b) Record a Water Right Conveyance and Assignment (Quit Claim) or Statutory Warranty Deed at the appropriate County Auditor’s Office as proof of conveyance of the water right from the seller to the state. If the right is under the jurisdiction of the Yakima River Adjudication, Ecology must file a Motion to Join Ecology to the Court Claim.

c) Issue a Superseding Certificate to document the permanent trust water right acquisition [RCW 90.42.040(2), RCW 90.38.040(1)].

d) Issue a superseding water right document to the right holder reflecting any portion of the water right not acquired by the state.

(1) For certificated water rights: Issue a Superseding Certificate.

(2) For rights documented by a water right claim or certificate of change: Issue a Certificate of Trust Water Right Acquisition. (Appendix H)

e) Certificate(s) are recorded with the County Auditor in accordance with RCW 90.03.330 and PRO-1000, WATER RIGHTS ADMINISTRATION PROCEDURE.

(1) The Trust Water Right Certificate is recorded at state expense;

(2) The water right holder pays to record any certificate issued to document the portion of a water right retained.

f) File the Certificate in the appropriate water right file.

g) Update the Water Right Tracking System (WRTS) and Trust Water Right database.

7. Tax Liability for Permanent Acquisitions:

a) Permanent acquisition of water rights in exchange for some consideration, whether monetary or otherwise, should be processed in accordance with PRO-1050, PROCEDURE FOR NOTIFICATION OF WATER RIGHT ACTIONS TO THE DEPARTMENT OF REVENUE.

Section 7A – Transfer of Water Rights Accepted by the Walla Walla Watershed Management Partnership Bank on a Permanent Basis to the State Trust Water Program

A. The process for transfer of rights from the Walla Walla Watershed Management Partnership Bank to the state's Trust Water Right Program

The Walla Walla Watershed Management Partnership (WWWMP) is authorized under RCW 90.92.070 to accept water rights into its water bank. Under RCW 90.92.070(3)(b), water rights accepted into the WWWWMP bank on a permanent basis must be transferred to the state water rights trust program "consistent with RCW 90.42.080." Water rights banked on a permanent basis under Chapter 90.92 RCW must be transferred to Ecology by deed, which must be recorded against every parcel within the water right's place of use.

Ecology retains its discretion under RCW 90.42.080 to negotiate terms under which water rights will be accepted into trust.

Section 8 - Donation of a Water Right

The proposed use of the prospective trust water right determines how we processing a donated water right.

1. If the donation is for instream flow purposes, proceed to Subsection 8.A, Procedures for Donations for Instream Flow Purposes.
2. If the donation is for a purpose other than instream flow, proceed to Subsection 8.B, Procedures for Donation of Water Rights for Purposes Other than Instream Flow.

A. Procedures for Donations for Instream Flow Purposes.

1. Applications:

- a) Donors must complete the Application to Enter a Water Right into the Trust Water Right Program. Applicants for donations under [RCW 90.42.080\(1\)\(b\)](#) or [RCW 90.38.020\(1\)\(b\)](#) must also provide information documenting their water use for the most recent five-year period.
- b) No application fee is required for donations of trust water rights [[RCW 90.03.470\(3\)\(c\)\(i\)](#)].

2. Public Notice:

- a) Public notice is required for all donations when they are created except for those that are managed exclusively under Chapter 90.38. RCW. [[RCW 90.38.040\(5\)\(b\) and \(c\)](#) and [RCW 90.42.040\(5\) and \(8\)](#)].

- b) Ecology must send notice to [\[RCW 90.42.040\(5\)\(b\)\]](#):

- (1) Potentially affected local governments. Local governments are defined as a “city, town, public utility district, irrigation district, public port, county, sewer district, or water district.” [[90.42.020 \(2\)](#)]
- (2) Appropriate state agencies.
- (3) Federally recognized tribal governments within the area.
- (4) Other interested parties.

- c) For donations, governmental notice may be made by email.

3. Processing Donations for Instream Flow Purposes:

- a) Ecology processes donations under one or more of the following:

[RCW 90.38.020\(1\)\(b\), \(3\), \(4\), \(5\), or \(7\)](#), or [RCW 90.38.040\(5\)\(a\), \(b\), \(c\)](#), [RCW 90.42.040](#), [RCW 90.42.080\(1\)\(b\), \(3\), \(4\), \(5\), and \(9\)](#).

- b) Extent and Validity:

- (1) The provisions of [RCW 90.03.380](#) and [RCW 90.03.390](#) do not apply to donations for instream flow purposes, or to preserve surface or groundwater resources [[RCW 90.38.040\(6\)](#) and [RCW 90.42.080\(5\)](#)].
- (2) If a portion of a water right is donated and it will help achieve an adopted instream flow, then an extent and validity evaluation IS NOT performed on the portion retained by the water right holder [[RCW 90.42.040\(9\)](#)].

- c) When quantifying a water right to accept into the trust program, donations for instream flows are limited to the highest use within the previous five years, less any quantity of water that will be used by the donor for any other purpose [[RCW 90.42.080\(4\)](#), [RCW 90.38.020\(4\)](#)].

Ecology determines the amount of water that can be accepted into trust by:

- (1) The highest use within the previous five years before the donation [\[RCW 90.42.080\(4\)\]](#), OR
- (2) If there has been nonuse of water in the last five years, and the applicant claims sufficient cause for non-use, Ecology will review information provided by the applicant, to determine if the right is eligible to be excused from relinquishment under [\[RCW 90.14.140\(1\)\]](#). If the nonuse is excused under a qualifying exception, then the amount of water that can be accepted into trust is calculated by looking at the highest use in the most recent five year period preceding establishment of a qualifying relinquishment exception (if the exempt period is less than 5 years, look - back from the date the qualifying exception was established) [\[RCW 90.42.080\(10\)\]](#); OR
- (3) If there has been nonuse of water in the last five years, and the applicant claims a qualifying exemption, Ecology will review information provided by the applicant to determine if the right is Eligible for a qualifying exemption from relinquishment under [\[RCW 90.14.140\(2\)\]](#) a or d. Ecology will calculate the amount of water eligible to be acquired into trust based on historical beneficial use [\[RCW 90.42.080\(11\)\]](#)

(Exercise of the trust water right for instream flow purposes is not required to prevent relinquishment of the donated water right accepted into the TWRP [\[RCW 90.42.040\(6\)\]](#).)

(4) The following materials should be reviewed to verify the amount of water use in the five years prior to the donation:

- The application form.
- The supplemental information showing water diversion, or beneficial use rates and quantities.
- Any readily available aerial photography (Ecology records, Google, or Microsoft)
- Readily available public records, such as county assessor's records.

d) Impairment:

- (1) An impairment analysis is not required prior to accepting a donation [\[RCW 90.38.020\(1\)\(b\)\]](#) and [\[RCW 90.42.080\(1\)\(b\)\]](#)
- (2) Within the Yakima River basin, trust water rights managed exclusively under Chapter 90.38 RCW, an impairment review is performed prior to their exercise. [\[RCW 90.38.040\(5\)\(a\)\]](#) and [\[RCW 90.38.902\]](#). No water rights may be “impaired as to their exercise” or “injured in any manner whatever” by the authorization [\[RCW 90.38.040\(5\)\(a\)\]](#).
- (3) Notwithstanding Subsections (1) and (2) above, claims of impairment require Ecology to perform impairment evaluations:

- Claims of impairment against a trust water right may be made by other water right holders when the trust water right is exercised [[RCW 90.38.020\(4\)](#) and [RCW 90.42.080\(4\)](#)].
- If Ecology finds that use of a trust water right has impaired a pre-established water right, the trust water right must be modified or terminated to eliminate the impairment [[RCW 90.42.040\(4\)](#)].
- If necessary to resolve impairment to an existing water right, Ecology will modify the trust water right consistent with Section 10.

e) Public Interest Considerations:

(1) Temporary and permanent donations for instream flow purposes in accordance with [RCW 90.42.080\(1\)\(b\)](#) are NOT subject to public interest considerations. [[RCW 90.42.040\(8\)](#)]

(2) Donations for instream flow purposes held exclusively under Chapter 90.38 RCW within the Yakima River basin are NOT subject to public interest considerations. HOWEVER, where an approved Chapter 90.82 RCW watershed plan (currently WRIA 37 and 38) calls for acquiring trust water rights in an area, the acquisition shall be consistent with that plan to the extent practicable and subject to legislative appropriation [[RCW 90.38.040\(3\)](#)].

2. Documentation

a) Temporary donations are acknowledged in letter form similar in content to the attached template (Appendix “F”), through an Order, or other instrument. The letter must contain an explicit statement of Ecology’s acceptance of the water right into the trust program. This letter is not proof of the validity or quantity of the water right.

b) Permanent donations:

- (1) Record a Water Right Conveyance and Assignment (Quit Claim) or Statutory Warranty Deed at the appropriate County Auditor’s Office. This serves as evidence of conveyance of the water right from the donor to the state. If the right is under the jurisdiction of the Yakima River Adjudication, a Motion to Join Ecology to the Court Claim is required.
- (2) Issue a Superseding Certificate of Water Right if the trust water right originates from a Certificate of Water Right; or,
- (3) Issue a Certificate of Trust Water Right Acquisition (Appendix H -- Template) if the right is documented by a Water Right Claim or Certificate of Change consistent with [PRO-1000, WATER RIGHTS ADMINISTRATION PROCEDURE](#). The Certificate of Trust Water Right should be filed and recorded against the parcel number with the original point of diversion.

3. A donated water right does not need to be exercised while it is in the TWRP.

4. Instream flow trust water donations may be eligible for a federal income tax deduction [[RCW 90.38.020\(5\)](#) and [RCW 90.42.080\(7\)](#)].

Advise the water right donor that the permanent donation of a water right for instream flow purposes may be tax deductible. [[RCW 90.42.080\(7\)](#)].

B. Procedures for Donation of Water Rights for Purposes Other than Instream Flow.

1. The application used for donations or gifts is the Application to Enter a Water Right into the Trust Water Right Program.
2. No application fee is required for donations of trust water rights [[RCW 90.03.470\(3\)\(c\)\(i\)](#)].
3. Public Notice:
 - a) Public notice must be made when the trust water right is created [[RCW 90.42.040\(5\)](#)]. Public notice is required to comply with [RCW 90.03.280](#), however for donations it may be posted on Ecology's website rather than in a newspaper. The notice should clearly state that the purpose is to establish a trust water right and include the purpose of use, place of use, point of diversion, and other relevant information.
 - b) If the donation is made under [RCW 90.38.020\(1\)\(a\)](#), and the water right within the Yakima River basin is managed exclusively under Chapter 90.38 RCW, public notice is not required prior to creation but must be made prior to exercise of the trust water right.
4. Extent and Validity
 - a) Trust water rights donated for purposes other than instream flows are subject to [RCW 90.03.380](#), UNLESS held by Ecology exclusively under Chapter 90.38 RCW [[RCW 90.38.040\(6\)](#)]. [POL-1200, EVALUATION OF CHANGES AND TRANSFERS TO WATER RIGHTS](#), provides policy for changes of water right.
 - b) [POL-1120, WATER RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS](#), provides guidance for conducting extent and validity evaluations.
 - c) [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#), provides guidance and examples helpful for quantifying the water consumptively used and the associated conveyance and application losses.
5. Quantifying the water right to accept into the trust program:
 - a) The temporary trust water right may be exercised up to the full extent of the right [[RCW 90.42.080\(9\)](#) and [RCW 90.38.020\(7\)](#)]. For permanent trust water right donations, the determination of extent and validity of the donated water right, using the guidance in Subsection 4 above, determines quantities.
6. Impairment:
 - a) An impairment analysis is required [[RCW 90.03.380](#)], UNLESS the donation is held by Ecology exclusively under Chapter 90.38 RCW.
 - b) If another water right holder files a claim of impairment after the trust water right is exercised:
 - (1) Ecology will investigate the allegation.
 - (2) Use of the trust water right may cease or be modified to avoid the impairment [[RCW 90.42.040\(4\)](#), [RCW 90.38.020\(4\)](#)].
 - (3) Ecology's decision regarding the allegation of impairment is an appealable decision.
7. Public interest

Public interest is a consideration for all water right donations for purposes other than for instream flow purposes [[RCW 90.42.040\(4\)](#)], UNLESS held by Ecology exclusively under Chapter 90.38 RCW. Yakima River basin trust rights under Chapter 90.38 RCW do not require consideration of public interest prior to creating or exercising the trust water right.

8. Documentation:

a) Temporary donations are acknowledged by a letter similar in content to the attached template (Appendix “F”), through an Order, or other instrument. The letter must contain an explicit statement of Ecology’s acceptance of the water right into the trust water rights program. Acceptance of the donation is not evidence of the validity or quantity of the water right.

b) Permanent donations:

- (1)** Record a Water Right Conveyance and Assignment (Quit Claim) or Statutory Warranty Deed at the appropriate County Auditor’s Office. This serves as evidence of conveyance of the water right from the donor to the state. If the right is under the jurisdiction of the Yakima River Adjudication, a Motion to Join Ecology to the Court Claim is required.
- (2)** Issue a Superseding Certificate of Water right if the trust water right originates from a Certificate of Water Right.
- (3)** Issue a Certificate of Trust Water Right Acquisition (Appendix H -- Template) if the right is documented by a Water Right Claim or Certificate of Change. The certificate describes the trust water right and should be issued consistent with [PRO-1000, WATER RIGHTS ADMINISTRATION PROCEDURE](#). The Certificate of Trust Water Right should be filed and recorded against the parcel number containing the original point of diversion.

Section 9 - Water Right Acquisitions through Water Savings Identified when Processing an Application for Change

1. Ecology may identify incidental water savings when it processes an application for change under [RCW 90.03.380](#), [RCW 90.03.390](#), or [RCW 90.44.100](#). The applicant may place the identified savings into the Trust Water Right Program.
2. If interest is shown, the applicant should then be advised to file an [**Application to Enter a Water Right into the Trust Water Right Program**](#).
3. If offered, the water right can be placed into the trust program through the procedures in Sections 4 through 8, depending on the type and nature of the acquisition.

Section 10 - Modification or Extension of an Existing Trust Water Right:

A. Modification:

Trust water rights are created as a result of agreements that convey water right to Ecology on a temporary or permanent basis. Even when permanent, the agreements may not be unconditional. If conditions change or if Ecology or the original water right holder invokes a condition of the agreement, modification of the trust water right may be appropriate. In some cases, such as where exercising a trust water right impairs another water right, Ecology is directed to resolve impairment from exercising a trust water right by modifying the trust water right.

[RCW 90.42.040\(4\)](#) and [RCW 90.38.020\(4\) and \(6\)](#) provide authority to modify trust water rights. The procedures used for modifying a trust water right are the same procedures used to create the trust water right (see Sections 4 through 8). Determine what type of process was used to create the trust water right, and follow the same procedures for public notice and changing the water rights, as appropriate.

B. Extension:

1. Requests to extend short-term leases (Section 5), long-term leases (Section 6), or temporary donations (Section 8) must be processed prior to expiration of the previous lease or temporary donation.
2. If the lease or temporary donation agreement has not lapsed, a new trust water right application is not required.
3. If a lease agreement is renegotiated and extended in accordance with the funding program's rules, then public notice should be completed in accordance with Subsection 5.3 or Subsection 6.3.
4. If extending a temporary donation is requested by letter, a new trust water right application is not required. Review of the request should be completed per Section 8, including public notice if the trust water right is to be exercised. Public notice should be completed in accordance with the procedures in Subsection 8.A.3 or Subsection 8.B.3.
5. After public notice Ecology may decide whether to extend the lease or donation. Include the decision in a letter sent to the party requesting the extension and to anyone who commented in response to the public notice. The letter is in the form of an Order and should include appropriate appeal language.

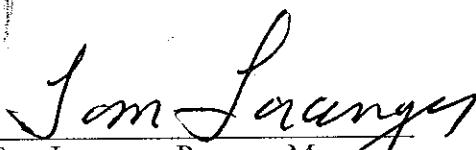
Section 11 - Trust Water Right Data

A. Record all water right applications, transactions, and stages of progress in the WRTS database.

1. The WRTS tracker will give a unique identification number to each trust water form or Application to Transfer Water into the Trust Water Right Program, and enter it into the WRTS database.
2. Stages and progress (such as publication of the public notice) will be tracked in the WRTS database.

B. Trust Water Right Acquisition Data

1. The Trust Water Right Coordinator (or other delegated party) creates a new record in the Trust Water Right database (or, the Interim Trust Database) once Ecology issues the letter acknowledging a donation or the Report of Examination for the transfer. When applicable, this record identifies the intended final recipient of public money, such as Water Right Owner or Former Water Right Owner. Organizations such as the Washington Water Trust, Washington Rivers Conservancy, or the Walla Walla Water Alliance may be entered as Trustee for the water right owner/payee.
2. The Trust Water Right Coordinator enters other details and data pertaining to the trust water right into the database.
3. The Database Funds Administrator enters funding information related to trust water right acquisitions into the database. Through coordination with the regional trust water right coordinator, the database funds administrator will enter the amount and source of funding for the trust water right.


Tom Loranger, Program Manager
Water Resources Program

Appendix A

Checklist for Trust Water Right Application Review

Use this checklist to determine completeness of Trust Water Right Application

APPLICATION TO ENTER A WATER RIGHT INTO THE TRUST WATER RIGHT PROGRAM

A. Process to review a trust water application upon filing:

Instructions provided with the form are to aid applicants. Additional information for staff advice to right holders and for internal review of the form is as follows:

1 Applicant Information (Section 1)

- a) The water right holder or the person that is to ultimately receive public moneys should be identified as the applicant.
- b) If the application is being submitted by a third party, such as the Washington Water Trust, on behalf of the water right holder or the person that is to ultimately receive public moneys, that entity should be identified as the contact for the application.

2 Water Right Information (Section 2)

- a) The water right document number (i.e., Certificate, Claim, etc.) that has been identified may be either the number contained within the water right document (as requested within the forms instructions or a data related control number). For clarity to the public, the number that is contained within the water right document should be used for processing the water right through public notice and contained in other documentation.
- b) Within the “check” boxes located throughout the form
 - (1) Confirm that the applicant has affirmed ownership of the water right or that owner signatures have been obtained.
 - (2) Confirm that the water right is not associated with an irrigation district that requires their permission to proceed.
 - (3) If the water right has not been exercised during the past five-years;
For donations that assist in providing instream flows, the extent of the water right quantified within trust cannot exceed the extent to which the water right was exercised during the five-years prior to the donation [[RCW 90.42.080\(4\)](#)], except for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, and for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [[RCW 90.42.080\(10\)](#) and (11)]
 - For leases, the extent of the water right quantified within trust cannot exceed the extent to which the water right was exercised during the five-years prior to the lease [[RCW 90.42.080\(8\)](#)], except for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the

date when nonuse was excused, and for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [[RCW 90.42.080\(10\)](#) and (11)].

- (4) Evidence as to the extent to which the water right has been exercised should be submitted at the time the Trust Water Right Application is filed. Potential evidence includes:
- Water measuring records.
 - Pump electrical consumption records
 - Direct Observatiaon.
 - See [POL-1120](#) for additional guidance

3 How is water to be made available for trust? (Section 3)

- a) This section is intended to provide additional detail related to the type of acquisition indicated within the check boxes.
- b) This section is to explain the actions that will be taken to make water right available for trust.
- c) This section becomes the basis for the quantification of the trustable water right.

4 *Purpose of Use:* (Section 5, Part B)

- a) The processing requirements of the trust water right transaction can vary according to the nature of the purpose while the water right is in trust.
- b) The water quantities to be placed into trust may be tentative pending additional evaluation and project planning to be accomplished

5 *Place of Use:* Proposed (Section 6, Part B)

- a) A water body or other place that is expected to benefit while the water right is in trust should be identified.
- b) Whenever possible, a surface water body that is to benefit from placing a water right into trust should be identified.

6 Signatures: (Section 8) Make sure that all required signatures are present.

7 Office use only boxes: These boxes are provided for processing purposes

a) Upper box, page one

- (1) Each trust water right application must be assigned a unique number and recorded within this box.

(2) Fees

- No fee is required for any trust water right transaction under the following circumstances:
 - ◊ An application to process a change relating to donation of a trust water right to the state [[RCW 90.03.470\(3\)\(c\)\(i\)](#)].

- ◇ An application to process a change when the Department otherwise acquires a trust water right for purposes of improving instream flows or for other public purposes [[RCW 90.03.470\(3\)\(c\)\(ii\)](#)].
 - A \$50.00 fee is required if the trust water acquisition does not meet the circumstances of [RCW 90.03.470\(3\)\(c\)](#) and the transaction is subject to [RCW 90.03.380](#).
- (3) Trust water right acquisitions can be subject to the State Environmental Policy Act (SEPA). Acquisitions are not exempt from SEPA if they are of water quantities exceeding:
 - One cubic foot per second of surface water.
 - 2,250 gallons per minute of ground water.
 - Water quantities for SEPA are determined by adding together all water rights subject to acquisition through any project that makes the water available for trust.
 - If the application is not exempt:
 - ◇ The applicant should submit a checklist.
 - ◇ The region supervisor must make a determination regarding SEPA
 - * Determination of Non-significance
 - * Mitigated Determination of Non-significance
 - * Environmental Impact Statement
- b) Lower box, page one
 - (1) The number of the water right from which the trust water is derived is entered.
 - (2) The file number of the trust water right application is entered. Alternatively, this box may be used to identify a contract number under which payment of state funds may be made.
- c) Lower box, page three: This box is used if it is necessary to return the application for completion.

B. Process to certify a trust water right. Use

Appendix H

Template for Certificate of Trust Water Right Acquisition, to document the permanent acquisition of any water right that is based upon a registered Water Right Claim or a previously issued Certificate of Change.

C. File Archiving.

Trust water right files are archived through the same process as are other water right files

Appendix B

Summary¹

Matrix of Trust Water Transaction Types, Processes, and Considerations

¹ This matrix contains only summary information to help distinguish among each transaction type. Refer to Sections 4 through 8 for specific guidance, processes, and considerations that apply to each transaction type. The summary information for the Yakima Basin trust water rights applies to transaction that are acquired and managed *exclusively* under RCW 90.38.

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Source of Trust Water Right	Permanent acquisition of all or part of a water right. [RCW 90.42.080(1)(a); RCW 90.38.020(1)(a)]	Short-Term lease of all or part of a water right. [RCW 90.42.080(1)(a); RCW 90.38.020(1)(a)]	Long-Term lease of all or part of a water right. [RCW 90.42.080(1)(a); RCW 90.38.020(1)(a)]	Water Right holder donates all or part of a water right. [RCW 90.42.080(1)(b); RCW 90.38.020(1)(b)]	<u>Statewide</u> : Conveyance of all or a portion of net water savings of water rights existing as of July 28, 1991. TWR results from operational or system improvements. [RCW 90.42.080(1)(a)]; <u>Yakima Basin</u> : In exchange for financial assistance, water users shall convey to Ecology trust water rights resulting from the assistance. [RCW 90.38.030(1)]
Application	Application to Enter a Water Right into the Trust Water Right Program	Application to Enter a Water Right into the Trust Water Right Program	Application to Enter a Water Right into the Trust Water Right Program	Application to Enter a Water Right into the Trust Water Right Program	Consolidated Application for Irrigation Efficiencies Grants Program/Trust water Rights Program
Notice – Public and Agencies	<u>Statewide</u> : Consistent with 90.03.280 and prior to creation of the TWR. [RCW 90.42.040(5)] <u>Yakima Basin</u> : Notice is not required until the TWR is exercised. [RCW 90.38.040(5)(b)]	<u>Statewide</u> : Notice is required prior to creation of the TWR. [RCW 90.42.040(8)] Instead of using a newspaper, the notice may be posted on Ecology's website, and local governments may be notified by email. [RCW 90.42.040(5)(c)] <u>Yakima Basin</u> : Notice is NOT required until the TWR is exercised. [RCW 90.38.040(5)(c)]	<u>Statewide</u> : Notice is required consistent with 90.03.280 and prior to creation of the TWR. [RCW 90.42.040(5)] <u>Yakima Basin</u> : Notice is not required until the TWR is exercised. [RCW 90.38.040(5)(b)]	<u>Statewide</u> : Notice is required prior to creation of the TWR. [RCW 90.42.040(5) and (8)] Instead of using a newspaper, the notice may be posted on Ecology's website, and local governments may be notified by email. [RCW 90.42.040(5)(c)] <u>Yakima Basin</u> : Notice is not required until the TWR is exercised. [RCW 90.38.040(5)(b) and (c)]	<u>Statewide</u> : Consistent with 90.03.280 and prior to creation of the TWR. [RCW 90.42.040(5)] <u>Yakima Basin</u> : Notice is not required until the TWR is exercised. [RCW 90.38.040(5)(b) and (c)]

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Extent and Validity of Water Right	<p><u>Statewide</u>: Extent and validity based on RCW 90.03.380.</p> <p><u>Yakima Basin</u>: Extent and Validity not required, but must be a valid right. [RCW 90.38.030(2), and 90.38.040 (6)]</p>	<p>Statewide: Not more than the lesser of : 1) Extent and validity based on RCW 90.03.380, OR 2) the highest use within the previous five years before the lease [RCW 90.42.080 (5) and (8)], ---OR</p> <p>3) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR</p> <p>4) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]</p> <p><u>Yakima Basin</u>: Must be a valid right. [RCW 90.38.030(2)]</p>	<p>Statewide: Not more than the lesser of : 1) Extent and validity based on RCW 90.03.380, OR 2) the highest use within the previous five years before the lease, [RCW 90.42.080 (5) and (8)], ---OR</p> <p>3) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused. [RCW 90.42.080 (11)], OR</p> <p>4) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]</p> <p><u>Yakima Basin</u>: Must be a valid right. [RCW 90.38.030(2)]</p>	<p><u>Statewide and Yakima Basin for Instream Flow</u>: RCW 90.03.380 DOES NOT apply; therefore, a determination of extent and validity is not applicable. [RCW 90.42.080 (4) and (5), and RCW 90.38.040(6)]</p> <p>However, quantification of the donation is based upon, 1) the highest use within the previous five years before the lease, 2) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR</p> <p>3) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]</p> <p><u>Statewide</u>: For all other purposes, extent and validity is based on 1) RCW 90.03.380. [RCW 90.42.080(5)], OR, 2) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR, 3) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]</p> <p><u>Yakima Basin</u>: RCW 90.03.380 DOES NOT apply; therefore, a determination of extent and validity is not applicable. [RCW 90.38.040(6)]</p>	<p><u>Statewide</u>: May require evidence of a valid water right. [RCW 90.42.030(2)]</p> <p><u>Yakima Basin</u>: Must be a valid water right. [RCW 90.38.030(2)]</p>

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Impairment Analysis	<u>Statewide</u> : Prior to authorizing change of purpose. [RCW 90.03.380] and exercising the TWR. [RCW 90.42.040(4)] <u>Yakima Basin</u> : Prior to exercising the TWR. [RCW 90.38.040(5)(a)]	<u>Statewide</u> : When requested RCW 90.42.080(8) ** <u>Yakima Basin</u> : NOT required prior to creation or exercise. [RCW 90.38.040(5)(c)]	<u>Statewide</u> : Prior to authorizing change of purpose. [RCW 90.03.380] and exercising the TWR. [RCW 90.42.040(4)] <u>Yakima Basin</u> : Prior to exercising the TWR. [RCW 90.38.040(5)(a)]	<u>Statewide</u> : Prior to exercising the TWR. [RCW 90.42.040(8)] <u>Yakima Basin</u> : Prior to exercising the TWR. [RCW 90.38.040(5)(a)]	<u>Statewide</u> : Prior to exercising the TWR. [RCW 90.42.040(4)] <u>Yakima Basin</u> : Prior to exercising the TWR. [RCW 90.38.040(5)(a)]
Quantification of Water Placed in Trust	<u>Statewide</u> : Quantify using extent of validity. [RCW 90.03.380] <u>Yakima Basin</u> : Quantify using extent of validity. [RCW 90.03.380] ? Schedule of net water savings. [RCW 90.38.040(4)]	<u>Statewide</u> : Not more than the lesser of: 1) Not more than the greatest water use within the five-years prior to the trust water lease, less any water used by the right holder. [RCW 90.42.080(8)] , AND 2) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR 3) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)] <u>Yakima Basin</u> : Not more than the greatest water use within the five-years prior to the trust water lease, less any water used by the right holder. [RCW 90.38.020(6)]	<u>Statewide</u> : Not more than the lesser of: 1) the quantities from the extent and validity determination AND 2) the greatest water use within the five-years prior to the lease, less any water used by the right holder. [RCW 90.03.380 and RCW 90.42.080(8)] OR, 3) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR, 4) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)] <u>Yakima Basin</u> : No more than the greatest water use within the five-years prior to the trust water lease, less any water used by the right holder. [RCW 90.38.020(6)]	<u>Statewide and Yakima Basin Instream</u> : 1) Permanent and temporary donations for instream flows are limited to the greatest water use within the five-years prior to the donation, less any water retained by the donor. [RCW 90.42.080(4), RCW 90.38.020(4) and (7)], OR, 2) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR 3) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)] <u>Statewide</u> : For all other purposes, quantification is based on extent and validity. [RCW 90.42.080(5)] , Add 2) and 3) <u>Yakima Basin</u> : For all other purposes, full extent of the right. [RCW 90.38.020(7)]	<u>Statewide</u> : Net water savings created by the water conservation project as determined by the state and the right holder prior to funding. [RCW 90.42.030(2)] <u>Yakima Basin</u> : In exchange for financial assistance, water users shall convey to Ecology trust water rights resulting from the assistance. [RCW 90.38.030(1)] Schedule of net water savings. [RCW 90.38.040(4)]

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Public Interest Evaluation	<u>Statewide</u> : Must not impair the public interest. [RCW 90.42.040(4)] <u>Yakima Basin</u> : Consistent with adopted watershed plan, if practicable. [RCW 90.38.040(3)]	<u>Statewide</u> : Not a consideration. [RCW 90.42.040(8)] <u>Yakima Basin</u> : Consistent with adopted watershed plan, if practicable. [RCW 90.38.040(3)]	<u>Statewide</u> : Must not impair the public interest. [RCW 90.42.040(4)] <u>Yakima Basin</u> : Consistent with adopted watershed plan, if practicable. [RCW 90.38.040(3)]	<u>Statewide</u> : For instream flow, not a consideration. [RCW 90.42.040(8)] For donations for other than instream flows, public interest evaluation is required prior to creation. 90.42.040 (4) (a) & (c) <u>Yakima Basin</u> : Consistent with adopted watershed plan, if practicable. [RCW 90.38.040(3)]	<u>Statewide</u> : Must not impair the public interest. [RCW 90.42.040(4)] State shall obtain public benefits [RCW 90.42.030(1)] <u>Yakima Basin</u> : Consistent with adopted watershed plan, if practicable. [RCW 90.38.040(3)]
Quantification of Water Right Remaining with Right Holder	<u>Statewide</u> : Must not exceed historic water right less water placed into Trust [RCW 90.03.380(1)] <u>Yakima Basin</u> : Same as statewide.	<u>Statewide</u> : Must not exceed historic water right less water placed into Trust RCW 90.42.080(8) <u>Yakima Basin</u> : Must not exceed most recent 5-yr use, less water placed into Trust. [RCW 90.38.020(6) and (7)]	<u>Statewide</u> : Must not exceed historic water right less water placed into Trust RCW 90.42.080(8) <u>Yakima Basin</u> : Must not exceed most recent 5-yr use, less water placed into Trust. [RCW 90.38.020(6) and (7)]	<u>Statewide</u> : Must not exceed historic water right less water placed into Trust RCW 90.42.080(8) <u>Yakima Basin</u> : Must not exceed most recent 5-yr use, less water placed into Trust. [RCW 90.38.020(4) and (7)]	<u>Statewide</u> : Must not exceed historic water right less water placed into Trust RCW 90.42.030(2) <u>Yakima Basin</u> : If leased, must not exceed most recent 5-yr use, less water placed into Trust. [RCW 90.38.020(6) and (7)]
Decision Document	<u>Statewide</u> : Trust Water Right Report with Order ROE. [RCW 90.03.380 (1)] <u>Yakima Basin</u> : Trust Water Right Report with Order. ROE [RCW 43.27A.190(6)]	<u>Statewide</u> : Trust Water Right Report with an Order ROE [RCW 90.03.380 (1)] <u>Yakima Basin</u> : Trust Water Right Report with Order. ROE [RCW 43.27A.190(6)]	<u>Statewide</u> : Trust Water Right Report with an Order ROE [RCW 90.03.380 (1)] <u>Yakima Basin</u> : Trust Water Right Report with Order. ROE [RCW 43.27A.190(6)]	Acknowledge by letter. If the TWR is to be authorized for a new purpose of use a Trust Water Right Report is issued [RCW 90.42.040(2)] Yakima Basin: Acknowledge by letter.	<u>Statewide</u> : Trust Water Right Report with and Order. ROE [RCW 90.42.040(2)] <u>Yakima Basin</u> : Trust Water Right Report with Order. ROE [RCW 43.27A.190(6)]
Final Document to the Trust Water Right Program and to the Right Holder	<u>Statewide</u> : Trust Water Certificate. Superseding Certificate or Certificate of Change to right holder for any remainder of the water right. RCW 90.42.040(2) Update the deed. <u>Yakima Basin</u> : Same as above. [RCW 90.38.040(2)]	<u>Statewide</u> : Trust Water Certificate. Contract Agreement signed by the water right holder and the Water Resources Program. [RCW 90.42.040(2)] <u>Yakima Basin</u> : Follow Acquavella PTO #6 and 12.	<u>Statewide</u> : Trust Water Certificate. Contract Agreement signed by the water right holder and the Water Resources Program. [RCW 90.42.040(2)] <u>Yakima Basin</u> : Same as statewide unless Acquavella procedures supersede. [RCW 90.38.020(2)]	<u>Statewide</u> : For permanent donations, a Trust Water Certificate is issued to the State of Washington and a Superseding Certificate or Certificate of Change is issued to the donor for any remainder of the water right. For temporary donations, the acknowledgement letter. [RCW 90.42.040(2)] <u>Yakima Basin</u> : For permanent, same as statewide unless Acquavella procedures supersede. For temporary, follow Acquavella PTO #6 and 12.	<u>Statewide</u> : For permanent acquisitions, a Trust Water Certificate is issued to the State of Washington and a Superseding Certificate or Certificate of Change is issued to the water right holder for any remainder of the water right. For temporary donations, the acknowledgement letter. [RCW 90.42.040(2)] <u>Yakima Basin</u> : For permanent, same as statewide unless Acquavella procedures supersede. For temporary, follow Acquavella PTO #6 and 12.

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Exercise of Trust Water Right	<u>Statewide</u> : A right acquired for instream flow purposes must be exercised accordingly. [RCW 90.42.080(1)(a)] & (2)] The right will be considered to be exercised when created RCW 90.42.040 (4) (c) <u>Yakima Basin</u> : Ecology may make arrangements to exercise to the fullest extent possible [RCW 90.38.020(2)]	<u>Statewide</u> : A right acquired for instream flow purposes must be exercised accordingly. [RCW 90.42.080(1)(a)] The right will be considered to be exercised when created. RCW 90.42.040 (4) (c) <u>Yakima Basin</u> : Ecology may make arrangements to exercise to the fullest extent possible [RCW 90.38.020(2)]	<u>Statewide</u> : A right acquired for instream flow purposes must be exercised accordingly. [RCW 90.42.080(1)(a)] The right will be considered to be exercised when created. RCW 90.42.040 (4) (c) <u>Yakima Basin</u> : Ecology may make arrangements to exercise to the fullest extent possible [RCW 90.38.020(2)]	<u>Statewide</u> : Shall be held or authorized for beneficial public use. [RCW 90.42.040(1)] The right will be considered to be exercised when created. RCW 90.42.040 (4) (c) <u>Yakima Basin</u> : Ecology may make arrangements to exercise to the fullest extent possible [RCW 90.38.020(2)]	<u>Statewide</u> : Public benefits to be obtained to be at least comparable to public moneys expended. [90.42.030(1) RCW] <u>Yakima Basin</u> : Exercised to the full extent possible [90.38.020(2) RCW]
Modification of a trust water right	<u>Statewide</u> : Consistent with the purposes associated with public funding. To obtain the maximum net benefits [RCW 90.54.020(2)] If impairment is found while exercising the TWR. [RCW 90.42.040(4)]	<u>Statewide</u> : Consistent with the purposes associated with public funding. To obtain the maximum net benefits. [RCW (90.54.020(2)] If impairment is found while exercising the TWR. [RCW 90.42.080(8)]	<u>Statewide</u> : Consistent with the purposes associated with public funding. To obtain the maximum net benefits [RCW 90.54.020(2)] If impairment is found while exercising the TWR. [RCW 90.42.040(4)]	<u>Statewide</u> : To obtain the maximum net benefits [RCW 90.54.020(2)] If not donated for instream flows and impairment is found while exercising the TWR. [RCW 90.42.040(4)] If donated for instream flow purposes, use may be modified to avoid impairment [RCW 90.42.080(4)]	<u>Statewide</u> : Consistent with the purposes associated with public funding. If impairment is found while exercising the TWR. [RCW 90.42.040(4)] To obtain the maximum net benefits. [RCW 90.54.020(2)]
11/20010					

Appendix C

Definitions

“Alternate” has often been used to mean a second water source or point through which a previously existing water right may be exercised, often at the discretion of the water right holder. Normally, alternate water rights are not additive to the previously existing water right.

“Determination of extent and validity” means Ecology’s conclusion about the lawful origination of, and amounts of water associated with, an historical beneficial use of water. This determination is required by [RCW 90.03.380](#) when a water right is proposed for changed or transfer.

“Exercise the trust water right” means to use the trust water right for the purpose(s) authorized when it was placed into the trust water program. Trust water rights for instream flow purposes may, in times of short supply, require protection from junior water rights. That protection, through regulation by a water master or other Ecology regulatory order, is evidence of the exercise of the trust water right.

“Net water savings” means the amount of water that is determined to be conserved and usable within a specified stream reach or reaches for other purposes without impairment or detriment to water rights existing at the time that a water conservation project is undertaken, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other existing water uses.¹

“Primary reach” means that portion of a water body that benefits from both the former consumptive use and return flow waters of a trust water right.

“Public notice” means, at a minimum, a notice published in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in other newspapers as the department determines is necessary, once a week for two consecutive weeks. For donations and leases of 5 years or less for instream flows, the notice can be posted on Ecology’s website rather than published in a newspaper.

At the same time the department shall send a notice containing pertinent information to all appropriate state agencies, potentially affected local governments and federally recognized tribal governments, and other interested parties.² Local governments are defined as a “city, town, public utility district, irrigation district, public port, county, sewer district, or water district.” For donations and leases of 5 years or less, this notice can be sent by email.

Alternatively, “public notice” means the notice required by [RCW 90.03.280](#) when the trust water right is subject to [RCW 90.03.380](#).

¹ [RCW 90.42.020\(2\)](#)

² [RCW 90.42.040\(5\)](#)

“Secondary reach” means that portion of a water body that benefits only from the former consumptive portion of a trust water right because it had received return flow waters while the water right was exercised.

“Supplemental” water rights have been used with a variety of meanings, including: to increase the instantaneous rate of withdrawal/diversion for a beneficial use associated with a previous water right; to increase the annual water quantity (acre-feet) for beneficial use associated with a previous water right to be appropriated at a rate not exceeding the rate of the previous water right; to increase both the instantaneous and annual quantities associated with an existing beneficial use of an existing water right. Additionally, the term supplemental has been used to recognize that a water right claim has been registered in the claim registry but the potential validity of the water right claim was not determined. This use of the term primarily occurred during the 1970’s.

“Trust water right agreement” means a document, agreement, or the trust water form that conveys the water right to the department for management as a trust water right. The document specifies the terms, the conditions related to acquisition and use of the water right while in trust, and the circumstances under which the water right might revert to the water right holder.

“Trust water right” means any water right acquired by the state under Chapters 90.38 or 90.42 RCW for management in the state trust water rights program.³

“Water conservation project” means any project or program that achieves physical or operational improvements that provide for increased water use efficiency in existing systems of diversion, conveyance, application, or use of water under water rights existing on July 28, 1991. Water conservation projects may include changes in point of diversion/withdrawal or place of use to accommodate new conveyances and distribution systems.⁵

³ [RCW 90.38.010\(3\)](#); [RCW 90.42.020\(3\)](#)

⁴ [RCW 90.42.020\(5\)](#)

⁵ [RCW 90.42.030\(2\)](#)

Appendix D

Progress Sheet for Trust Water Rights Applications

PROGRESS SHEET – APPLICATION ENTER A WATER RIGHT INTO TRUST

Type of Trust Proposal:

☐ Donation ☐ Water Conservation ☐ Purchase ☐ Lease <5 yrs ☐ Lease >5 yrs ☐ Other

SUBJECT TO REAL ESTATE EXCISE TAX? YES ☐ NO ☐

NAME: «F Name» «L name»

«Co»

«Add1»

«Add2»

«City», «State» «Zip»

«Phone»

Copies scanned & e-mailed to Department of Revenue:

Date: _____

Initial: _____
Chg. Application *ROE/ROD* *Assignment*

COUNTY «CNTY»

WRIA «WRIA» WRTS No. «WRATS No»

PURPOSE OF APPLICATION: «Proposed Purpose of Trust»

Date Application received: «Date App Rcvd.»

Date mailed to interested parties:

☐ WDFW _____ ☐ State DOH _____ ☐ County DOH _____

☐ Tribe _____ ☐ Other _____

PUBLICATION: Newspaper: «Newspaper»

OK'd by: _____ Date Notice Sent _____ Date Affidavit received: _____

_____ Protest period expires: _____ Checked by: _____

_____ Date: _____

☐ Protests: _____ ☐ Fee rcvd. _____

FIELD EXAMINATION:

Examination made: _____ By: _____

Date Trust Water Report issued or Date Donation Acknowledged: _____

PROJECT COMPLETION FIELD EXAMINATION

DATE: _____ BY: _____

Appendix E

Public Notices

- a) Contents of the public notice for a trust water right should include⁶:
- (1) The water right holder's name;
 - (2) The water right number and priority date of the water right;
 - (3) A brief description of the water right;
 - (4) The water source;
 - (5) The existing point of diversion/withdrawal;
 - (6) The existing purpose of use;
 - (7) The water quantities to be acquired;
 - (8) The proposed purpose of use as a trust water right;
 - (9) The water body in which the trust water right will be exercised, if for instream flows;
 - (10) Any other information that might be necessary for the general understanding of the trust water right proposal;
 - (11) Protest and comments boilerplate: Protests or objections to approval of this application must include a detailed statement of the basis for objections; protests must be accompanied by a fifty dollar (\$50.00) recording fee and filed with the Department of Ecology, at the address shown below, within thirty (30) days from

(Last date of publication to be entered above by publisher)

State of Washington
Department of Ecology
Water Resources Program
Address

NOTE: If the trust water right is not to be immediately exercised within the trust water right program, then a second public notice is required prior to first exercising the trust water right.

NOTE: A new public notice is required if the authorized purpose or other substantive information related to the exercising of the trust water right changes.

⁶ Due to the variety of potential trust water transactions, the contents and requirements to provide public notice will vary.

Appendix F

Model letter for Acceptance of a Trust Water Right Donation

July 18, 2011

Name
Address
City, ST xxxxx-xxxx

Dear Name,

The purpose of this letter is to acknowledge Ecology's acceptance of your donation to the Washington State Trust Water Right Program. The trust water right has been assigned the control number . Please refer to that number when corresponding with us about this trust water right.

The Department of Ecology, pursuant to RCW 90.42.080(1)(b), acknowledges your donation in the amount of gallons per minute and acre-feet per year. The purpose of the donation is to benefit instream flow in the XXXXX River] from Date to Date.

[Use if the donation is for a portion of the water right.] The parent water right, , authorized the withdrawal of gallons per minute, up to acre-feet per year for the irrigation of acres during the irrigation season and up to acre-feet per year for continuous domestic use. The recorded place of use is located within of Section , T. N., R. E.W.M.

RCW 90.42.080 provides in part that the total of any portion of the water right remaining with the donor plus the donated portion of the water right may not exceed the extent to which the water right was exercised during the five years before the donation.

In accordance with RCW 90.42.040(6), RCW 90.14.140(h), and RCW 90.14.215, a water right is not subject to relinquishment while it is managed within the Trust Water Right Program.

Ecology's acceptance of the donated water right into the trust water right program is not evidence of the validity or quantity of the right. When the period of trust ends, the water right will revert back to the water right holder or landowner in the full quantity accepted into the trust water program and for the original purposes.

If, prior to expiration of this temporary donation, you would like to extend the temporary donation, please send us a written request. Also, if you wish to modify any terms of your donation, your letter must include the new terms. Ecology will review your request and any new or modified terms and conditions and will notify you whether the donation can be extended.

If you have questions or concerns, please call the [trust water coordinator] at [phone number]_____.

Your Right To Appeal

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

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Pollution Control Hearings Board 1111 Israel RD SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608

Please send a copy of your appeal to:

_____, Section Manager

You have a right to appeal this decision. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted

*For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>*

Sincerely,

Signature Block

Water Resources Program

cc:

Appendix G

Trust water right report form



STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

TRUST WATER RIGHT REPORT OF EXAMINATION Change of Purpose and Place of Use WRTS File #:

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
---------------	-----------	------------	-----------------

NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM

ADDRESS/STREET	CITY/STATE	ZIP CODE
----------------	------------	----------

TRUST WATER RIGHT ATTRIBUTES

SOURCE

TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
-------------------------------	----------------------------	----------------------------

QUANTITY, TYPE OF USE, PERIOD OF USE

AFFECTED REACHES

APPROXIMATE LOCATION OF HISTORIC DIVERSION / WITHDRAWAL

feet and feet from the of Section , T. N., R. E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE [E. or W.] W.M. E.	WRIA	COUNTY
PARCEL NUMBER	LATITUDE	LONGITUDE			DATUM

DESCRIPTION OF PLACE OF USE [See Attachment 1 for map of the trust water right location]

PROJECT SUMMARY

TRUST WATER RIGHT TERM

BEGIN DATE	END DATE
------------	----------

**PORTION OF WATER RIGHT
NOT PLACED INTO TRUST
WRTS File #:**

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
---------------	-----------	------------	-----------------

NAME

ADDRESS/STREET	CITY/STATE	ZIP CODE
----------------	------------	----------

WATER RIGHT ATTRIBUTES

SOURCE

TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
-------------------------------	----------------------------	----------------------------

QUANTITY, TYPE OF USE, PERIOD OF USE

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL					
feet and feet from the of Section , T. N., R. E.W.M.					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
		N.	E.		
PARCEL NUMBER	LATITUDE		LONGITUDE	DATUM	

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
-----	-------	------------------------------------

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED
[See Attachment 2 for a map of the place of use and point(s) of diversion or withdrawal]

DESCRIPTION OF WATER SYSTEM

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
----------------------------	-------------------------------	------------------------------------

PROVISIONS

Provisions related to the Trust Water Right:

Provisions related to the portion of the water right not placed into trust:

[Delete headings if there are no applicable provisions.]

FINDINGS OF FACT AND ORDER

Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. 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. _____, be approved/denied subject to existing rights and the provisions specified above. [The following is optional and is only used where a physical change is part of a publicly-funded conservation project] I further ORDER that the requested change of point of diversion/change of place of use under Water Right Change Application No. _____, be approved/denied subject to existing rights and the provisions specified above.

You have the right to appeal this order to the Pollution Control Hearings Board. Pursuant to RCW 43.21B, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty days of the date of your receipt of this document.

To appeal this order, your notice of appeal must contain a copy of the Ecology order you are appealing.

Your appeal must be mailed to:
The Pollution Control Hearings Board
PO Box 40903
Lacey WA 98504-0903

OR Hand Deliver your appeal to:
The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg. 2
Lacey WA 98503

AND

Your appeal must also be served on:
The Department of Ecology
Appeals Coordinator
PO Box 47608
Olympia WA 98504-7608

In addition, send a copy to:
_____, Section Manager
Water Resources Program
Department of Ecology

Signed at _____, Washington, this _____ day of _____ 200 .

_____, Section Manager
Water Resources Program
Region Office

INVESTIGATOR'S REPORT

BACKGROUND

Description and Purpose of Proposed Change

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.

Attributes of the Certificate and Proposed Change

Table 1 Summary of Existing Attributes and Proposed Changes to Water Right No.

Attributes	Documented	Proposed
Name		
Priority Date Date of Application for Change		
Instantaneous Quantity		
Annual Quantity		
Source		
Point of Diversion/Withdrawal		
Purpose of Use		
Period of Use		
Place of Use		

Legal Requirements for Proposed Change

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

- **Public Notice**
- **State Environmental Policy Act (SEPA)**
- **Water Resources Statutes and Case Law**

INVESTIGATION

History of Water Use

Proposed Use

Other Rights Appurtenant to the Place of Use

Hydrologic/Hydrogeologic Evaluation

Trust Water Right Calculations

Trust Water Place of Use

Trust Water Management

Impairment Considerations

Public Interest Considerations

Consideration of Protests and Comments

CONCLUSIONS

RECOMMENDATIONS *(chose one)*

Approval without provisions

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

Approval with provisions

Based on the above investigation and conclusions, I recommend that the request for change to _____ be approved in the amounts and within the limitations listed below and subject to the provisions listed in the Report of Examination.

Denial

Based on the above investigation and conclusions, I recommend that the request for change to _____ be denied.

Trust Water Right Attributes:

____ cfs, ____ acre-ft/yr from _____ to _____ for instream flow purposes in the primary reach.

The primary reach begins.....

____ cfs, ____ acre-ft/yr from _____ to _____ for instream flow purposes in the secondary reach as follows:

table

The secondary reach begins.....

If a portion of water right not placed into trust involves a POD or POU change:

Approval with provisions

Based on the above investigation and conclusions, I recommend that the request for change to _____ be approved in the amounts and within the limitations listed below and subject to the provisions listed in the Report of Examination.

Denial

Based on the above investigation and conclusions, I recommend that the request for change to _____ be denied.

_____ gallons per minute, _____ acre-feet per year for _____ from _____ to _____.

Point of Withdrawal:

____ 1/4, ____ 1/4, Section _____, Township _____ North, Range _____ East W.M.

Place of Use

Report by: _____

Water Resources Program

Date

Appendix H

Template for Certificate of Trust Water Right Acquisition

Certificate of Acquisition of Water Right

Certificate Number

In accordance with the provisions of Chapter 90.38 and or 90.42 RCW, this certificate is issued to document the permanent acquisition into the State Trust Water Right Program of (water quantity) from (water right document type) number (number), priority date (priority date).

The original water use was for (purpose of use) during the period from season start to season end each year located within (place of use).

The authorized Trust Water Right Program purpose of use is (trust water right purpose) from season start to season end each year. The purpose of use is located (trust water purpose location).

Appendix I
Pre-trial Order #6

AS AMENDED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF YAKIMA

IN THE MATTER OF THE DETERMINATION
OF THE RIGHTS TO THE USE OF THE
SURFACE WATERS OF THE YAKIMA RIVER
DRAINAGE BASIN, IN ACCORDANCE WITH
THE PROVISIONS OF CHAPTER 90.03,
REVISED CODE OF WASHINGTON,

No. 77-2-01484-5

THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

PRETRIAL ORDER NO. 6
Re: Procedures Relating
to Order Pendente Lite

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.

I.

BACKGROUND

A. Findings

1. During the pendency of this general adjudication case there may arise a need, from time to time, for this Court to issue interim orders relating to the use of water by one or more of the parties hereto. These interim orders pendente lite may arise in the context of, among others, regulatory action initiated by the Department of Ecology or disputes over the rights to water use between various parties.

2. The Court is also aware that there could occur drought conditions which might require a comprehensive interim regulation and administration of the waters of the Yakima River Basin for discrete

PRETRIAL ORDER NO. 6

3264 -1-

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5 periods of time. This Court recognizes that there is a general policy
6 of deference, based on both Federal and Washington law, to the state
7 courts in the administration, as well as the confirmation, of water
8 rights in general adjudication cases in the posture of this case. See
9 43 U.S.C.A. §666 and Arizona v. San Carlos Apache Tribe, 463 U.S. 545
10 (1983).

11 3. Pursuant to the remand of this case to this Court by the United
12 States District Court for the Eastern District of Washington, by Order
13 dated January 12, 1979, and it being the overriding policy of this
14 Court to conduct this proceeding in a harmonious relationship with the
15 Federal Courts, this Court is willing, if it is deemed appropriate, to
16 assume the lead role in determining all of the various interim regula-
17 tory and administrative issues pertaining to surface water and its use
18 in the Yakima River Basin by the parties hereto which may arise during
19 the pendency of this case.

20 4. The lead role, described above, could not only provide an
21 orderly, unitary approach to resolving disputes among the parties,
22 thereby alleviating confusion between court systems, but could also
23 promote a policy of uniformity and continuity in interim water use
24 regulation and administration, as well as the efficient use of judicial
25 resources in both the state and federal court systems and of the
26 resources of the various parties.
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5 B. Purpose

6 The purpose of this order is to establish the procedures which
7 will be followed in relation to interim water allocations among parties,
8 including the entry by this Court of any orders pendente lite.
9

10 II.

11 PROCEDURES - ORDERS PENDENTE LITE

12 Based on the foregoing, the following procedures relating to the
13 issuance of orders pendente lite by this Court are established.

14 A. Procedures Relating to Non-Emergency Conditions.

15 The procedures set forth in II.A. relate only to conditions of a
16 non-emergency nature. (See Section II.B. for procedures relating to
17 emergency conditions.)

18 1. Any party, including the plaintiff, may request the Court to
19 issue an order pendente lite by filing a petition, accompanied by a
20 written certification, with the Clerk of this Court. The petition
21 shall contain the following:

- 22 a. Name of party;
23 b. The subbasin or subbasins involved;
24 c. Relief requested;
25 d. A statement of reasons supporting the relief requested;
26 e. The name(s) of the party or parties who are directly
27 affected by relief requested.
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5 The written certification shall contain a statement of the petitioner
6 that a copy of the petition and notice of the time and place of the
7 hearing by the Court on said petition have been transmitted through
8 the United States Postal Service by registered mail or by certified
9 mail, return receipt requested, postage prepaid to each party named in
10 Section II.A.1.e. above, and to the plaintiff. (See Section II.A.3. and
11 4. relating to hearings of petitions by this Court.)

12 2. Petitions filed under Section II.A. shall be heard on the
13 following dates:

14 a. If the petition is filed on or before the 15th day of
15 a month, the date of the hearing on the petition shall
16 be the second ~~Friday~~ ^{THURSDAY} of the next following month at
17 9:30 a.m.

18 b. If the petition is filed after the 15th day of a month,
19 the date of the hearing on the petition shall be the
20 second ~~Friday~~ ^{THURSDAY} of the second following month at 9:30 a.m.

21 3. The petitioner shall at the time of hearing be prepared to
22 submit evidence, written or oral or both, and present arguments in
23 support of its petition. Any party may, at said hearing, respond with
24 evidence and argument relevant to the petition.

25 4. The plaintiff is directed:

26 a. To include notice of all petitions filed under this
27 procedure in the monthly notice transmitted by the
28 plaintiff to all parties and attorneys of record
29

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5 pursuant to Pretrial Order No. 3, filed April 19, 1985;
6 and

- 7 b. To be prepared to provide a response, including any
8 recommendations it may have, at any hearing held as
9 provided in 2, next above.

10 5. The Court shall, as to any petition, take such action as it
11 deems appropriate, including the denial of the petition, or the
12 granting of the petition with or without conditions.

13 B. Procedures Relating to Emergency Conditions.

14 1. Any party may request the Court to issue an order pendente lite
15 relating to an emergency condition by filing a petition with the Clerk
16 of this Court. The petition shall include the information set forth
17 in Section II.A.1.a.-e and, in addition, shall set forth the facts
18 constituting the emergency condition requiring the issuance of an order
19 on an expedited basis. For purposes hereof, an emergency condition is
20 a condition of facts that requires consideration and action by this
21 Court in an earlier time frame than is provided by Section II.A.2.

22 2. Dates for hearings on petitions relating to an emergency
23 condition shall be as follows:

24 a. The petitioner shall file a motion for setting for a date
25 for hearing with the Court. Prior to the filing thereof, the petitioner
26 shall take all reasonable steps to notify the parties directly affected
27 and the attorney for the plaintiff, either orally or by written
28 communication, of the intent to file the motion.

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5 b. The Court shall, upon request of the petitioner and
6 ex parte, issue such order, as it deems appropriate under the circum-
7 stances, setting a date for hearing on the motion and establishing the
8 method and content of any notice of hearing to be provided to the
9 parties.

10 c. If a petition is filed which is accompanied by supporting
11 affidavits, that in the opinion of the Court demands extraordinary
12 relief to be granted prior to a hearing as provided in Section II.B.2.b.,
13 the Court shall issue orders as appropriate, for a limited term of
14 time, to take effect prior to the hearing on the petition.

15
16 III.

17 IMPACTS ON FINAL DECREE

18 Orders pendente lite and regulatory orders, as provided for herein
19 shall relate solely to the regulation or administration of the surface
20 water subject to this case pending the completion and entry of a Final
21 Decree of general adjudication of the claimed rights. In all instances
22 where an order pendente lite has been entered or a regulatory order has
23 been issued, nothing in any of said orders shall have any relationship
24 or impact on the ultimate determination as to the validity of water
25 rights in the Report of Referee, Conditional Final Order, or the Final
26 Adjudication Order. No regulatory order or order pendente lite shall
27 establish any inference or implication as to any element of a water
28 right, or be admissible as evidence in support or derogation of any
29

claim.

IV.

REGULATORY ORDERS OF PLAINTIFF

A. In addition to interim regulation of water use provided herein, the plaintiff is authorized to issue regulatory orders regulating interim use of water by parties to this proceeding based upon:

(1) rights confirmed in "general adjudication" decrees entered by superior courts of this state (including subsequent modifications of purpose or place of use or point of diversion of such rights approved by the plaintiff pursuant to RCW 90.03.380 subsequent to the entry of said decrees) as to the following:

	<u>Caption of Case</u>	<u>Superior Court Cause Number</u>	<u>Date of Entry of Decree</u>
a.	<u>In re Ahtanum Creek</u>	Yakima No. 18279	5/7/25
b.	<u>In re Big Creek</u>	Kittitas No. 6759	3/27/24
c.	<u>In re Cook Creek</u>	Kittitas No. 6222	8/13/21
d.	<u>In re Cowiche Creek</u>	Yakima No. 14233	5/18/22
e.	<u>In re Teanaway River</u>	Kittitas No. 6221	6/16/21
f.	<u>In re Wenas Creek</u>	Yakima No. 12935	5/27/25;

or,

(2) rights embodied in permits or certificates established under RCW 90.03.250, et seq., provided that the authority to issue regulatory orders as to (2) is limited only to enforcement of conditions of such certificates and permits and does not relate to

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5 the validity of the basic right embodied in any such document; or,

6 (3) an evaluation that a use of water is not (a) embodied in
7 an aforescribed certificate or permit or (b) the subject of a
8 claim on file in the Water Rights Claims Registry of RCW 90.14.111.

9 B. (1) Any party aggrieved by a regulatory order issued by
10 plaintiff pursuant to the authority of this section may request review
11 of the order by this Court by filing a petition with this Court. The
12 petition shall set forth a synopsis of reasons for requesting the
13 review and be accompanied by a copy of the regulatory order to be
14 subjected to review. The filing of a petition shall not automatically
15 stay the effect of a regulatory order. See Section IV.B.2. All
16 petitions filed hereunder shall be heard by the Court at the times
17 provided in Section II.A.2.a. except as provided in Section IV.B.

18 (2) Any party desiring (a) to obtain an order staying the
19 effectiveness of a regulatory order prior to a hearing or (b) to
20 obtain a hearing date earlier than that provided in Section II.A.2.a.
21 may so request the Court by filing a motion with the Court with a copy
22 thereof to the plaintiff transmitted as provided in Section II.A.1.

23 The procedures of Section II.B.2.a. and b. shall be used for
24 obtaining an order setting a hearing date under this subsection. The
25 procedures of Section II.B.2.c. shall also apply in relation to any
26 requests for an order staying the effectiveness of a regulatory order
27 pending a hearing.

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5 C. A regulatory order issued pursuant to Section IV.A. shall be
6 subject to review by this Court through the filing of a petition
7 requesting such review with this Court. No such petition will be
8 considered by this Court unless it is filed within twenty (20) days
9 after the day of receipt of the regulatory order by the petitioner;
10 except that if the twentieth day is a Saturday, Sunday or state
11 holiday, the last day for filing such petition shall be the next
12 working day of the Court following the Saturday, Sunday or state
13 holiday.

14
15 V.

16 NOTICE TO ALL PARTIES

17 Plaintiff is directed to provide immediately a copy of this order
18 to all parties or their counsel of record, if any.

19
20 ENTERED this 18th day of February, 1987.

21
22
23 Walter Stauffacher
JUDGE WALTER A. STAUFFACHER

24 Presented by:

25 Charles B. Roe, Jr.
26 CHARLES B. ROE, JR.
27 Senior Assistant Attorney General

28 Attorney for Plaintiff, State of
29 Washington, Department of Ecology

30 PRETRIAL ORDER NO. 6

-9-

Appendix J

Pre-trial Order #12

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4 **IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON**
5 **FOR YAKIMA COUNTY**

6 IN THE MATTER OF THE
7 DETERMINATION OF THE RIGHTS TO
8 THE USE OF THE SURFACE WATERS
9 OF THE YAKIMA RIVER DRAINAGE
10 BASIN, IN ACCORDANCE WITH THE
11 PROVISIONS OF CHAPTER 90.03,
12 REVISED CODE OF WASHINGTON

13 STATE OF WASHINGTON DEPARTMENT
14 OF ECOLOGY,

15 Plaintiff,

16 v.

17 JAMES J. ACQUAVELLA, et al.,
18 Defendants.

No. 77-2-01484-5

PRETRIAL ORDER NO. 12

**RE: PROCEDURES
RELATING TO CHANGES OF
USE AND TRANSFERS OF
SURFACE WATER RIGHTS
SUBJECT TO THIS
ADJUDICATION**

19 **I. BACKGROUND**

20 1.1 During the pendency of this adjudication, the Court may
21 authorize the Department of Ecology (Ecology) to regulate the use of water
22 in the Yakima River Basin. RCW 90.03.210. On October 6, 1986, this
23 Court entered Pretrial Order No. 5, which established procedures for
24 interim regulation during the pendency of the adjudication. This Court
25 ordered that, during the pendency of the adjudication and prior to
26 judgment or appeal, surface water involved in the proceeding be regulated
or partially regulated according to the schedule of rights specified in the
Report of Referee for each category of claimants.

PRETRIAL ORDER NO. 12 -- 1.

1563

1 1.2 On February 18, 1987, the Court entered Pretrial Order No. 6,
2 which establishes procedures relating to interim Orders *Pendente Lite*
3 governing changes of use of water rights during the pendency of the
4 adjudication. Under Pretrial Order No. 6, an applicant to change the use of
5 a water right during the pendency of the adjudication may petition this
6 Court for an Order *Pendente Lite* authorizing the temporary change of use
7 of the water right during the pendency of the adjudication or until further
8 order of the Court.

9 1.3 On July 27, 1997, the Legislature enacted 90.80 RCW, which
10 authorizes county legislative authorities to establish water conservancy
11 boards for the purpose of making conditional decisions on water right
12 transfer applications.¹ Under this statute, water conservancy boards may
13 review water transfer applications for compliance with applicable laws and
14 regulations and issue conditional approvals of such applications, subject to
15 Ecology's final review. See RCW 90.80.070.

16 1.4 Any conditional approval of a water right transfer application
17 must be submitted by the water conservancy board to Ecology, which is
18 required to review each proposed transfer conditionally approved by the
19 board for compliance with RCW 90.03.380, 90.03.390, and 90.44.100, and
20 other applicable law. Ecology is authorized to then affirm, reverse, or
21 modify the conditional decision made by the water conservancy board. See
22 RCW 90.80.080.

23 1.5 Water conservancy boards have been established in Benton
24 County, Kittitas County, Klickitat County, and Yakima County pursuant to

25 ¹ The scope of a water conservancy board's authority is determined with reference to Ch. 90.80 RCW
26 and other applicable law.

1 90.80 RCW. Benton, Kittitas, Klickitat, and Yakima Counties encompass
2 geographic areas that are covered by this proceeding. Furthermore, water
3 conservancy boards may be established in adjacent counties, which may
4 under certain circumstances issue decisions that affect water rights that
5 also are subject to this adjudication. See RCW 90.80.070(2); ESHB 1832,
6 Ch. 237, Laws 2001 § 8. Consequently, the Court anticipates that
7 applications for the transfer of surface water right claims (based on
8 properly filed statements of claims to the Water Rights Claims Registry
9 under 90.14 RCW) and certificates and permits (under 90.03 RCW) subject
10 to this adjudication may be filed with water conservancy boards.
11 Alternatively, an applicant may apply to transfer a surface water right
directly with Ecology pursuant to RCW 90.03.380.

12 1.6 On May 9, 2001, Governor Locke signed Engrossed House Bill
13 1350, which established a new process for appeals of transfers of water
14 rights subject to a general adjudication. See Chapter 220, Laws 2001.
15 EHB 1350 establishes a process for appeals of decisions on changes and
16 transfers of water rights subject to a general adjudication. After enactment
17 of EHB 1350, superior court review of a decision by Ecology to change or
18 transfer a water right subject to a general adjudication will be heard by the
19 Superior Court conducting the adjudication. In the case of the Acquavella
20 adjudication, EHB 1350 also includes specific procedures under which an
21 appeal is filed directly with this Court. The statute as amended reads in
22 pertinent part as follows:

23 “(2) Any appeal of a decision of the department on an
24 application to change or transfer a water right subject to a
25 general adjudication that is being actively litigated and was
26 commenced before October 13, 1977, shall be conducted as
follows:

1 (a) The appeal shall be filed with the court conducting
2 the adjudication and served under RCW 34.05.542(3). The
3 content of the notice of appeal shall conform to RCW
4 34.05.546. Standing to appeal shall be based on the
5 requirements of RCW 34.05.530 and is not limited to parties to
6 the adjudication.

7 (b) If the appeal includes a challenge to the portion of the
8 department's decision that pertains to tentative determinations
9 of the validity and extent of the water right, review of those
10 tentative determinations shall be conducted by the court
11 consistent with the provisions of RCW 34.05.510 through
12 34.05.598, except that the review shall be de novo.

13 (c) If the appeal includes a challenge to any portion of the
14 department's decision other than the tentative determinations
15 of the validity and extent of the right, the court must certify to
16 the pollution control hearings board for review and decision
17 those portions of the department's decision. Review by the
18 pollution control hearings board shall be conducted consistent
19 with chapter 43.21B RCW and the board's implementing
20 regulations, except that the requirements for filing, service, and
21 content of the notice of appeal shall be governed by (a) of this
22 subsection.

23 (d) Appeals shall be scheduled to afford all parties full
24 opportunity to participate before the superior court and the
25 pollution control hearings board.

26 (e) Any person wishing to appeal the decision of the
board made under (c) of this subsection shall seek review of the
decision in accordance with chapter 34.05 RCW, except that
the petition for review must be filed with the superior court
conducting the adjudication.

(3) Nothing in this section shall be construed to affect or
modify any treaty or other federal rights of an Indian tribe, or
the rights of any federal agency or other person or entity
arising under federal law. Nothing in this section is intended
or shall be construed as affecting or modifying any existing
right of a federally recognized Indian tribe to protect from
impairment its federally reserved water rights in federal court."

1 RCW 90.03.210, as amended by Chapter 220, Laws 2001, sec. 5. The
2 statute also includes specific procedures regarding consolidation of the
3 appeal and standing. The statute reads in pertinent part as follows:

4 “(3) For proceedings conducted by the pollution control
5 hearings board pursuant to chapter 43.21B RCW or as
6 otherwise provided in RCW 28 90.03.210(2) involving decisions
7 of the department of ecology on applications for changes or
8 transfers of water rights that are the subject of a general
9 adjudication of water rights that is being litigated actively
10 under chapter 90.03 or 90.44 RCW, the petition must be filed
11 with the superior court conducting the adjudication, to be
consolidated by the court with the general adjudication. A
party to the adjudication shall be a party to the appeal under
this chapter only if the party files or is served with a petition for
review to the extent required by this chapter.”

12 RCW 34.05.514, as amended by Chapter 220, Laws 2001, sec. 3.

13 1.7 WAC 173-153-110(7), a provision in Ecology's water
14 conservancy board rules, requires that:

15 [i]f a geographical area within the jurisdiction of a conservancy
16 board is or becomes the subject of an adjudication conducted
17 by a superior court for the determination of water rights,
18 ecology will seek guidance from the superior court regarding
19 the court's role in administering the water rights that are
20 subject to the adjudication. Thereafter, ecology shall advise the
conservancy board on whether and how the board may proceed
to evaluate and make conditional decisions on applications for
transfers of water rights that are subject to the adjudication
being conducted by the superior court.

21 1.8 In response to Ecology's request, this Court has decided to
22 establish rules and guidelines setting forth procedures and processes with
23 respect to applications for permanent transfers and requests for temporary
24 transfers of surface water rights subject to the adjudication, and appeals
25 from Ecology decisions on water right transfer applications.
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1 2.2 Except as otherwise provided in RCW 90.03.380(3), an
2 application for a permanent transfer of a surface water right arising under
3 state law and subject to this adjudication must be filed with Ecology or a
4 water conservancy board. Parties may not request the Court to authorize
5 permanent transfers of surface water rights pursuant to RCW 90.03.380.

6 2.3 For applications filed after the date this Order is entered, notice
7 that any such application has been filed with Ecology or a water
8 conservancy board must be provided by the applicant to all parties in this
9 adjudication through publication of notice of the application in the monthly
10 notice, which is sent to all parties of record pursuant to Pretrial Order No.
11 4, Amending Pretrial Order No. 3 Re: Notice Procedures and Other Pretrial
12 Mailers, dated January 8, 1986, in addition to other statutorily required
13 notice procedures. The form of notice of the filing of an application with a
14 water conservancy board shall comply with the form prescribed in WAC
15 173-153-080. The form of notice of the filing of an application with Ecology
16 shall comply with the form prescribed in RCW 90.03.280.

17 2.4 Except as otherwise provided in RCW 90.03.380(3), Ecology is
18 hereby ordered to accept and process applications for permanent transfers
19 of surface water rights arising under state law and subject to this
20 adjudication in accordance with RCW 90.03.265, RCW 90.03.380, chapter
21 90.80 RCW, and 173-152 WAC.

22 **III. APPEALS PROCEDURES**

23 3.1 Only a decision by Ecology on a water right transfer application
24 may be appealed. A Record of Decision issued by a Conservancy Board
25 must be reviewed by Ecology under RCW 90.80.80 and a final decision
26 issued by Ecology before the decision may be appealed.

1 3.2 An appeal of an Ecology decision on an application to transfer a
2 surface water right subject to this Order must be filed with this Court and
3 served in accordance with RCW 34.05.542(3). The "parties of record" under
4 RCW 34.05.542(3) who must be served shall be limited to the applicant of
5 the decision subject to appeal, Ecology, and the Office of the Attorney
6 General.

7 3.3 The content of the notice of appeal shall conform to RCW
8 34.05.546.

9 3.4 Standing to appeal shall be based on the requirements of RCW
10 34.05.530 and is not limited to parties to the adjudication.

11 3.5 Participation by others (both parties and non-parties to
12 Acquavella) shall be allowed for those who apply for and are allowed to
13 intervene in such appeals pursuant to the civil rules. A party to the
14 adjudication is not a party to an appeal of a decision to transfer a water
15 right unless it properly intervenes in the appeal, files a Notice of Appeal or
16 is served as one of the "parties of record" in compliance with the
17 requirements of RCW 90.03.210(2) and this Order.

18 3.6 The Referee shall ensure that the monthly notice transmitted to
19 all parties and attorneys of record includes a list of water right transfer
20 decisions by Ecology for which appeals have been filed with the Court.

21 3.7 Within 14 days of the filing of an appeal with this Court of an
22 Ecology decision to transfer a water right subject to Acquavella, any party
23 to an appeal may file with the Court and serve on all other parties to the
24 appeal a Proposed Order of Certification.

25 3.8 Within 45 days of receipt of an appeal, the Court will convene
26 the parties to the appeal in order to --

PRETRIAL ORDER NO. 12 -- 8

1 (a) set a schedule for the Court's review of Ecology's tentative
2 determination of the validity and extent of the water right;

3 (b) conduct a hearing, if necessary, to determine whether the
4 appeal raises issues other than Ecology's tentative determination of
5 the validity and extent of the water right;

6 (c) establish a hearing schedule including a date certain upon
7 which a decision will be made on the appeal; and

8 (d) issue an Order certifying to the PCHB such issues as may
9 be raised in the appeal other than those regarding the validity and
10 extent of the water right and are within the scope of the PCHB's
11 jurisdiction.

12 3.9 The Court shall issue an Order certifying to the PCHB such
13 issues as may be raised in the appeal other than those regarding the
14 validity and extent of the water right and are within the scope of the
15 PCHB's jurisdiction. The Court will attach a copy of the Notice of Appeal
16 and all other documents filed with the Notice of Appeal and promptly
17 forward the Order of Certification to the PCHB. The Court's Order of
18 Certification shall --

19 (a) identify the issues raised in the Notice of Appeal that must
20 be reviewed by the PCHB;

21 (b) request a ruling or decision from the PCHB by a date certain
22 on those issues that are certified to the PCHB from the Court for an
23 opinion; and
24
25
26

PRETRIAL ORDER NO. 12 -- 9

1 (c) inform the PCHB of the hearing schedule established by the
2 Court for any appeal of Ecology's tentative determination of validity
3 and extent of the water right.

4 3.10 The Court will forward to the PCHB its decision on any appeal
5 of Ecology's tentative determination of validity and extent of the water right
6 as soon as such decision is issued by the Court.

7
8 **IV. RECORD FOR APPEAL AND STANDARD OF REVIEW**

9 4.1 If the appeal includes a challenge to the portion of Ecology's
10 decision that pertains to Ecology's tentative determination of the validity
11 and extent of the water right, review of Ecology's determination shall be
12 conducted by the Court consistent with the provisions of RCW 34.05.510
13 through RCW 34.05.598, except that the review shall be *de novo*.

14 4.2 In conducting its review of an appeal of Ecology's tentative
15 determination of the validity and extent of the water right, the Court may
16 receive other evidence not contained in the agency record. Additional
17 evidence may include but is not limited to documents filed by the parties or
18 issued by the Court in this adjudication.

19 **V. POLLUTION CONTROL HEARINGS BOARD REVIEW**

20 5.1 The Order of Certification issued by the Court shall act as the
21 notice of appeal required by the PCHB.

22 5.2 Chapter 43.21B RCW and the PCHB's implementing
23 regulations will govern the PCHB's review of those issues enumerated in the
24 Court's Order of Certification, except that RCW 90.03.210(2)(a) and this
25
26

1 Order will govern the requirements for filing, service, and content of the
2 notice of appeal.

3 5.3 The Court will provide the PCHB with the Court's hearing
4 schedule for any appeal of Ecology's tentative determination of validity and
5 extent of the water right for the purposes of ensuring that the Court's
6 schedule and PCHB's schedule established under WAC 371-08-430 afford
7 all parties full opportunity to participate before the Court and the PCHB.

8 5.4 Any person wishing to appeal the PCHB's decision on an appeal
9 of Ecology's decision on a water rights transfer other than the tentative
10 determination of the validity and extent of the water right shall seek review
11 of that decision in accordance with Chapter 34.05 RCW, except that the
12 petition for judicial review must be filed with this Court.

13 5.5 The Court shall conduct its review of an appeal of the PCHB's
14 decision under Chapter 34.05 RCW.

15 5.6 The Court shall consolidate its decision on any appeal of the
16 PCHB's decision with the Court's decision on any appeal of Ecology's
17 tentative determination of validity and extent of the water right. These two
18 decisions shall be consolidated into a single cause under Civil Rule 42 and
19 any decision issued by the Court shall be issued as a single appealable
20 order.

21 VI. APPELLATE REVIEW

22 6.1 A party of record, a party who has filed a Notice of Appeal, or
23 an intervenor may appeal decisions of the Court only on those issues for
24 which a party has properly filed a Notice of Appeal with the Court upon
25 Ecology's decision or the decision of the PCHB.
26

1 6.2 Review of a decision of the Court by either the Court of Appeals
2 or Supreme Court shall be secured in the manner provided by law for
3 review of superior court decisions in other civil cases.

4 **VII. LIMITATIONS**

5 7.1 This Order does not apply to any treaty or other federal rights
6 of an Indian tribe, the rights of any federal agency or other person or entity
7 arising under federal law, or water transfers authorized under RCW
8 90.03.380(3). This Order does not affect or modify any existing right of a
9 federally-recognized Indian tribe to protect from impairment its federally-
10 reserved water rights in federal court. This Order does not address issues ^{was}
11 involving the Yakama Reservation.

12 Dated this 22nd day of January, ²⁰⁰²~~2001~~.

the United
States or

13
14
15 Walter Stauffacher
16 HON. WALTER STAUFFACHER

17 Presented by:

18 OFFICE OF THE ATTORNEY GENERAL

19
20 Alan M. Reichman
21 Alan Reichman
22 WSBA No. 23874
23 Attorney for Plaintiff
24 Washington Department of Ecology
25
26

PRETRIAL ORDER NO. 12 -- 12

Appendix K

Pre-trial Order #17

RECEIVED
JUN 23 2003

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

FILED
JUN 20 2003

Department of Ecology
IN THE MATTER OF THE DETERMINATION
OF THE RIGHTS TO THE USE OF THE
SURFACE WATERS OF THE YAKIMA
RIVER DRAINAGE BASIN, IN
ACCORDANCE WITH THE PROVISIONS OF
CHAPTER 90.03, REVISED CODE OF
WASHINGTON,

KIM M. EATON
CLERK OF
COURT
WASHINGTON

KIM M. EATON
YAKIMA COUNTY CLERK

No. 77-2-01484-5

Pre-Trial Order No. 17

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,
Plaintiff,

Regarding Disposition of Final Decisions
Approving Transfer (Changes) of Water
Rights Pursuant to RCW 90.03.380 (1)

vs.

JAMES J. ACQUAVELLA, ET AL.,
Defendants

1. On January 22, 2002, this Court entered Pretrial Order No. 12, which establishes procedures relating to changes of use and transfers of water rights subject to this adjudication. Specifically, Pretrial Order No. 12 includes procedures governing appeals of decisions made by the Department of Ecology relating to changes of use and transfers of water rights under RCW 90.03.380(1) for water rights that also are subject to this adjudication. Pretrial Order No. 12 did not address the relationship of any water right change or transfer decisions, including any decisions rendered after all quasi-judicial or judicial review proceedings relating to Department of Ecology decisions are completed, to the entry of the final decree of this Court under RCW 90.03.230 and the issuance of adjudicated certificates under RCW 90.03.240. For purposes of this Order, a "water right transfer decision" is defined as an order approving a water right change or transfer made pursuant to RCW 90.03.380(1) that is final after all appeals or review proceedings, if any, are completed.

2. The purpose of this Order is to clarify the treatment by this Court of water right transfer decisions made prior to the entry of a final decree by this Court as provided in RCW 90.03.230.

3. The following procedure is established for all such water right transfer decisions:

(a) Ecology shall, within 30 days of the date of a water right transfer decision, issue to the applicant a Notice of Change or Transfer for any changed or transferred water right

Pre-Trial Order No. 17 - 1

17 059

1 that also is subject to this adjudication. Ecology also shall file a copy of the Notice with this
2 Court. The Notice shall describe the purpose of use, place of use and point of diversion of
3 the water right, as approved for change of use or transfer. The Notice shall indicate that the
4 water right is subject to this adjudication.

5 (b) A Notice of Change or Transfer issued by Ecology pursuant to this Order shall be
6 suitable for recording, and the applicant may record the Notice with the appropriate county
7 auditor, in like manner and with the same effect as provided for in RCW 90.03.380(1). If
8 the change or transfer includes a change in place of use, the applicant shall record the Notice
9 of Change or Transfer both for the newly-authorized place of use and for the real property,
as described, for which use of the water right was confirmed in the applicable Conditional
Final Order of this Court.

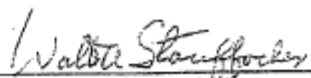
10 (c) For those changes or transfers which have been approved by Ecology prior to the
11 entry of this Order, Ecology shall be required to issue a Notice of Change or Transfer and it
12 shall be filed with the Court for incorporation by reference into the final decree.

13 (d)(i) Except as provided in subparagraph (ii), this Court shall incorporate by
14 reference in its final decree, entered in this proceeding pursuant to RCW 90.03.200, the
15 findings and conclusions contained in the Court's Conditional Final Order for each right
confirmed therein.

16 (ii) Unless otherwise requested by the applicant or successor-in-interest, this Court
17 shall, where a Notice of Change or Transfer has been issued by Ecology and has been filed
18 with the Court, incorporate, by reference, water right changes or transfers described in the
Notice into its final decree.

19 4. This Order does not apply to any treaty or other federal rights of an Indian tribe, the
20 rights of any federal agency or other person or entity arising under federal law, or water transfers
21 authorized under RCW 90.03.380(3). This Order does not affect or modify any existing right of the
22 United States or a federally-recognized Indian tribe to protect from impairment its federally-
23 reserved water rights in federal court. This Order does not address issues involving the Yakama
Reservation.

24 Dated this 20th day of June, 2003.

25 
Walter A. Stauffacher, Judge

Appendix L
Motion To Be Joined

FILED

2005 JUN 13 AM 8 29

CLERK OF
SUPERIOR COURT
YAKIMA COUNTY, WASH.

**STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT**

IN THE MATTER OF THE
DETERMINATION OF THE RIGHTS
TO THE USE OF THE SURFACE
WATERS OF THE YAKIMA RIVER
DRAINAGE BASIN, IN
ACCORDANCE WITH THE
PROVISIONS OF CHAPTER 90.03,
REVISED CODE OF WASHINGTON,

NO. 77-2-01484-5

MOTION TO BE JOINED AS
ADDITIONAL PARTY DEFENDANT
AND TO DIVIDE WATER RIGHT
AND AFFIDAVITS

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

COURT CLAIM NO. 01228
SUBBASIN 19

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.

1. Movant Department of Ecology states that the State of Washington Trust Water Rights Program has succeeded to an interest in a portion of a water right and states the following:

- A. Claimant: Charles R. Harris and Peggy L. Harris
- B. Address: P.O. Box 723
208 Sinclair Ave.
Naches, WA 98937
- C. Telephone No.: (509) 653-2455

MOTION TO BE JOINED AS
ADDITIONAL PARTY DEFENDANT
AND TO DIVIDE WATER RIGHT AND
AFFIDAVITS

COURT CLAIM NO. 01228

1

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

18,890

1 D. Court Claim No.: 01228

2 II. Washington Water Trust acquired a portion of the water right from Charles R.
3 Harris and Peggy L. Harris. Washington Water Trust states that it succeeded to all of the
4 portion of the water right it has now transferred to the State of Washington Trust Water Rights
5 Program.

6 A. Successor's Name: State of Washington Trust Water Rights Program

7 B. Address: Department of Ecology
8 Central Regional Office
9 15 West Yakima Avenue, Suite 200
10 Yakima, WA 98902-3452

11 C. Telephone No.: (509) 575-2490

12 D. Portion of water right involved:

13 Source: Naches River

14 Priority Date: May 10, 1895

15 Use: Instream flow

16 Quantity: 0.38 cfs, 112 acre-feet per year

17 Period of Use: April 1 through October 31

18 Point of Diversion: 375 feet south and 275 feet east of the west quarter
19 corner of Section 4 being within NW ¼ SW ¼ of Section 4, T. 14 N., R.
20 17 E.W.M.

21 Place of Use: Instream flow from the historical point of diversion from
22 the South Branch of the Naches River into La Fortune Ditch and
23 unnamed side channels of the Naches River, to the confluence of the
24 side channels with the mainstem Naches River, downstream to the
25 confluence of the Yakima River with the Columbia River.

26 III. Claimants Charles R. Harris and Peggy L. Harris have retained a portion of the
water right under Court Claim 01228 as follows:

MOTION TO BE JOINED AS
ADDITIONAL PARTY DEFENDANT
AND TO DIVIDE WATER RIGHT AND
AFFIDAVITS

2

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
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COURT CLAIM NO. 01228
SUBBASIN 19

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ATTORNEY GENERAL OF WASHINGTON
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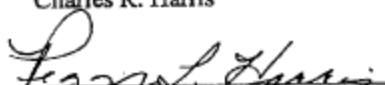
V. (A) Affidavit of Claimant:

STATE OF WASHINGTON)
COUNTY OF YAKIMA) ss.

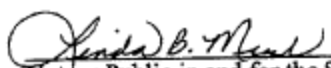
We, Charles R. Harris and Peggy L. Harris, being first duly sworn, depose and say that we have read the above and foregoing Motion to Be Joined as Additional Party Defendant and to Divide Water Right, that we know the contents thereof, and that the facts therein stated are true.

WITNESSED this 6th day of June, 2005.


Charles R. Harris


Peggy L. Harris

SUBSCRIBED AND SWORN TO before me on this 6th day of June, 2005.


Notary Public in and for the State of Washington.
My appointment expires 10/10/06

MOTION TO BE JOINED AS
ADDITIONAL PARTY DEFENDANT
AND TO DIVIDE WATER RIGHT AND
AFFIDAVITS

COURT CLAIM NO. 01228
SUBBASIN 19

4

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

(B) Affidavit of intermediary right holder Washington Water Trust:

STATE OF WASHINGTON)
COUNTY OF King) ss.

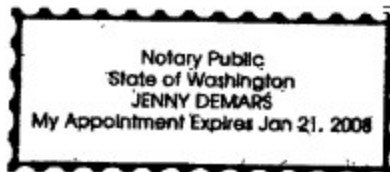
I, D. Susan Adams, being first duly sworn, depose and say that I have read the above and foregoing Motion to Be Joined as Additional Party Defendant and to Divide Water Right, that I know the contents thereof, and that the facts therein stated are true.

WITNESSED this 3 day of June, 2005.

WASHINGTON WATER TRUST

D. Susan Adams
D. Susan Adams
Executive Director

SUBSCRIBED AND SWORN TO before me on this 3 day of June, 2005.



JDM
Notary Public in and for the State of Washington.
My appointment expires 01-21-08

MOTION TO BE JOINED AS
ADDITIONAL PARTY DEFENDANT
AND TO DIVIDE WATER RIGHT AND
AFFIDAVITS

COURT CLAIM NO. 01228
SUBBASIN 19

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Olympia, WA 98504-0117
FAX (360) 586-6760

(C) Affidavit of current right holder State of Washington Trust Water Rights Program:

STATE OF WASHINGTON)
COUNTY OF Thurston) ss.

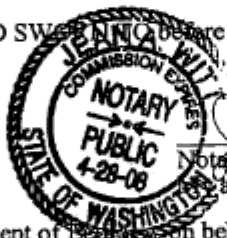
I, Ken Slattery, being first duly sworn, depose and say that I have read the above and foregoing Motion to Be Joined as Additional Party Defendant and to Divide Water Right, that I know the contents thereof, and that the facts therein stated are true.

WITNESSED this 1st day of June, 2005.

STATE OF WASHINGTON TRUST WATER RIGHTS PROGRAM

Ken Slattery
Ken Slattery, Acting Manager
Water Resources Program
Department of Ecology

SUBSCRIBED AND SWORN before me on this 1st day of June, 2005.



Jean A. Witt
Notary Public in and for the State of Washington.
Appointment expires 04-28-08

VI. The Department of Ecology on behalf of the State of Washington Water Trust Program, respectfully moves this Court for an Order to Join Additional Party and to Divide Water Right as attached hereto.

DATED this 31st day of May, 2005.

Barbara A. Markham
BARBARA A. MARKHAM, WSBA # 30234
Assistant Attorney General
Attorney for Washington Department of Ecology

MOTION TO BE JOINED AS
ADDITIONAL PARTY DEFENDANT
AND TO DIVIDE WATER RIGHT AND
AFFIDAVITS

COURT CLAIM NO. 01228
SUBBASIN 19

6

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

Appendix M

Order To Join

2015 JUN 10 AM 9 27

EXCISE
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON YAKIMA COUNTY SUPERIOR COURT

IN THE MATTER OF THE
DETERMINATION OF THE RIGHTS
TO THE USE OF THE SURFACE
WATERS OF THE YAKIMA RIVER
DRAINAGE BASIN, IN
ACCORDANCE WITH THE
PROVISIONS OF CHAPTER 90.03,
REVISED CODE OF WASHINGTON,

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.

NO. 77-2-01484-5

~~[PROPOSED]~~
ORDER TO JOIN ADDITIONAL
PARTY AND DIVIDE WATER
RIGHT

COURT CLAIM NO. 01228
SUBBASIN 19

This matter came before the Court on motion of Washington Department of Ecology. The Court, having considered the motion and the basis therefore, finds that Claimants Charles R. Harris and Peggy L. Harris have transferred a portion of the water right under the above court claim, and ORDERS as follows:

The State of Washington Trust Water Rights Program is joined as an additional party to Court Claim 01228. The water right in Court Claim 01228 is divided as set forth below.

[PROPOSED]
ORDER TO JOIN ADDITIONAL PARTY
AND DIVIDE WATER RIGHT

COURT CLAIM NO. 01228
SUBBASIN 19

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

1 At the completion of the adjudication, the Department of Ecology shall issue
2 certificates regarding Court Claim 01228 as follows:

3 To Charles R. Harris and Peggy L. Harris:

4 Source: Naches River

5 Use: Irrigation of 3.7 acres and stock watering.

6 Quantity: 0.08 cfs, 23 acre-feet per year for irrigation; .01 cfs and 1 acre-foot
7 per year for stock water.

8 Period of Use: April 1 through October 31 for irrigation; year-round for stock
9 water.

10 Priority Date: May 10, 1895

11 Point of Diversion: 375 feet south and 275 feet east of the west quarter corner
12 of Section 4 being within NW ¼ SW ¼ of Section 4, T. 14 N., R. 17 E.W.M.

13 Place of Use: the 3.7 acres are located within Lot 13 of the Wenonah Orchard
14 Tracts No. 2 within that portion of the E1/2NE1/4NE1/4 of Section 9, T. 14N,
15 R. 17 E.W.M.

16 To State of Washington Trust Water Rights Program:

17 Source: Naches River

18 Use: Instream flow Quantity: 0.38 cfs, 112 acre-feet per year.

19 Period of Use: April 1 through October 31.

20 Priority Date: May 10, 1895

21 Point of Diversion: 375 feet south and 275 feet east of the west quarter corner
22 of Section 4 being within NW ¼ SW ¼ of Section 4, T. 14 N., R. 17 E.W.M.

23 Place of Use: Instream flow from the historical point of diversion from the
24 South Branch of the Naches River into La Fortune Ditch and unnamed side
25 channels of the Naches River, to the confluence of the side channels with the
26

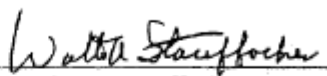
[PROPOSED]
ORDER TO JOIN ADDITIONAL PARTY
AND DIVIDE WATER RIGHT

COURT CLAIM NO. 01228
SUBBASIN 19

1 mainstem Naches River, downstream to the confluence of the Yakima River
2 with the Columbia River.


3 This order shall be effective upon filing with the Clerk. Any objection to the order
4 must be filed with the Clerk within 30 days of its publication in the Monthly Notice or shall be
5 deemed waived.

6 DATED this 10th day of June, 2005.

7 
8 Judge Walter A. Stauffacher

9 Presented by:

10 ROB McKENNA
11 ATTORNEY GENERAL

12
13 
14 BARBARA A. MARKHAM, WSBA #30234
15 Assistant Attorney General
16 Attorney for Washington Department of Ecology

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[PROPOSED]
ORDER TO JOIN ADDITIONAL PARTY
AND DIVIDE WATER RIGHT

COURT CLAIM NO. 01228
SUBBASIN 19

Appendix N
Quit Claim

RECORDED AT THE REQUEST OF:
AND AFTER RECORDING RETURN TO:

D. Susan Adams
Executive Director
Washington Water Trust
810 Third Avenue, Suite 180
Seattle, WA 98104



Document Title: Water Right Conveyance and Assignment

Grantors: Washington Water Trust

Grantee: The State of Washington, by and through its Department of Ecology

Legal Description: Water right formerly appurtenant to portions of Lots 13, 14, 15, 16, 18, 19, 20 and 21, Wenohah Orchards & development Co., Inc., all Lying within Yakima County, Washington (The full legal description appears in Exhibit B of this document.)

Assessor's Tax
Parcel No: 171409-11402, 11411, 12412 and 11404

Reference Numbers
Of Documents
Assigned
Or Released: 7419255

[Note: This page is a cover sheet, attached pursuant to RCW 65.04.047, and is not a substantive portion of the instrument recorded herewith.]



ELIZABETH PELLY

WTR

\$26.99

7449515

Page: 1 of 8

04/13/2005 11:48A

Yakima Co, WA

WATER RIGHT CONVEYANCE AND ASSIGNMENT

The Washington Water Trust ("WWT") gifts and hereby quit claims, conveys and assigns to the State of Washington, by and through its Department of Ecology, a water right to 112 acre-feet per year of water under Court Claim No. 01228 within Subbasin No. 19 in the Yakima River Basin Water Rights Adjudication, *State of Washington v. James J. Acquavella, et al.*, (Yakima Superior Court Cause No. 7-2-01484-5)(the "Water Right"), together with any after-acquired title to that water right to 112 acre-feet of water. The Water Right was confirmed by the Court in the Conditional Final Order for Subbasin No. 19 entered December 14, 1995, and is more particularly described in the Report of Examination issued by the State of Washington, Department of Ecology, dated August 17, 2004. A copy of the Report of Examination is attached as Exhibit A to this Water Right Conveyance.


The Water Right was formerly appurtenant to the real property described in Exhibit B to this Conveyance (the "Property"), but was severed from ownership of the Property when the Water Right was conveyed to WWT by Water Right Conveyance dated September 3, 2004 and recorded on September 13, 2004 in the records of Yakima County, Auditor's File No. 7419255.

WWT conveys and assigns the Water Right to the State of Washington in perpetuity to be administered and managed by the Department of Ecology as a trust water right under the Trust Water Right Program established in Chapter 90.42 RCW. Pursuant to RCW 90.42.080(1)(a)(b) and (7), the Water Right is to be used exclusively to enhance instream flows within the Naches and Yakima basins downstream to the confluence with the Columbia River for the preservation of wildlife, fish, scenic, recreational, aesthetic, and other environmental values.

DATED this 30th day of March, 2005

GRANTOR:

WASHINGTON WATER TRUST.
A Washington nonprofit corporation

By: 
Susan Adams, Its Executive Director

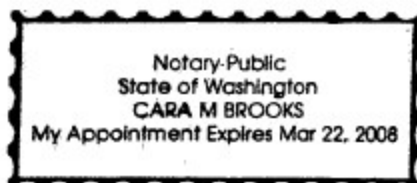


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Page: 2 of 8
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Yakima Co, WA

STATE OF WASHINGTON)
)ss.
COUNTY OF King)

I certify that on this 30th day of March, 2005, that I know or have satisfactory evidence that SUSAN ADAMS is the person who appeared before me, and said person acknowledged that he is the individual described in and who executed the foregoing instrument, and acknowledged that he signed same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 30th day of March, 2005.



Cz m. Brooks
Cara m. Brooks
(Printed Name)
Notary Public in and for the
State of Washington
Residing at 1201 3rd Ave Seattle
Commission Expires: 03/22/2008



ELIZABETH PELLY

WTR

\$26.00

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Page: 3 of 8
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Yakima Co, WA



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490



March 15, 2005

D. Susan Adams
Executive Director
Washington Water Trust
810 Third Avenue, Suite 180
Seattle, Washington 98104-1606

RE: Court Claim No. 01228, Subbasin No. 19 (Lower Naches),
Charles & Peggy Harris

Ecology indicates agreement to the terms of WWT's donation by returning the requested signed letter.

Within the next 90 days, my office will be working with the Attorney General's office to complete the motion process with the Superior Court which will partition the water right and add a party to Court Claim No. 01228.

Sincerely,

Bob Barwin, Section Manager
Water Resources
Department of Ecology
Central Regional Office

RB:hd
050316

Enclosure: March 3, 2005 Letter From D. Susan Adams, Executive Director, WWT



March 3, 2005



The Washington Water Trust is a private, nonprofit organization that works to benefit water quality, fisheries and recreation in Washington's rivers and streams by acquiring existing water rights from willing sellers through purchase, lease or gift.

Robert Barwin
Department of Ecology
Central Regional Office
15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3452

Re: Washington Water Trust Donation of Water Right to State Trust Water Rights Program (Report of Examination for Change CS4-01228CTCL)

Dear Mr. Barwin:

Enclosed with this letter is a Water Right Conveyance by which the Washington Water Trust ("WWT") intends to donate and quitclaim a water right to the State of Washington Trust Water Rights Program. The water right is a portion of the right confirmed to Charles and Peggy Harris in *State of Washington v. James J. Acquavella, et al.*, (Yakima Superior Court Cause No. 7-2-01484-5) under Court Claim No. 01228 by the Conditional Final Order in Subbasin No. 19 entered December 14, 1995. Ecology approved a change of 112 acre-feet of the water right to instream flow in the Amended Report of Examination dated August 27, 2004, which is Exhibit A to the Water Right Conveyance.

The water right for instream flow was formerly appurtenant to 26.3 acres, which have been purchased by the Yakama Indian Nation ("YIN"). The water is to be used for fish and wildlife enhancement in the side channels of the Naches River that flow through the property purchased by YIN, which is identified in Exhibit B to the Water Right Conveyance. By the terms of the Water Right Conveyance, WWT expressly limits the use of the water right for instream flow purposes in the Naches and Yakima basins. Consistent with the terms of the Report of Examination, the consumptive portion of the right is to be protected downstream to the confluence of the Yakima River with the Columbia River.

Since our November 2004 letter to you regarding this matter, Assistant Attorney General Barbara Markham has reviewed the quit claim deed and provided suggested changes. We agree with Ms. Markham's suggestions and have incorporated all of the changes in the final deed.

810 Third Avenue, Suite 120 Seattle, WA 98104 ~ tel: (206) 675-1585 fax: (206) 749-9274
www.thewatertrust.org ~ info@thewatertrust.org

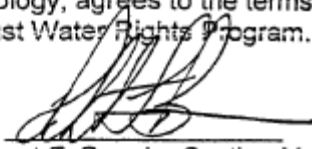
In donating the water right to the State of Washington, WWT requests that the State file a motion with the Yakima Superior Court in the Yakima Adjudication and request an order partitioning the water right between the Harris's and the State, and adding the State as an additional party under Court Claim No. 01228. Such order is necessary to ensure an accurate certificate of adjudicated water right is entered at the close of the adjudication.

If Ecology agrees to the terms of WWT's donation and agrees to file the motion with the adjudication court to partition the water right and add a party to Court Claim No. 01228 within 90 days of receipt of the recorded deed, please sign below and return this letter to WWT. Once we receive Ecology's agreement, we will sign the Water Right Conveyance, record it with Yakima County, and provide a copy to you. We request that you provide us with a copy of Ecology's motion to the court and the order entered by the court. If you have any questions regarding this water right donation, please call Lisa Pelly at WWT at (206) 675-1585, ext. 104.



D. Susan Adams
Executive Director
Washington Water Trust
810 Third Avenue, Suite 180
Seattle, WA 98104

The undersigned, on behalf of the State of Washington Department of Ecology, agrees to the terms of WWT's donation of water right to the state Trust Water Rights Program.

By: 
Robert F. Barwin, Section Manager
Water Resources Program
Department of Ecology
Central Regional Office

Date: MAR 15, 2005

Cc: Barbara Markham, AAG Ecology

