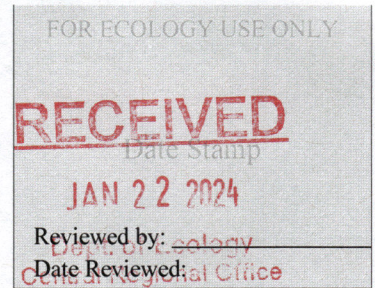


Board Name:  
**WATER CONSERVANCY BOARD**  
**Application for Change/Transfer**  
**Record of Decision**



Applicant Name: Wallace Ranch II, LLC

Application Number: KITT-20-01

This record of decision was made by a majority of the board at an open public meeting of the (Board Name) Kittitas County Water Conservancy Board held on (date meeting was held) 01/16/2024. The undersigned board commissioners certify that they each understand the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that each commissioner, having reviewed the report of examination, knows and understands the content of the report.

☐ **Approval:** The (board name) Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on (date report of exam was signed) \_\_\_\_\_ and submits this record of decision and report of examination to the Department of Ecology for final review.

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

**Signed:**

Water Conservancy Board Name: <u>Kittitas County Water Conservancy Board</u>	Date: <u>1/16/24</u>
Chair Name: <u>Mark Crowley</u>	Signature: <u>Mark Crowley</u>
(choose one) <input checked="" type="checkbox"/> Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other (please explain)	

Water Conservancy Board Name: <u>Kittitas County WCB</u>	Date: <u>1/16/24</u>
Title: <u>Board Member</u> Name: <u>Robbi Soltz</u>	Signature: <u>Robbi Soltz</u>
(choose one) <input checked="" type="checkbox"/> Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other (please explain)	

Water Conservancy Board Name:	Date:
Title: Name:	Signature:
(choose one) <input type="checkbox"/> Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other (please explain)	

Water Conservancy Board Name:	Date:
Title: Name:	Signature:
(choose one) <input type="checkbox"/> Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other (please explain)	

Water Conservancy Board Name:	Date:
Title: Name:	Signature:
(choose one) <input type="checkbox"/> Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other (please explain)	

**Mailed with all related documents to the Dept of Ecology (send to the Regional office below), and any other interested parties.**

ECY 040-105 (05/14) If you need this document in a format for the visually impaired, call Water Resources Program at 360-407-6872.  
Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.



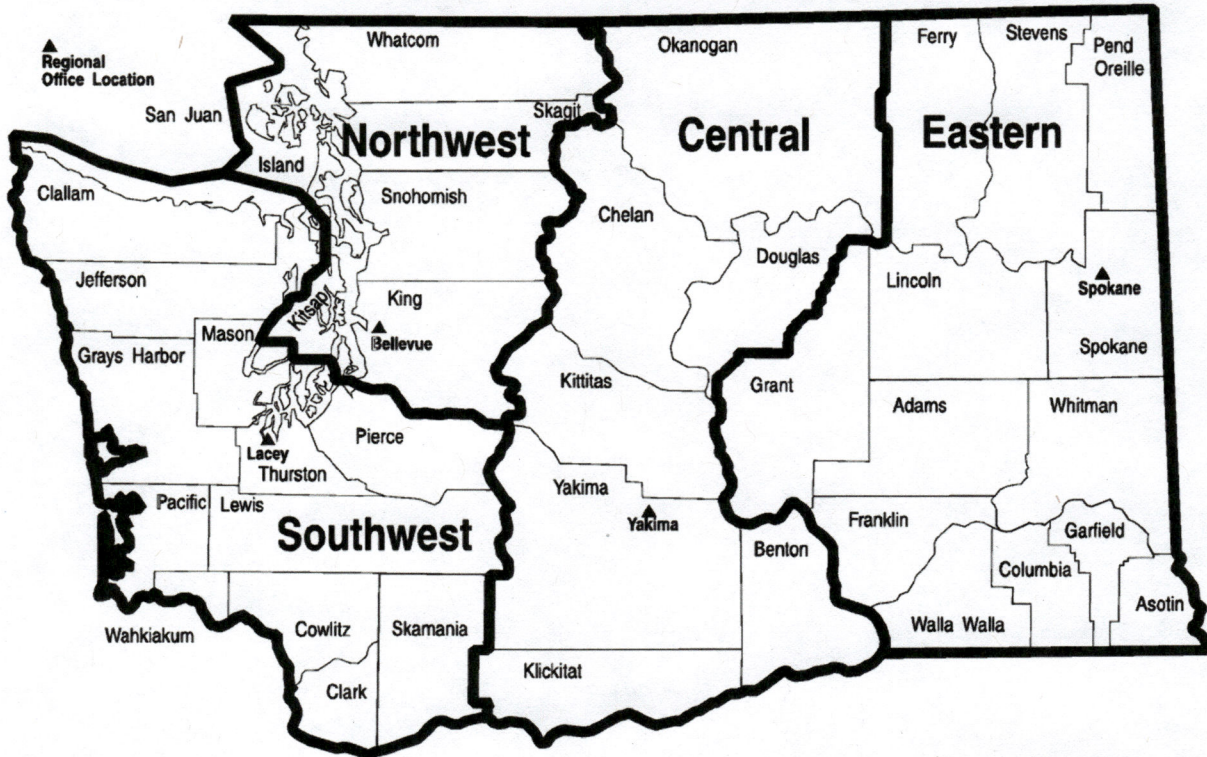
Please check the appropriate Regional Office:

**RECEIVED**

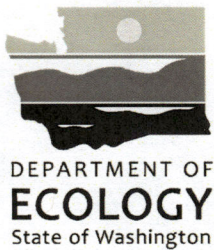
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Central Regional Office

<input type="checkbox"/> Northwest Regional Office 3190 – 160 <sup>th</sup> Ave SE Bellevue, WA 98008	<input type="checkbox"/> Eastern Regional Office 4601 N. Monroe St. Spokane, WA 99205
<input type="checkbox"/> Southwest Regional Office PO Box 47775 Olympia, WA 98504	<input checked="" type="checkbox"/> Central Regional Office 1250 W. Alder St. Union Gap, WA 98903







Board Name: Kittitas County

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## WATER CONSERVANCY BOARD

### Application for Change/Transfer

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

## REPORT OF EXAMINATION

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

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

☒ Surface Water

☐ Ground Water

Date Application Received	August 13, 2020	Water Right Document Number (i.e., claim, permit, certificate, etc.)	Adjudicated Cert. S4-83912-J
Water Right Priority Date	September 24, 1894	Board-Assigned Change Application Number	KITT-20-01
Name: Wallace Ranch II, LLC	Phone: 425-455-9976	Email: rwallace@wallaceproperties.com	
Address (street): PO Box 4184	City: Bellevue	State: WA	Zip: 98009-4184
<b>Changes Proposed:</b> <input type="checkbox"/> Change purpose <input checked="" type="checkbox"/> Add purpose <input type="checkbox"/> Add irrigated acres <input type="checkbox"/> Change point of diversion/withdrawal <input type="checkbox"/> Add point of diversion/withdrawal <input checked="" type="checkbox"/> Change place of use <input checked="" type="checkbox"/> Other (Temporary, Trust, Interties, etc.) <b>Change a portion of the water right to instream flow for mitigation</b>			
<b>SEPA:</b> The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: <input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Not Exempt			

## BACKGROUND AND DECISION SUMMARY

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

Existing Right (Tentative Determination)							
Maximum cub ft/second	3.35	Maximum gal/minute					
Maximum acre-ft/yr	138.87 (75.74 CU)	Describe Type(s) of use, and period(s) of use	Irrigation of 38.2 acres				
Source	Yakima River	Tributary of (if surface water)	Columbia River				
At a Point Located:							
Parcel No.	886734	1/4	NW	1/4	NE	Section	14
Township N.	19	Range	16 E.W.M.	WRIA	39	County	Kittitas
<b>LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED</b> That portion of the NE 1/4 of Section 14, T. 19 N., R. 16 E.W.M. lying between the railroad and the Yakima River.							
Parcel no.	886734, 18582, 18583, 18584	1/4		1/4	NE	Section	14
Township N.	19	Range	16 E.W.M.	WRIA	39	County	Kittitas



### Proposed Use – Portion A (Irrigation)

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Columbia River Regional Office

Maximum cub ft/second		3.008 cfs		Maximum gal/minute			
Maximum acre-ft/yr		80.13 (45.74 CU)		Describe Type(s) of use, and period(s) of use		Irrigation of up to 23.05 acres; April 15 to October 1	
Source	Yakima River			Tributary of (if surface water)		Columbia River	
At a Point Located:							
Parcel No.	886734	¼	NW	¼	NE	Section	14
Township N.	19	Range	16 E.W.M.	WRIA	39	County	Kittitas

#### LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

That portion of the NE¼ of Section 14, T. 19 N., R. 16 E.W.M. lying between the railroad and the Yakima River.

Parcel no.	886734, 18582, 18583, 18584	¼		¼	NE	Section	14
Township N.	19	Range	16 E.W.M.	WRIA	39	County	Kittitas

### Proposed Use – Portion B (Instream Flow for Mitigation)

Maximum cub ft/second		0.342 cfs		Maximum gal/minute			
Maximum acre-ft/yr		58.74 (30.00 CU)		Describe Type(s) of use, and period(s) of use		Instream flow for mitigation; April 15 to October 1	
Source	Yakima River			Tributary of (if surface water)		Columbia River	
At a Point Located:							
Parcel No.	886734	¼	NW	¼	NE	Section	14
Township N.	19	Range	16 E.W.M.	WRIA	39	County	Kittitas

#### LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

##### Primary Reach

Up to 0.342 cubic feet per second, 58.74 acre-feet per year for the purpose of instream flow for mitigation for out of priority uses from April 1 through October 15, within the Yakima River beginning at approximate River Mile 173.6 in NW¼NE¼ of Section 14, Township 19N, Range 16 E.W.M., and ending at River Mile 172.8 in the NW¼SW¼ of Section 13, Township 19N, Range 16 E.W.M.

##### Secondary Reach

Secondary Reach begins on the Yakima River at River Mile 172.8 in the NW¼SW¼ of Section 13, Township 19 N., Range 16 E.W.M. The Secondary Reach and continues down the Yakima River to the Yakima Canyon within Kittitas County at river mile 127 within the SE¼ NW¼ of Section 33, T. 15 N., R. 19 E.W.M

Parcel no.	N/A	¼	N/A	¼	N/A	Section	N/A
Township N.	N/A	Range	N/A	WRIA	39	County	Kittitas

### Board's Decision on the Application – Portion A (Irrigation)

Maximum cub ft/second		3.008		Maximum gal/minute		N/A	
Maximum acre-ft/yr		80.13 (45.74 CU)		Describe Type(s) of use, and period(s) of use		Irrigation of 23.05 acres; April 15 to October 1	
Source	Yakima River			Tributary of (if surface water)		Columbia River	
At a Point Located:							
Parcel No.	886734	¼	NW	¼	NE	Section	14
Township N.	19	Range	16 E.W.M.	WRIA	39	County	Kittitas

#### LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

That portion of the NE¼ of Section 14, T. 19 N., R. 16 E.W.M. lying between the railroad and the Yakima River.

Parcel no.	886734, 18582, 18583, 18584	¼		¼	NE	Section	14
Township N.	19	Range	16 E.W.M.	WRIA	39	County	Kittitas

### Board's Decision on the Application – Portion B (Instream Flow for Mitigation)

Maximum cub ft/second		0.348 cfs		Maximum gal/minute		N/A	
Maximum acre-ft/yr		58.74 (30.00 CU)		Describe Type(s) of use, and period(s) of use		Instream Flow for Mitigation; April 15 to October 1	



Source	Yakima River			Tributary of (if surface water)			Columbia River	
At a Point Located:							Section 14	
Parcel No.	886734	1/4	NW	1/4	NE	JAN 22 2024		
Township N.	19	Range	16 E.W.M.	WRIA	39	County Kittitas		
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED								
Primary Reach								
Up to 0.342 cubic feet per second, 58.74 acre-feet per year for the purpose of instream flow for mitigation for out of priority uses from April 1 through October 15, within the Yakima River beginning at approximate River Mile 173.6 in NW1/4NE1/4 of Section 14, Township 19N, Range 16 E.W.M., and ending at River Mile 172.8 in the NW1/4SW1/4 of Section 13, Township 19N, Range 16 E.W.M.								
Secondary Reach								
	Unit	May	Jun	Jul	Aug	Sep	Oct	Total
Qa	acre ft.	0.00	5.56	10.74	7.94	5.76	0.00	30.00
Average Qi	cfs	0.000	0.093	0.175	0.129	0.097	0.000	-
Secondary Reach begins on the Yakima River at River Mile 172.8 in the NW1/4SW1/4 of Section 13, Township 19 N., Range 16 E.W.M. The Secondary Reach and continues down the Yakima River to the Yakima Canyon within Kittitas County at river mile 127 within the SE1/4 NW1/4 of Section 33, T. 15 N., R. 19 E.W.M								
Parcel no.	N/A	1/4	N/A	1/4	N/A	Section		N/A
Township N.	N/A	Range	N/A	WRIA	39	County		Kittitas

### Description of Proposed Works

**Portion A:** Diversion, conveyance, and distribution systems are complete and will generally remain the same which consist of a 75 horsepower (hp) diversion from Yakima River which flows through a pressurized mainline with laterals used to supply multiple turnouts and irrigation via a wheel and hand line systems. Land to be fallowed will be designated in a farm plan.

**Portion B:** The water right is proposed to be placed in the State's Trust Water Rights Program for instream flow for mitigation to mitigate out of priority use associated with the Wallace Ranch development.

### Development Schedule

Begin project by this date (At least 75 days after Board's ROD issuance):	Begun
Complete project by this date:	Complete
Complete change & put water to full use by this date:	November 1, 2025

Irrigation infrastructure for Portion A is already in place. The previously irrigated acres (15.15 acres) associated with Portion B will be fallowed prior to placing the water right into the State's Trust Water Rights Program.



## Report

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

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

On Month August, day 13, year 2020.

Name of applicant: Wallace Ranch II, LLC of City: Bellevue State: Washington filed an application

for change (to do what e.g., POU, POD, POW, etc) of Purpose and Place of Use under (Water right number, e.g., certificate, permit, claim, superseding document #, cert of change #): Adjudicated Cert. S4-83912-J. The application was accepted at an open public meeting on Month: August day: 18, year: 2020, and the board assigned application number (XXXX-YR-##): KITT-20-01. On November 13, 2023, the applicant submitted a letter requesting amendment of the application to include changing up to 30 acre-ft/yr consumptive use (CU) to instream flow for mitigation. The remaining quantities would be retained for continued irrigation. A copy of the adjudicated certificate is provided in Attachment 1.

### Attributes of the water right as currently documented

Name on certificate, claim, permit: Wallace Ranch Limited Partnership

Water right document number (e.g., cert #, claim #, permit #, superseding document #): Acquavella Adjudication Court Claim No. 02267 (Certificate No. S4-83912-J)

As modified by certificate of change number: NA

Priority date, first use Date of priority or claimed date water was originally first put to beneficial use : September 24, 1894

Water quantities: Qi (Instant qty): 3.35 cfs Qa (Annual qty): 279.60 acre ft/year

Source (well, river, etc): Yakima River

Point of diversion/withdrawal (Distance from ¼¼, Section, Township, Range EWM): 200 feet south and 200 feet east of the north quarter corner of Section 14, being within the NW1/4NE1/4 of Section 14, T. 19 N., R. 16 E.W.M.

Purpose of use: Irrigation Number of Acres if Irrigation: 38.2

Period of use: April 15 through October 1

Place of use: That portion of the NE1/4 of Section 14, T. 19 N., R. 16 E.W.M. lying between the railroad and the Yakima River.

Existing provisions (family farm act, interruptable, etc.): The instantaneous quantity under both the 1884 and 1894 rights to Yakima River water is limited to no more than 3.35 cfs.

### Tentative determination of the water right

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

### History of water use

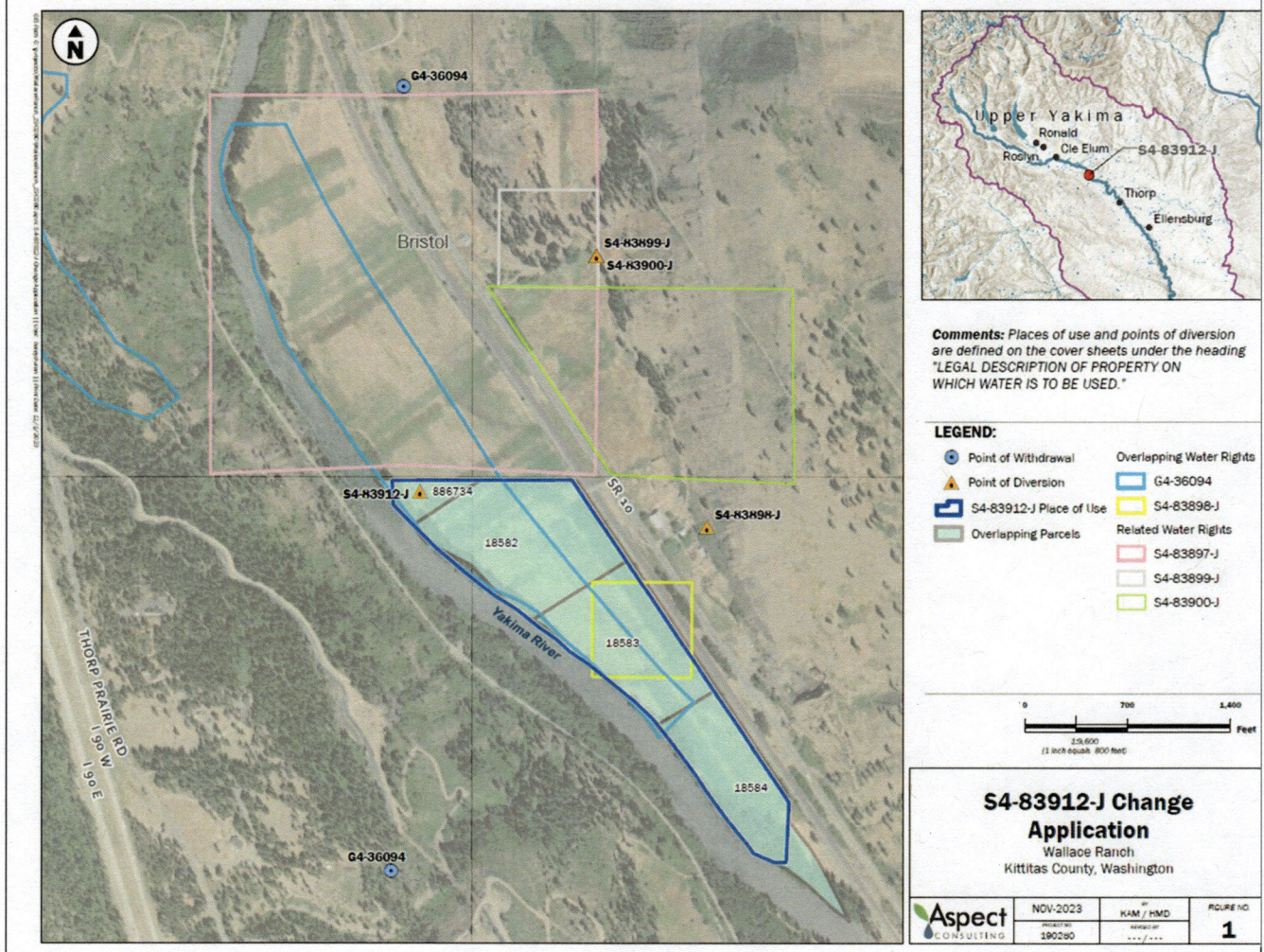
Describe the historical water use information that was considered by the board:

This water right has been the subject of the *Acquavella* Adjudication which established legal standing of these court claims through signing of the Swauk Creek (Subbasin 4) CFO on January 9<sup>th</sup>, 2003. Following the signed CFO, the acreage within the place of use has been utilized for growing hay until current. In 2010, Wallace Ranch temporarily donated 1.35 cfs and 79.17 acre-ft/yr to the State's Trust Water Rights Program (TWRP) under Control No. CS4-02267sb4d. The donated water was largely from increased on-farm water management and irrigation techniques resulting in mostly non consumptive water savings. The 2010 trust donation expired in April 2021, a new trust donation was submitted in May of 2023 and is pending Ecology acceptance. Aerial photographs from 2022, 2018, 2014, 2011, 2009, 2006, 2005, and 2003 were reviewed to confirm continuous beneficial use of the water right once every 5 years



since the CFO date. Clear evidence of cultivation (e.g., wet wheel lines, plowed field, green vegetation, cut and raked hay, etc.) is seen in each of the photographs. Minimal irrigation (1.6 acres) appears to be occurring outside of the place of use to the northeast adjacent to the road. Irrigation in excess of 38.2 acres within the place of use is related to adjacent water right No. S4-83897-J which shares a point of diversion with this water right. In both instances, the use of water is considered beneficial, and the changes in place of use are considered to be a de-facto change. Ecology's Water Resource Program Policy for Conducting Tentative Determination of Water Rights (POL-1120) states that, "In some situations, changes to historic uses associated with water rights have been made in the diversion or use of water without first obtaining authorization for the changes pursuant to chapters 90.03 and 90.44 RCW. Such unauthorized changes to existing water rights are commonly referred to as "defacto, or after-the-fact changes."

Water to supply this water right is diverted from the Yakima River and distributed through a pressurized mainline with laterals used to supply multiple turnouts and irrigation via a wheel line system within the places of use of this water right. Additional information on historic water use is discussed below for the *Tentative Determination*. Wallace Ranch has also raised and pastured livestock (cows and horses) but the associated water use is not related to the subject water right. A project vicinity and location map are shown below in Figure 1.





### Previous changes

Describe any previous change decisions associated with the water right:

Since signing of the CFO, no formal changes have occurred on the subject water right with the exception of the trust water donation No. CS4-02267sb4d in 2010 which expired in April 2021, and a new trust donation was submitted in May of 2023 and is pending Ecology acceptance. Pending approval of the subject water right change, the trust donation application will be withdrawn.

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### SEPA

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

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

- (1) It is a surface water change application where more than 1.0 cfs of the entitled amount is subject to a change in place of use, purpose, or point of diversion, unless that surface application is for an agricultural irrigation project that will not receive public subsidies, in which case the threshold is increased to 50 cfs, RCW 43.21C.030(2)(c), RCW 43.21C.035;
- (2) It is a groundwater change application where more than 2,250 gpm of the entitled amount is subject to a change in place of use, purpose, or point of withdrawal.
- (3) It is an application that, in combination with other water right applications for the same project, collectively exceeds the amounts above.
- (4) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA).
- (5) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Based on water right SEPA exemption thresholds, the subject application quantities are exempt. However, other future permits triggered at the County or State level must also be considered. A SEPA review has been completed as a part of the property platting efforts with Kittitas County as the lead permitting agency. A SEPA Determination of Mitigated Non-Significance was issued by on November 17<sup>th</sup>, 2020 under SEPA number 202005860 and is included as Attachment 2.

**The information or conclusions in this section were authored and/or developed by (Name of Person): Tyson Carlson, LHG (Aspect Consulting) and Kelsey Mach LG (Aspect Consulting)**

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

Public notice of the application was given in The Daily Record of Ellensburg, Washington on January 6 and 13, 2021. A copy of the Public Notice affidavit is included as Attachment 3. The protest period ended on February 12, 2021. There were no protests received during the 30-day protest period. The Board notified the following parties of this application Ecology, United States Department of Fish & Wildlife, Washington State Department of Fish and Wildlife (WDFW), Confederated Tribes and Bands of the Yakama Nation, Washington State Department of Archaeology & Historic Preservation, and the Tri County Ecologic Development District.

In addition, no oral and written comments were received at an open public meeting of the Board or other means as designated by the Board.

Pursuant to RCW 90.42.040(5)(b), Ecology will issue notice to the creation of the subject trust water right. The notice will be sent to all appropriate state agencies, potentially affected local governments and federally recognized tribal governments, and other interested parties.

### **Other**

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

No other comments or protest were received.



**The information or conclusions in this section were authored and/or developed by (Name of Person):** Tyson Carlson,  
**LHG (Aspect Consulting) and Kelsey Mach LG (Aspect Consulting)**

**JAN 22 2024**

**Dept. of Ecology  
 Central Regional Office**

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

The following information was obtained from the following:

- Research of records including the Ecology Water Rights Tracking System (WRTS) database, the Ecology Well Log Database, Kittitas County online Compass for tax parcel ownership, aerial imagery (i.e. Google Earth, USGS Earth Explorer, Landsat, Department of Natural Resources), Acquavella adjudicated records and Ecology water right files.
- Conversations with current landowners, attorney, and other interested parties.
- A site visit was completed on November 24, 2020, by Theo Leonard (Kittitas County Water Conservancy Board) and Tyson Carlson (Aspect Consulting) met with Chane Roghair (Wallace Ranch Manager). During the site visit, the point of diversion was located and the place of use and associated irrigation infrastructure was observed.

***Proposed project plans and specifications***

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

To clarify how much water will be used for future mitigation and how much will be retained for irrigation, and to minimize the need for ongoing reporting to Ecology (i.e. farm plan), No. S4-83912-J will be split into two portions denoted (A) and (B), each with defined purposes of use, discrete quantities, and places of use.

Portion A will remain as the existing irrigation use on 23.05 acres within the existing place of use boundary to continue growing hay using wheel line irrigation. A minimum of 15.15 acres of irrigation occurring under this water right will be followed.

Portion B will be changed to instream flow for mitigation in the Yakima River. The water right will be placed in the State TWRP for mitigation of future out of priority uses specific to the Wallace Ranch development.

***Other water rights appurtenant to the property (if applicable)***

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

All overlapping and related water right places of use are shown above on Figure 1.

***Overlapping Water Rights***

Pending application for New Water Right No. G4-36094, and adjudicated certificate S4-83898-J have mapped places of use overlapping the water right place of use for the subject right proposed for change. Application No. G4-36094 has a municipal purpose of use and is associated with a pending Wallace Ranch development. Certificate No. S4-83898-J has a single domestic purpose of use but is mislocated, and is associated with the residence across Highway 10 in the NW¼NE¼NE¼ of Section 14 and is not used within the existing place of use for the subject right.

***Related Rights***

Wallace Ranch also holds water rights Nos. S4-83897-J, S4-83899-J, and S4-83900-J, which are adjudicated irrigation certificates put to beneficial use on adjacent portions of the property, but the authorized places of use do not overlap with the place of use for the subject right proposed for change. The subject water right authorized point of diversion from the Yakima River is shared with Adjudicated Certificate No. S4-83897-J. Both rights are provisioned such that the maximum rate of diversion (3.35 cfs) cannot be exceeded between the two rights. This equates to about 0.026 cfs per acre. A portion of No. S4-83897-J was donated to the TWRP in 2010 (No. CS4-02267sb4a), and remained in the TWRP through April 2021. A trust donation form was resubmitted in 2023. The Yakima River source has also recently been used to supply water for Nos. S4-83899-J and S4-83900-J which are permitted to also withdrawal from an unnamed spring locally known as Hart Creek. A portion of No. S4-83900-J was donated to the TWRP in 2015, and remained in donation status through 2020 but has not been renewed.



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**Table 1 – Related Irrigation Water Rights**

Water Right No.	Priority Date	Qa	Qi (cfs)	Acres
<b>S4-83912-J (Subject Right)</b>	<b>9/24/1894</b>	<b>279.6</b>	<b>3.35*</b>	<b>38.2</b>
S4-83897-J	5/24/1884	676.06	3.35*	92.2
S4-83900-J	5/24/1884	39	0.16	10
S4-83899-J	5/24/1884	6.6	0.0167	3.5
<b>Total</b>		<b>1,001.26</b>	<b>3.5267</b>	<b>143.9</b>

\*Cannot exceed 3.35 cfs between S4-83912-J and S4-83897-J

Based on the inspection of Table 1, it is noted that the subject water right No. S4-83912-J is about 27 percent of the total water right portfolio in terms of annual quantity and number of acres irrigated.

### ***Tentative Determination***

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

The Board's tentative determination is based upon the following findings: the water right has been the subject of the *Acquavella* Adjudication which established legal standing of these court claims through signing of the Swauk Creek (Subbasin 4) CFO in 2003. Following the signed CFO, the acreage described above was continuously irrigated through 2023. In 2010, Wallace Ranch temporarily donated 1.35 cfs and 79.17 acre-ft/yr, related to irrigation efficiencies and farm management techniques, to the TWRP under Control No. CS4-02267sb4d, and continued to irrigate the entire place of use using up to 2.0 cfs and 200.43 acre-ft/yr. Therefore, because the water right has been put to continuous beneficial use up to 38.2 acres at least once every five years, the water right remains valid and is eligible for change.

### ***Estimate of Water Use***

The amount of water beneficially used under No. S4-83912-J was determined using a multiple line of evidence approach, including review of aerial photographs, Landsat imagery, direct measurement, and crop water use calculations.

A description of each is provided below.

### ***Aerial Photo Review***

Aerial imagery from Google Earth of the place of use from 2022, 2021, 2017, 2014, 2011, 2009, 2006, 2005, and 2003 showing continuous irrigation of 38.2 acres within the place of use are included below (Figures 2 through 10). The place of use is shown as a blue outline, while the 38.2 acres of irrigation are shown as a white outline. Note that several cuttings of hay are grown each season, and therefore dependent upon the timing of the imagery for that season, some areas may appear more green while others may appear less green dependent upon the stage of growth for that cutting area. Irrigation and/or fallowing of acreage was also supported by the review of Landsat imagery over a similar time span, including intervening years between available photographs.

**Figure 2 - August 2022 (Google Earth)**



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Figure 3 - June 2021 (Google Earth)



Figure 4 - July 2017 (Google Earth)

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



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Figure 5 - July 2014 (Google Earth)



Figure 6 - August 2011 (Google Earth)

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Figure 7 - June 2009 (Google Earth)





Figure 8 - June 2006 (Google Earth)



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Figure 9 - July 2005 (Google Earth)





Figure 10 - June 2003 (Google Earth)

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#### Direct Meter Readings

Available annual and instantaneous quantities recorded from the Wallace Ranch Yakima River diversion flow meter are presented below. The electronic Seametrics flow meter was installed in 2020 and is located immediately landward of the diversion intake. The meter replaced a failing McCrometer flow meter. The consolidated metered use represents use under both S4-83912-J (subject water right) and S4-83897-J, as well as the two smaller rights S4-83899-J and S4-83900-J.

Table 2 - Annual Meter Reading Summary

Irrigation Year	Aerial Imagery	Metered Use		Trust Donation under Subject Right**		Estimated Use under Subject Right	Total Beneficial Use under Subject Right
		Qa (acre-ft)	Qi (gpm)	Qa (acre-ft)	Qi cfs (gpm)	Qa (acre-ft)	Qa (acre-ft)
2003	Yes	No data	No data	-	-	No data	No data
2004		No data	No data	-	-	No data	No data
2005	Yes	No data	No data	-	-	No data	No data
2006	Yes	319	2,000*	-	-	86.1	86.13
2007		623	2,000*	-	-	168.2	168.21
2008		499	2,000*	-	-	134.7	134.73
2009	Yes	465	2,000*	-	-	125.6	125.55
2010		No data	No data	79.17	1.35 (606)	No data	No data



2011	Yes	No data	No data	79.17	1.35 (606)	No data	No data
2012		No data	No data	79.17	1.35 (606)	No data	No data
2013		No data	No data	79.17	1.35 (606)	No data	No data
2014	Yes	221	1,400	79.17	1.35 (606)	59.67	138.87
2015		271	1,400	79.17	1.35 (606)	73.17	152.37
2016		245	1,400	79.17	1.35 (606)	66.15	145.37
2017	Yes	240	1,400	79.17	1.35 (606)	64.8	143.97
2018		304	1,400	79.17	1.35 (606)	82.08	161.27
2019		No data	No data	79.17	1.35 (606)	No data	No data
2020		No data	No data	79.17	1.35 (606)	No data	No data
2021	Yes	No data	No data	-	-	No data	No data
2022	Yes	No data	No data	-	-	No data	No data
2023		796.67	No data	79.17	1.35 (606)	215.10	294.27

\* Meter reporting forms document 2.0 cfs, however correspondence from Wallace Ranch's representative as part of the 2010 donation notes this is in error, and the meter reads in gpm.

\*\* Trust donation for S4-83912-J is 1.35 cfs and 79.17 acre-ft/yr, the trust donation for S4-83897-J is 0.23 cfs and 93.83 acre-ft/yr.

Based on the available metering data, 168.2 acre-ft (623 acre-ft \*27 percent) was conservatively estimated to be diverted under the subject right in 2007, which is the highest use in a given 5-year period between 2003 to 2010. Following increased on-farm irrigation efficiencies, a maximum of 138.87 acre-ft/yr was beneficial used in a rolling 5-year period as indicated by available meter data. With the exception of the anomalously high reading in 2023, more recent data indicates the metered use under the subject right fluctuates between 60 and 82 acre-ft, in 2014 and 2018 respectively, and the total beneficial use (including the 273 acre-ft protected in the TWRP) fluctuates between 333 and 355 acre-ft. Similarly, the entire water right portfolio's Qi (3.5267 cfs or about 1,583 gpm) has been continuously used (and/or trusted) since signing of the CFO.

#### Crop Water Use Calculations

In support of the direct meter records, this section describes how the total and consumptive water use values were calculated to identify how much land would need to be fallowed for 30 acre-ft (CU) to be eligible for transfer to instream flow for mitigation purposes in the Yakima River.

Ecology and Water Conservancy Boards use various methods, such as the Washington Irrigation Guide (WIG), to estimate water use. The WIG data show the estimated average amount of water required by a crop above the portion of the requirement that might be met by antecedent moisture in the root zone under average climatic conditions (the amount of water a crop needs in excess of rainfall). The monthly WIG data indicate that the Crop Irrigation Requirement (CIR) for clover (used as a surrogate for grass hay) near Cle Elum is 19.10 inches or about 1.5925 feet/acre.

Using Ecology's Guidance Document, GUID-1210, Determining Irrigation Efficiency and Consumptive Use, an application efficiency (Ea) was estimated to be about 75 percent for wheel-line irrigation. This equates to a Total Irrigation Requirement (TIR) of about 2.1233 acre-ft/acre (TIR = CIR/Ea). For comparison, in the *Aquavella* adjudication, the court awarded a 7.3 acre-ft/acre TIR water duty under this certificate. Since that time, increases in irrigation efficiencies have occurred.

The sum of the monthly TIR multiplied by the number of authorized irrigated acres (38.2) is the total quantity of water required to fully irrigate the authorized place of use (81.11 acre-ft/yr) under current irrigation practices. The monthly TIR (in acre-ft) is converted to an instantaneous rate (in cfs) by dividing by the number of days in each respective



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month, then by the conversion factor 1.9834 ac-ft/day/cfs, resulting in a maximum diversion rate (July TIR) of 0.472 cfs.

Based on this analysis, the TIR for the 38.2 acres is summarized in Table 3 below.

**Table 3 – Total Irrigation Requirement (TIR) of 38.2 acres**

	Unit	May	Jun	Jul	Aug	Sep	Oct	Total
<b>Qa</b>	acre ft.	0.00	15.03	29.02	21.48	15.58	0	<b>81.11</b>
<b>Average Qi</b>	cfs	0.000	0.253	0.472	0.349	0.262	0	-

The calculated TIR is reasonable based on the metered water use between 2014 and 2018 (221 to 304 acre-ft) and the subject water rights relative proportion of the total annual quantity (Qa) water right authorizations (about 27 percent). The higher water use as presented in the meter data from 2006 to 2009, is indicative of less efficient irrigation practices at that time. Starting in 2010, Wallace Ranch changed its irrigation practices which lead to more efficient irrigation of the property.

#### *Annual Consumptive Quantity*

In accordance with RCW 90.03.380(1) under a water right proposed for a change to add a purpose of use, Ecology is required to determine that the Annual Consumptive Quantity (ACQ) of use does not increase after the change. ACQ means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right.

Ecology's Water Resource Program Procedures PRO-1210, Calculating and Applying the Annual Consumptive Quantity (ACQ), and Policy POL-1210, Policy for the Evaluation of Changes to Enable Irrigation of Additional Acreage or the Addition of New Purposes of use to Existing Water Rights were consulted for application of ACQ under the subject applications. They state a period containing partial non-use of the water right that qualifies for one or more statutory good causes or exemptions to relinquishment under RCW 90.14.140 – such as a temporary trust donation under RCW 90.38 – does not constitute continuous use and is not eligible for calculation of ACQ. Specifically, under 3(a):

*“A period containing complete nonuse of the water right in a year or season, regardless of whether the period qualifies for one or more of the statutory good causes or exceptions to relinquishment under RCW 90.14.140 and 90.44.520 or had been in the Trust Water Rights Program under RCW 90.38 or 90.42, does not constitute continuous use and is not eligible for calculation of ACQ.”*

Based on this guidance, the most recent five-year period of continuous beneficial use is 2005 through 2009. This date range is prior to the trust water donation in 2010 and implementation of considerable on farm irrigation management techniques that resulted in significant water savings. Meter data is also available to inform total water use for four years of this time period. Consistent with the analysis above, the subject water right is estimated to be about 27 percent of total water use. Application efficiency (Ea) was calculated by dividing the CIR (about 60.83 acre-ft) by the year-specific Qa. Consistent with GUID-1210, CU is then calculated by multiplying the year-specific Qa by the sum of Ea and %Evap. Results of this analysis indicate an ACQ of 75.74 acre-ft (CU) as presented in Table 5 below.

**Table 4 – ACQ Calculation**

Year	Meter Data (Acre-ft)	Total Acre-ft	Ea	%Evap	Acre-ft (CU)	ACQ
2005	NA	81.11*	-	-	68.94*	<b>75.74</b>
2006	319	86.13	71	10	69.77	
2007	623	168.21	36	10	77.38	
2008	499	134.73	45	10	74.10	



2009 465 125.55 48 10 72.82

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\* Conservatively estimated based on WIG calculations.

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Ecology's published guidance on irrigation efficiency (GUID-1210) provides efficiency ranges for common irrigation methods. The prevalent irrigation method at Wallace Ranch is wheel lines, which has an efficiency range of 60 to 85 percent. The efficiencies calculated in the ACQ analysis fall below this range for three years, from 36 to 48 percent. When considering an appropriate application efficiency, GUID 1210 instructs as follows:

*"When evaluating total water use for an existing water right, the permit writer should attempt first to calculate actual efficiency rather than assume an efficiency from Table 1."*

The year-specific efficiencies are based on metering data, and although it is uncertain exactly what irrigation conditions contributed to the lower efficiencies, but is likely contributed to local irrigation customs and water use requirements in May and October which the WIG does not fully account for. However, the observed water duty (3.23 to 4.3 feet/acre) is still within the original adjudicated water duty of 7.3 feet/acre and is within five years of the signing of the CFO. Therefore, it is considered a reasonably valid water use and is consistent with Ecology v. Grimes (1993) for an irrigation water right.

Assuming an ACQ of 75.74 acre-ft (CU) for the irrigation of 38.2 acres equates to approximately 1.98 acre-ft (CU) per acre. This suggest that fallowing of 15.15 acres (30 / 1.98) would be required to make available 30 acre-ft (CU) for mitigation of new out of priority uses associated with the Wallace Ranch development. Tables 5 and 6 include the total irrigation requirement and consumptive use schedules associated with fallowing of 15.15 acres

Table 5 – Total Irrigation Requirement (15.15 acres)

	Unit	May	Jun	Jul	Aug	Sep	Oct	Total
<b>Qa</b>	acre ft.	0.00	10.88	21.02	15.55	11.28	0.00	<b>58.74</b>
<b>Average Qi</b>	cfs	0.000	0.183	<b>0.342</b>	0.253	0.190	0.000	-

Table 6 – Consumptive Use (15.15 acres)

	Unit	May	Jun	Jul	Aug	Sep	Oct	Total
<b>Qa</b>	acre ft.	0.00	5.56	10.74	7.94	5.76	0.00	<b>30.00</b>
<b>Average Qi</b>	cfs	0.000	0.093	0.175	0.129	0.097	0.000	-

This leaves **80.13 acre-ft/yr** (138.87 - 58.74), **45.74 CU** (75.74 - 30.00) for retained irrigation of **23.05 acres** (38.2 - 15.15).

#### Trust Water Place of Use

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

Consistent with the authorized point of diversion, the Primary Reach begins at approximate River Mile 173.6 in NW¼NE¼ of Section 14, Township 19N, Range 16 E.W.M.,

Return flow is conservatively expected to return to the river at short distance downstream at the property boundary. Therefore, the Secondary Reach begins on the Yakima River at River Mile 172.8 in the NW¼SW¼ of Section 13, Township 19 N., Range 16 E.W.M. The Secondary Reach continues down the Yakima River to the Yakima Canyon within Kittitas County at river mile 127 within the SE¼ NW¼ of Section 33, T. 15 N., R. 19 E.W.M. The consumptive use associated with Certificate S4-83912-J is eligible for protection as a trust water right in the secondary reach as described in Table 6 above.



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The consumptive portion of the trust water right will serve as mitigation for out of priority water use of the Wallace Ranch project from groundwater sources in continuity with the Yakima River. The new mitigated appropriation seeking to mitigate with this right must show that they are water budget neutral with respect to the total water supply available (TWSA) in the Yakima Basin Project.

*Trust Water Management*

Certificate S4-83912-J is being changed to add the purpose of instream flow for mitigation for out of priority water use. These quantities will be managed by Ecology as outlined in the Trust Water Right Agreement between Wallace Ranch and Ecology.

*Land to be Fallowed*

The proposed lands to be fallowed include a minimum of 15.15 acres located on Kittitas County Parcel Nos. 886734, 18582, 18583, 18584 all within the NE¼ of Section 14, T. 19 N., R. 16 E.W.M., lying between the railroad and the Yakima River. A farm and Wallace Ranch project development plan will be submitted to Ecology documenting future irrigation and mitigated water use.

**The information and conclusions in this section were authored and/or developed by (Name of Person): Tyson Carlson, LHG (Aspect Consulting) and Kelsey Mach LG (Aspect Consulting)**

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

***Tentative determination (validity and extent of the right)***

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

Based on the information above, the Board finds S4-83912-J represents a valid water right for 3.35 cfs and 138.87 acre-ft (75.74 CU) per year for the irrigation of 38.2 acres, April 15 through October 1.

***Relinquishment or abandonment concerns***

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

Adjudicated Certificate S4-83912-J has been used consistently for irrigation since the signing of the CFO in 2003 through the 2023 irrigation season. However, the meter data and total irrigation requirement calculations indicates partial relinquishment of some mostly non-consumptive portions of the water authorization totaling about 140.73 acre-ft/yr (279.60 – 138.87).

***Consideration of comments and protests***

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

No protests were received during either 30-day public comment period. No comments were made at the public meeting held by the Board on January 19, 2021. In addition, no comments were received following the Board notification to interested parties.

***Impairment***

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

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

No water right on the Yakima River will be negatively affected by increased instream flows during the irrigation season. Therefore, based on these considerations, transferring a portion of this water right to instream flow for mitigation is not expected to impair other water rights.



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**Public Interest**

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

Adjudicated Certificate S4-83912-J is a surface water right and pursuant to RCW 90.03.380 and a public interest evaluation is not required for changes to surface water rights. However, pursuant to RCW 90.42.040(4)(a) the subsequent exercise of a trust water right may be authorized only if the department first determines that the public interest will not be impaired. Prior to approval of the new municipal water application for the development on the subject property, Ecology will consider how the mitigation use of the trust water created by the (B) portion of Adjudicated Certificate S4-83912-J will affect the public interest.

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

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

Based on the above investigation and conclusions, the Board recommends that the request for change to Adjudicated Certificate S4-83912-J be approved in the amounts and within the limitations listed below and subject to the provisions established by the Department of Ecology for the management of the trust water.

**Retained Irrigation (Portion A)**

The land to be retained as irrigation consists of 23.05 acres within the existing water right place of use and **80.13 acre-ft/yr (45.74 CU)**.

The Qi is **3.008 cfs**.

**Instream Flow for Mitigation (Portion B)**

The land to be fallowed consists of 15.15 acres which equates to **58.74 acre-ft/yr (30.00 CU)** as demonstrated in Tables 5 and 6 above.

The Qi is **0.342 cfs**, based on the average July instantaneous flow as demonstrated in Tables 5 and 6 above.

**Primary Reach**

Up to 0.342 cubic feet per second, 58.74 acre-feet per year for the purpose of instream flow for mitigation for out of priority uses from April 1 through October 15, within the Yakima River beginning at approximate River Mile 173.6 in NW¼NE¼ of Section 14, Township 19N, Range 16 E.W.M., and ending at River Mile 172.8 in the NW¼SW¼ of Section 13, Township 19N, Range 16 E.W.M.

**Secondary Reach (Consumptive Use)**

	Unit	May	Jun	Jul	Aug	Sep	Oct	Total
<b>Qa</b>	acre ft.	0.00	5.56	10.74	7.94	5.76	0.00	<b>30.00</b>
<b>Average Qi</b>	cfs	0.000	0.093	0.175	0.129	0.097	0.000	-

**Secondary Reach**

Secondary Reach begins on the Yakima River at River Mile 172.8 in the NW¼SW¼ of Section 13, Township 19 N., Range 16 E.W.M. The Secondary Reach and continues down the Yakima River to the Yakima Canyon within Kittitas County at river mile 127 within the SE¼ NW¼ of Section 33, T. 15 N., R. 19 E.W.M

**The information or conclusions in this section were authored and/or developed by (Name of Person):** **Tyson Carlson, LHG (Aspect Consulting) and Kelsey Mach LG (Aspect Consulting)**

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



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*Conditions and limitations*

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

Annual consumptive use under Portion A (45.74 acre-ft/ year (CU) and Portion B (30.00 acre-ft/year (CU)) shall not exceed the ACQ of **75.74 acre-ft/yr.**

The instantaneous quantity use under both the S4-83912-J (Portion A and B) and S4-83897-J rights are limited to no more than 3.008 cfs.

Portion B of this water right change will be placed in the State's Trust Water Rights Program and managed by Ecology to be made available to Wallace Ranch under the governing Trust Water Right Agreement.

The real property owned by Wallace Ranch which is appurtenant to Portion B (trusted portion) of this water right shall remain fallow unless authorized by a future water right decision.

*Construction Schedule*

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

Irrigation infrastructure for Portion A is already in place. The previously irrigated acres (15.15 acres) associated with Portion B will be fallowed prior to placing the water right into the State TWRP.

**The information or conclusions in this section were authored and/or developed by (Name of Person): Tyson Carlson, LHG (Aspect Consulting) and Kelsey Mach LG (Aspect Consulting)**

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

Signed at **Ellensburg,** Washington  
(City)

This	<u>16</u>	day of	<u>January</u>	<u>2023</u> <u>2024</u>
	Date (Day)		(Month)	(Year)

Name of Board Representative:

Mark Crowley

Name of Water Conservancy Board:

Kittitas County

Signature:

Mark Crowley