

**YAKIMA COUNTY
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision**

For Ecology Use Only
Received: _____
Date Stamp DEPT OF ECOLOGY Received APR 10 2014 CENTRAL REGION OFFICE
Reviewed by: _____
Date Reviewed: _____

Applicant: Estate of Richard Matson

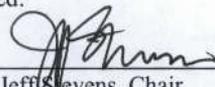
Application Number: **YAKI-13-02, YAKI-13-03 AND YAKI-13-04**

This record of decision was made by a majority of the board at an open public meeting of the Yakima Water Conservancy Board held on July 10, 2013. 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 July 10, 2013, and submits this record of decision and report of examination to the Department of Ecology for final review.

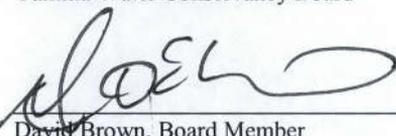
Denial: The (board name) Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on (date report of exam was signed) and submits this record of decision to the Department of Ecology for final review.

Signed:



Jeff Stevens, Chair
Yakima Water Conservancy Board

Date: July 10, 2013 Approve
Deny
Abstain
Recuse
Other
4-3-14



David Brown, Board Member
Yakima Water Conservancy Board

Date: July 10, 2013 Approve
Deny
Abstain
Recuse
Other
4-3-14



Mark Reynolds, Board Member
Yakima Water Conservancy Board

Date: July 10, 2013 Approve
Deny
Abstain
Recuse
Other
4-3-14

Dave England, Board Member Alternate
Yakima Water Conservancy Board

Date: July 10, 2013 Approve
Deny
Abstain
Recuse
Other

(Name), (Title)
(Board Name) Water Conservancy Board

Date: _____ Approve
Deny
Abstain
Recuse
Other

Hand-delivered with all related documents to the Dept of Ecology Central Regional Office, and other interested parties on July 11, 2013.

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).

Ecology is an equal opportunity employer

Proposed Use

MAXIMUM CUB FT/ SECOND 2.739 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 249.0	TYPE OF USE, PERIOD OF USE Irrigation of 82 acres (04/15-10/15)				
SOURCE Naches River			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT POINTS LOCATED: PARCEL NO. No. 1: 151633-11003 (Consolidated Div.)	¼ NE	¼ NE	SECTION 33	TOWNSHIP N. 16N	RANGE 15E	WRIA 38	COUNTY. Yakima
No. 2: 151621-43401 (NDA / Nile Ditch)	SW	SE	21	16N	15E	38	Yakima
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED no change							
PARCEL NO. no change	¼	¼	SECTION no change	TOWNSHIP N. no change	RANGE, no change		

Board's Decision on the Application

MAXIMUM CUB FT/ SECOND 2.739 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 249.0	TYPE OF USE, PERIOD OF USE Irrigation of 82 acres (04/15-10/15)				
SOURCE Naches River			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT POINTS LOCATED: PARCEL NO. No. 1: 151633-11003 (Consolidated Div.)	¼ NE	¼ NE	SECTION 33	TOWNSHIP N. 16N	RANGE 15E	WRIA 38	COUNTY. Yakima
No. 2: 151621-43401 (NDA / Nile Ditch)	SW	SE	21	16N	15E	38	Yakima
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD no change							
PARCEL NO. no change	¼	¼	SECTION no change	TOWNSHIP N. no change	RANGE, no change		

DESCRIPTION OF PROPOSED WORKS

A new point of diversion/pump station, has been installed on the Naches River to serve the subject water right, as well as one additional Naches River water right and one Nile Creek water right, which are owned by the Estate of Richard R. Matson under Court Claim No. 01397 and 01396, and which are the subject of separate change applications pending before this Board (YAKI 13-04 and YAKI 13-03). Said point of diversion became operational during the 2013 irrigation season and its use was authorized on a temporary basis by the Yakima County Superior Court, *Acquavella* Adjudication, pursuant to Order *Pendente Lite* dated August 08, 2013. Said pump station consists of a floating River Screen, lift boom, and a 25 horsepower pump high volume-low pressure pump.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: April 01, 2013	COMPLETE PROJECT BY THIS DATE: April 15, 2014	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: April 15, 2018
---	--	---

REPORT

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

On September 5, 2013, Daryl J. Matson, as Personal Representative of the ESTATE OF RICHARD R. MATSON of Selah, WA filed an application to add a point of diversion under Naches Subbasin Court Claim No. 01397. The application was accepted at an open public meeting on September 5, 2013, and the Board assigned application number YAKI 13-02.

A site visit was conducted on October 18, 2013, by Mark Reynolds, Board Member, Yakima County Water Conservancy Board; Jason McCormick, Washington Water Trust; and Jason Matson, representing the Estate of Richard R. Matson.

Attributes of the water right as currently documented

Name on certificate, claim, permit: Estate of Richard R. Matson

Water right document number: Court Claim No. 01397

As modified by certificate of change number: n/a

Priority date, first use: August 26, 1889

Water quantities: Qi: 1.66 cfs irrigation and 1.079 cfs for conveyances; 0.01 cfs year-round stock water / Qa: 249.0 acre ft./year irrigation; 1.0 acre ft./year year-round stock water

Source: Naches River

Point of diversion/withdrawal: SW ¼ SE ¼, Section 21, T. 16 N., R. 15 E.W.M.

Purpose of use: Irrigation of 82 acres (04/15-10/15); stock water (year-round)

Period of use: year-round

Place of use: The NE ¼ of Section 33 lying south of Little Bald Mountain Road, the SE ¼ NW ¼ of Section 33 south of Nile Creek and that portion of the SW ¼ NW ¼ of Section 34, west of Nile Road, ALL in T. 16N., R. 15E. W.M.

Tentative determination of the water right

In order to make a water right change decision, the Board must make a tentative determination of the validity and extent of the right. Under RCW 90.14.160, the failure to divert or withdraw water for any period of five (5) successive years after September 1, 1967, without sufficient cause, shall relinquish such right or a portion thereof, and said right or portion thereof shall revert to the state. The author finds this water right to have been fully beneficially used for the irrigation of 82 acres.

History of water use

The subject water right has been fully used to irrigate 82 acres since the issuance of the Conditional Final Order for Subbasin 16, dated April 8, 1993. Since April 8, 1993 said water right has been used to irrigate the same 82 acres.

The site visit and aerial photos correlate to the continued irrigation of 82 acres, which are presently cropped with grass hay, alfalfa, and cherries. The Board's quantitative analysis concerning the extent of recent use of the subject water right is provided below.

Previous changes

N/A

SEPA

The Board has reviewed the proposed project in its entirety. Generally, appropriations of 50 cfs or less of surface water for irrigation purposes are exempt from SEPA under WAC 197-11-800(4)a. However, the SEPA exemption states that the exemption applies when appropriations are, "done without a government subsidy." This barrier removal and point of diversion change was largely funded through BPA's Yakima Tributary Access and Habitat Program which disqualifies this application for categorical SEPA exemption. North Yakima Conservation District submitted a SEPA checklist to Washington State Department of Fish and Wildlife ("WDFW") on May 24, 2010 and WDFW, acting as Lead Agency, published a Determination of Nonsignificance on June 2, 2010.

Other

N/A

The information or conclusions in this section were authored and/or developed by Applicant's representatives.

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

Public notice of the application was given in the *Yakima Herald Republic* on October 10, 2013, and October 17, 2013. Protest period ended on November 16, 2013.

There were no protests received during the 30 day protest period. In addition, no oral or written comments were received at an open public meeting of the Board or other means as designated by the Board.

The information or conclusions in this section were authored and/or developed by Applicant's representatives.

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

The following information was obtained from an October 18, 2013, site inspection conducted by Mark Reynolds, Board Member, Yakima County Water Conservancy Board; Jason McCormick, Washington Water Trust; and Jason Matson, representing the Estate of Richard R. Matson, as well as technical reports, research of department records, and conversations with the applicant and/or other interested parties.

Proposed project plans and specifications

A new point of diversion/pump station has been installed on the Naches River to serve the subject water right and two additional water rights owed by the Estate of Richard R. Matson under Court Claim No. 01397 and 01396. Said point of diversion was operational during the 2013 irrigation season and authorized for use of all three water rights by the Yakima County Superior Court *Acquavella* Adjudication pursuant to Order *Pendente Lite* (temporary court order), dated August 08, 2013. Said point of diversion/pump station consists of a floating River Screen, lift boom, and a 25 horsepower pump high volume-low pressure pump.

Other water rights appurtenant to the property

In addition to being served by Court Claim No. 01397, primary irrigation of the same 82 acres is authorized under the Estate of Richard R. Matson's Nile Creek water right (Court Claim No. 01396). The subject place of use was also confirmed a right for group domestic supply of two residences and stock water from an unnamed spring.

Court Claim No. 01396: The right to primary irrigation of 102 acres, within the same place of use, from Nile Creek was confirmed under Court Claim No. 01397. The priority date is June 11, 1888. The place of use is described as that portion

of the E $\frac{3}{4}$ NW $\frac{1}{4}$ of Section 33 lying northerly of Nile Creek and southerly of the Little Bald Mountain Road, that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33 lying southerly of Nile Creek, that portion of the NE $\frac{1}{4}$ of Section 33 lying southerly of Little Bald Mountain Road and westerly of the County Road (Nile Road); and that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34 lying west of the County Road (Nile Road), ALL in T. 16 N., R. 15 E.W.M., Yakima County, Washington.

Court Claim No. 01408: The applicant was recommended a right to an unnamed spring for group domestic supply for two residences and stock watering under Court Claim No. 01408. This right is for 0.04 cfs, 4 acre-feet/year for domestic supply and 0.01 cfs, 1 acre-feet/year for stock water, on a continuous basis. The priority date is January 01, 1910. The place of use is described as that portion of the S1/2N1/2NE1/4 of Section 33, T. 16 N., R. 15 E.W.M., which lies south of Nile Creek and westerly of the county road (Nile Road).

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: (1) review of Applicant-provided aerial photography; (2) conversations with Applicant, including in connection with the site visit; (3) and quantitative analysis under the Washington Irrigation Guide, as follows:

The Board, in reliance on recent aerial photography submitted by the Applicant, as well as Applicant's Farm/Irrigation Plan, found that, with respect to the 82 acres authorized under the subject right, Applicant is currently irrigating 38 acres of mixed alfalfa, utilizing a wheeline irrigation system. Likewise, review of aerial photography and Farm/Irrigation Plan confirms 44 acres of cherries are under irrigation, utilizing a microspray irrigation system. The Washington Irrigation Guide, prepared by the US Department of Agriculture, Yakima area, ("WIG") identifies the following Yakima area Crop Irrigation Requirements ("CIR"): cherries with cover, 3.58 acre-feet/acre; alfalfa, 2.94 acre-feet/acre; and pasture/turf, 3.1 acre-feet/acre.

CIR – Alfalfa/grass

For purposes of this application, the Board adopts the relevant *Acquavella* Subbasin 16 testimony and findings as adopted by the Court under Court Claim No. 01397, as follows.

Dr. George Maddox served as a consultant and witness on behalf of Nile Ditch Association. The Court adopted Dr. Maddox's general analyses and conclusions regarding crop water requirements, as herein described. At hearing, Dr. Maddox testified that, under the subject water right, the total quantity of 0.033 cfs is required to be diverted for each acre irrigated. This figure includes 0.02 cfs per acre to be applied directly to the land and 0.0133 cfs per acre for "farm efficiency." Dr. Maddox stated that 0.02 cfs is the amount of water that could be applied directly to the land that will allow the water to reach the crop's roots without running off the surface. He then applied an efficiency factor of 60% to determine that 0.0133 cfs per acre would be needed for farm efficiency. Dr. Maddox described farm efficiency as the sum of delivery efficiency and field efficiency. In other words, 0.0133 cfs per acre is the amount of water that would be lost to delivery of the water through unlined ditches and application of the water to the fields.

The *Acquavella* Court adopted Dr. Maddox's determination that the annual CIR for alfalfa and grass hay within the place of use under the subject water right is equal to 3.0 AF/acre. And that analysis correlates almost precisely with the applicable WIG guidance, which confirms Yakima area CIRs of 2.9 AF/acre for alfalfa and 3.1 AF/acre CIR for pasture/turf. Adopting a 50/50 alfalfa/pasture assumption, the overall CIR may be estimated as follows: $(2.94 \text{ AF/acre} + 3.1 \text{ AF/acre}) / 2 = 3.02 \text{ AF/acre}$ – again, virtually identical to the Maddox analysis adopted by the Court for the subject water right.

Dr. Maddox determined (and the Court adopted) an Application Efficiency ("Ea") of 60 percent for the Matson alfalfa and grass hay irrigation system. The Total Irrigation Requirement ("TIR") was then calculated based on the monthly CIR of 3.0 AF/acre for alfalfa and grass hay ($TIR = CIR/Ea$). The sum of the annual TIR multiplied by the number of acres (38 acres) is the total quantity of water of a portion of the water right, equaling 190 AF/year.

CIR – Sweet Cherries

The Board, in reliance on WIG and Ecology's *Guidance Document, GUID-1210, Determining Irrigation Efficiency and Consumptive Use* finds as follows:

For the 44 acres of cherries with cover, GUID-1210 stipulates 70 percent Ea for a microspray (cherries with cover) irrigation system of the sort used by Applicant. Yakima area CIR for cherries equals 3.58 AF/acre. From those numbers, TIR may be calculated as follows: ($TIR = CIR/Ea$). The sum of the annual TIR multiplied by the number of acres (44 acres) equals the total quantity of water associated with Applicant's cherry acreage, equaling 224.84 AF/year.

Combined Findings

Based upon the above, the Board finds this water right to have been fully beneficially used for the seasonal irrigation of 82 acres. Within the authorized place of use, 82 acres, 190 AF/y of water required for irrigation of alfalfa/hay and 224.84 AF/y required for irrigation of cherries. Combined requirement as calculated would, therefore, equal 414.84 AF/y. However, as noted above, the TIR of the subject water right is supplemental to Court Claim No. 01396, Nile Creek. Because both claims are used to irrigate the same 82 acres (often simultaneously) within the authorized 102 acres, the Court's prior determination of 249.0 AF/y under the subject water right shall stand as the demonstrated and maximum-allowed Qa.

The information or conclusions in this section were authored and/or developed by Applicant's representatives.

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

Tentative determination (validity and extent of the right)

The Board's tentative determination was based upon the following findings: the Board's October 18, 2013 site visit; review of aerial photos; and conversations with the Applicant and Applicant's representatives. Upon such evidence and information, the Board finds this water right to have been fully beneficially used for the irrigation of 82 acres at a rate of 2.739 cfs and 249 acre-feet/year.

Consideration of comments and protests

No comments or protests were received.

Impairment

The application seeks to add a point of diversion of Court Claim No. 01397 approximately 1.4 miles downstream from the historic Nile Ditch Association point of diversion. This additional point of diversion is the subject of the tributary habitat enhancement project under which the new pump station/point of diversion has been installed to consolidate Court Claim Nos. 01397 and 01396. Locally, there are no water users in the intervening reach between the existing point of diversion and the proposed additional point of diversion.

Beyond considering local impacts, the Board must consider potential impairment impacts to the Yakima Basin Project. The aggregate water supply and availability in the Yakima Basin is referred to as Total Water Supply Available ("TWSA"). The proposed transfer will not change or add purposes of use or higher water-duty crops, nor will it increase irrigation acreage.

This application seeks to add a point of diversion with the same reliability, instantaneous quantities and annual quantities as has been historically been enjoyed from Naches River at the Nile Ditch Association point of diversion. In addition, and as set forth in Provisions, below, the Board notes that the Applicant shall not divert water from both points of diversion simultaneously, nor shall its aggregated instantaneous and annual diversions from both locations exceed those quantities as defined in the Board's decision, above. Accordingly, the proposed transfer will be water budget neutral with respect to TWSA.

Other – Use of Water from Two Authorized Points of Diversions

Generally speaking, the measure of a water right is established at the headgate, see *Big Creek Water Users Association v. Ecology and Trendwest Investments, Inc.*, PCHP No. 02-113. Nevertheless, the Board has also considered and is noting the Applicant's authority, in its capacity as a co-holder with Nile Ditch Association ("NDA") of the subject water right under Court Claim No. 01397, to use water from either or both the proposed Naches River pump station and the historic Nile Ditch. In connection therewith, the Board has analyzed two issues: (1) Applicant's authority under NDA's corporate rules to divert NDA water other than from the Nile Ditch; and (2) Applicant's operational/farming plan as a mechanism to ensure that Board authorization to use to use either or both ditches as proposed will not result in unlawful enlargement of the subject water right. The Board's analysis and conclusions follow:

Rights and duties of NDA Water Right Holders under Corporation Rules

The Applicant provided to the Board a copy of the Nile Ditch Association's current Bylaws. Article IV of those Bylaws provides in pertinent part:

ARTICLE IV – TRANSFER AND WITHDRAWAL

Water shares shall be deemed appurtenant to the land served as certified to the corporation by the members,

...

Any member may withdraw entirely or partially from the corporation by surrender of his water shares, or an appropriate number thereof, to the corporation, and the corporation shall transfer and surrender to the member a water right claim for an amount of water equivalent to the amount of water represented by the surrendered shares. ... The responsibility for transferring, perfecting and obtaining water from any other source in lieu of service from the corporation, whether in pursuance of the withdrawn water right or not, shall be solely the responsibility of the withdrawing member.

Taken together, the above-quoted Bylaw provisions establish the following:

- A party holding irrigation lands "certified to the corporation by its members" (i.e., lands irrigated via Nile Ditch under the various NDA water rights, Court Claim No. 01397) is eligible for NDA membership and use of its facilities;
- NDA water/shares *may*, at the choice of the member, be transferred out of Nile Ditch; and
- So long as a member holding irrigation lands certified to the corporation pays all assessments and otherwise complies with all conditions of NDA membership, he or she is free to deliver NDA water to such lands via Nile Ditch, or via an alternative diversion (upon securing the necessary judicial or administrative transfer approvals).

The Board concludes, then, that Applicant, in its capacity as a co-owner of the NDA water right in question, is permitted under NDA's governing rules to divert its NDA water/shares either from the existing (Nile Ditch) diversion, the Consolidated Diversion or a combination of both. (As set forth under Provision No. 4, however, Applicant will be required to limit turnouts from the Nile Ditch as necessary to ensure that aggregate diversion and use of water under the

subject water right does not exceed the instantaneous and annual quantities set forth in the Board's Tentative Determination.)

Applicant's Farm/Irrigation Plan

Nile Creek Ranch (the Applicant) submitted to the Board a Farm/Irrigation Plan (the "Plan"), which addresses the current irrigation diversion and delivery infrastructure and capabilities for both the historic Nile Ditch diversion and the Consolidated Diversion under this application.

Under the Plan, Applicant will continue as a regular, dues-paying NDA member and will maintain its Nile Ditch turn-out. Generally, Applicant will divert its NDA water rights at the Consolidated Diversion. Applicant does, however, anticipate the need to use Nile Ditch from time to time – not only to address periodic farm/operational needs, but also as a back-up in the event of a failure of the Consolidated Diversion, e.g., a flood event.

The Plan includes water measuring and metering capabilities at both the Nile Ditch turn-out and Consolidated Diversion to ensure that Applicant's diversions under all three water rights currently before this Board will not exceed allowed quantities, either individually or collectively. The Board has incorporated elements of the Plan under *Provisions*, below, including installation and maintenance of an *Acquavella*-approved measuring devices and Applicant's commitment to not simultaneously divert NDA water under Court Claim No. 01397 from both Nile Ditch and the Consolidated Diversion.

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

The Board finds, in accordance with WAC 173-153-130(6)(e), that this application conforms to RCW 90.03.380 and applicable case law to be a valid addition of point of diversion. The Board authorizes this additional, downstream point of diversion on the Naches River at a location approximately 480' west and 525' south of the NE corner of Section 33, within the NE ¼ NE ¼ S. 33, T. 16N, R. 15 E.W.M. (Parcel No. 151633-11003).

(Under separate decisions (YAKI 13-04 and YAKI 13-03), the Board is concurrently approving Applicant's requests to add this same Naches River diversion as an additional, approved point of diversion, YAKI 13-04, and change from Nile Creek to the Naches River diversion as the approved point of diversion, YAKI 13-03.)

The information or conclusions in this section were authored and/or developed by Applicant's representatives.

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

Conditions and limitations

1. This authorization shall not excuse the Applicant from compliance with any applicable federal, state or local statutes, ordinances, or regulations, including those administered by other programs of Ecology and/or the Washington State Department of Fish and Wildlife.
2. Diversion of water at all authorized points of diversion hereunder shall be in compliance with the Order Requiring Metering, Measuring, and Reporting Requirements, all Subbasins (1-31) in Benton, Kittitas, and Yakima Counties entered September 15, 2005, by the *Acquavella* Court, Cause No. No. 77-2-01-01484-5. The Order may be viewed at the following website: <http://www.ecy.wa.gov/programs/wr/measuring/images/pdf/order772014845.pdf>.
3. Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions and to inspect at reasonable times any measuring device used to meet the above conditions.

4. The Applicant shall not divert water from both points of diversion simultaneously, and the combined instantaneous and annual quantities that Applicant may divert at both locations under the subject water right shall be limited to 2.739 cfs and 249.0 acre-feet/year, as defined in the Board's decision.

Construction Schedule

This water right will be put to full beneficial use by April 15, 2018.

Other

N/A

The information or conclusions in this section were authored and/or developed by Applicant's representatives.

The undersigned Board commissioner certifies that he 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, having reviewed the report of examination, knows and understands the content of this report and concurs with the report's conclusions.

Signed at Yakima, Washington

This 9 day of April, 2014.


_____, Board Representative
Yakima County Water Conservancy Board

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).

Ecology is an equal opportunity employer