



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

For Ecology Use Only Received: DEPT OF ECOLOGY Received APR 21 2014 CENTRAL REGION OFFICE Reviewed by: Date Reviewed:

Applicant: (applicant's name) Teanaway Ridge LLC

Application Number: (application number) KIT-13-07

This record of decision was made by a majority of the board at an open public meeting of the Kittitas Water Conservancy Board held on April 15, 2014. 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.

[X] 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 April 15, 2014 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 April 15, 2014 and submits this record of decision to the Department of Ecology for final review.

Signed:

Gregg Hall, Chair Kittitas County Water Conservancy Board

Date: 4/15/14

- Approve [X] Deny [ ] Abstain [ ] Recuse [ ] Other [ ]

Chad Bala Kittitas County Water Conservancy Board

Date:

- Approve [ ] Deny [ ] Abstain [ ] Recuse [X] Other [ ]

Lenny Morrison Kittitas County Water Conservancy Board

Date:

- Approve [ ] Deny [ ] Abstain [ ] Recuse [ ] Other [ ]

Mark Crowley Kittitas County Water Conservancy Board

Date: 4/15/14

- Approve [X] Deny [ ] Abstain [ ] Recuse [ ] Other [ ]

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

Date:

- Approve [ ] Deny [ ] Abstain [ ] Recuse [ ] Other [ ]

Mailed with all related documents to the Dept of Ecology Central Regional Office, and other interested parties on (date mailed).

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# Board's Decision on the Application

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE Instream Flow				
SOURCE Big Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED							
<u>Primary reach</u> - within Big Creek from the existing point of diversion downstream to the next authorized point of diversion which is legally described as a point on Big Creek. <u>Secondary reach</u> - within Big Creek from the end of the primary reach to the confluence of the Yakima and Columbia Rivers.							
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,		

## DESCRIPTION OF PROPOSED WORKS

The applicant proposes to change the purpose of use from irrigation and stock water to instream flow. The applicant proposes to change the place of use to a primary and secondary reach within Big Creek and the Yakima River.

The applicant intends to enter into a Trust Water Right Agreement with Ecology. Under the Trust Water Right Agreement, the instream flow right will be used in the future for instream flow purposes and as mitigation for other water uses, including providing municipal water to the City of Cle Elum as part of annexation of property to the City of Cle Elum by an entity related to the applicant and for mitigation of other domestic water uses. Not all of the other water uses have not yet been identified and it is anticipated that some use of the water for mitigation will require separate application processes, depending on the use. These separate applications may be processed by a conservancy board and/or by Ecology.

## DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:
Instream flow uses – no construction necessary	12/31/2020	12/31/2020

## REPORT

**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 November 19, 2013 Teanaway Ridge LLC of Cle Elum, Washington filed an application for change for instream flow for mitigation of future domestic use under Court Claim No. 00756. The application was accepted at an open public meeting on November 19, 2013, and the board assigned application number KITT-13-07. Additional background information is set forth below under "History of Water Use."

#### *Attributes of the water right as currently documented*

Name on certificate, claim, permit: 00756

Water right document number: S4-83047-J

As modified by certificate of change CS4-00756CTCL@1: (see History of Water Use)

Priority date, first use: June 30, 1889

Water quantities:

Qi: 0.34 cubic foot per second for irrigation and 0.156 cubic foot per second from September 2 through November 15, 0.222 cubic foot per second from November 16 through February 29, 0.156 cubic foot per second from March 1 through April 30, 0.02 cubic foot per second from May 1 through September 1 for stock watering

Qa: 81.60 acre-feet per year for irrigation and 0.90 acre-foot per year (consumptive use) for stock watering

Source: Big Creek

Point of diversion/withdrawal: 1100 feet north and 750 feet east from the south quarter corner of Section 29, being within the SW¼SE¼ of Section 29, T. 20 N., R. 14 E.W.M.

Purpose of use: Irrigation of 17 acres and stock watering

Period of use: May 1 through September 1 for irrigation; continuous for stock watering

Place of use: That part of the S½NE¼ of Section 29, T. 20 N., R. 14 E.W.M. lying south of the Kittitas Reclamation District Canal and easterly of Big Creek, EXCEPT the east 400 feet thereof.

Existing provisions: The instantaneous quantity authorized for stock watering from May 1 through September 1 is not in addition to that authorized for irrigation. When there is a surplus of water in the creek and all existing rights are being satisfied, up to 0.68 cubic foot per second and an additional 20 acre-feet per year may be diverted as long as no more than 6.8 cubic feet per second is being diverted into the Lund Ditch by all of the Big Creek Water users.

On January 14, 2008, notice was given that an application for change had been approved changing the purpose of use, season of use, point of diversion, and place of use for this water right. Following this approval, 69 gallons per minute, 60 acre-feet per year will and be used for continuous municipal supply and stock water will be withdrawn from a well in hydraulic continuity with Big Creek located 2300 feet north and 1300 feet west of the southeast corner of Section 29, within the SE¼SE¼ of Section 29, T. 20 N., R. 14 E.W.M. The new place of use is portions of the NW¼SE¼, SW¼SE¼, SE¼SE¼ and the W½NE¼SE¼ of Section 29, T. 20 N., R. 14 E.W.M. and portions of the NW¼NE¼ and E½NE¼ of Section 32, T. 20 N., R. 14 E.W.M. The approval placed several provisions on the water right and contained a development schedule that required that construction begin by December 31, 2009 and be completed by January 1, 2023. The specific place of use description and provisions may be found in the PTO-17 Notice filed for this right and in the Report of Examination and Ecology's Modified Order approving the change application.

**Tentative determination of the water right**

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

**History of water use**

This water right has previously had an approved transfer by the Washington Department of Ecology ("Ecology"), which was completed in 2008 (the ROE and ROE exhibits are attached as Exhibit A [hereinafter referred to as the "2007 ROE, Exhibit \_\_\_"]) changing the place of use and purpose of use from irrigation and stock water to municipal supply and stock water purposes (Application No. CS4-00756CTCL@1) (hereinafter the 2007 Transfer).

The owner of the water right filed the application to change the water right on June 6, 2006, seeking to change the purpose of use, season of use, point of diversion, and place of use for this water right. Following this approval, 69 gallons per minute, 60 acre-feet per year was approved for continuous municipal supply to be withdrawn from a well in hydraulic continuity with Big Creek located 2300 feet north and 1300 feet west of the southeast corner of Section 29, within the SE¼SE¼ of Section 29, T. 20 N., R. 14 E.W.M. The new place of use is portions of the NW¼SE¼, SW¼SE¼, SE¼SE¼ and the W½NE¼SE¼ of Section 29, T. 20 N., R. 14 E.W.M. and portions of the NW¼NE¼ and E½NE¼ of Section 32, T. 20 N., R. 14 E.W.M. The approval placed several provisions on the water right and contained a development schedule that required that construction begin by December 31, 2009 and be completed by January 1, 2023. The specific place of use description and provisions may be found in the PTO-17 Notice filed for this right (Exhibit B) and in the Report of Examination and Ecology's Modified Order approving the change application (Exhibit A). Ecology adopted the 2007 ROE and issued a Notice of Water Right Change or Transfer on January 14, 2008 (Exhibit B).

During the 2007 Transfer the extent and validity determination resulted in the number of acres the right was confirmed for was reduced from 17 acres to 12.5 acres and the annual quantity limitation was reduced from 81.6 to 60 acre feet per year. The Consumptive use of the water right was also determined in 2007 to be 21.01 acre-feet per year. (2007 ROE, Exhibit 10.)

This water right has previously been temporarily donated to the trust (Application No. CS4-00756CTCL@2). Ecology accepted the donation and the water right remained in trust until March 1, 2011 (Exhibit C).

**Previous changes**

See 'History of Water Use' above and discussion of the 2007 transfer assigned Control No. CS4-00756CTCL@1..

**SEPA**

The board has reviewed the proposed project in its entirety. The 2007 transfer was subject to SEPA. However, this transfer only involves a change in purpose of use from irrigation and stock water to instream flow and place of use (specific irrigated land to instream flow) and is therefore exempt from SEPA under WAC 197-11-800.

**Other**

**The information or conclusions in this section were authored and/or developed by Jeff Slothower.**

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

Public notice of the application was given in the Ellensburg Daily Record on December 20, 2013 and December 27, 2013. (Exhibit D.) Protest period ended on January 26, 2014.

There were no protests received during the 30 day protest period. 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.

Date: Not applicable.

This was recognized by the board as a  Protest  Comment

Name/address of protestor/commenter: Not applicable.

Issue: Not applicable.

Board's analysis: Not applicable.

**NOTE to author:** Repeat this table as necessary to describe each protest or comment

*Other*

Not applicable.

**The information or conclusions in this section were authored and/or developed by Jeff Slothower.**

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

The following information was obtained from a review of the Board's file and the superseding certificate issued in CS4-0076CTCL@1, the 2007 ROE technical reports, research of department records, information and live testimony submitted by the applicant and conversations with the applicant and/or other interested parties.

*Proposed project plans and specifications*

The applicant proposes to transfer the water right to instream flows for water banking purposes. The formerly appurtenant property has been fallowed and is no longer irrigated with this water right. No water will be used on that property unless it is from another source and authorized by the appropriate governing entity.

The Board is only reviewing the transfer of the water rights into instream flows. The applicant will seek admission of the water rights into the State Trust Water Right Program to be used for water banking through a separate process with the Department of Ecology. The instream flow right will have a primary reach and secondary reach as follows:

Primary Reach – The portion of Big Creek below the original point of diversion to the confluence with the Yakima River.

Secondary Reach – Commencing at the confluence of Big Creek and the Yakima River, within the Yakima River downstream to the confluence with the Columbia River.

The use of the instream flow for water banking purposes will be considered by Ecology during its review of acceptance of the water right into the State Trust Water Right Program. The terms and conditions of the Trust Water Right Agreement are beyond the statutory jurisdiction of the Board. The terms and conditions of the Trust Water Right Agreement will be established pursuant to a separate process.

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

There are no other water rights appurtenant to the authorized place of use.

*Public Interest (groundwater only)*

This is a surface water right change, therefore the public interest was not examined by the Board because the transfer is not subject to RCW 90.44.100. This change will increase flows in Big Creek from the historic diversion downstream to the confluence with the Yakima River.

*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:

Under RCW 90.03.380, a transfer of a water right is allowed so long as it does not increase the annual consumptive quantity. The annual consumptive quantity is determined by considering the highest two years of the most recent five-year period of continuous beneficial use of the water right.

Based on the evidence presented, the Board finds as follows:

1. Based on the Affidavit of Gerald Griffin (2007 ROE, Exhibit 3), the place of use was last irrigated for the 2005 irrigation season.
2. In 2006 the water right was severed from the land (Cole Solare LLP to Teanaway Ridge LLC deed, Exhibit E) and an application for the 2007 transfer was filed on June 6, 2006 and ultimately approved on October 8, 2007 (Exhibit F).
3. Any non-use occurring between June 6, 2006 and October 8, 2007 is excused under RCW 90.14.140(1)(L).
4. On November 26, 2008 the applicant applied to donate the water right to Ecology's trust water right program. Ecology accepted the donation and the water right remained in trust until March 1, 2011.
5. Non-use during the 2009 through 2011 irrigation seasons is therefore excused under RCW 90.14.140(2)(h).
6. Thus, the Board finds that while the water right was not used for the 2008, 2012 and 2013 irrigation season no five (5) year period of non-use exists since 2005 when the water right was last used for irrigation purposes.

*Geologic, Hydrogeologic, or other scientific investigations (if applicable)*

The Board did review the 2007 ROE for background information but determined that the change to instream flow did not warrant further review of or require scientific investigation. The board adopted the 2007 ROE calculation of consumptive use because there has been no use since that consumptive use calculation. The consumptive use calculation can be found at the 2007 ROE, Exhibit 11.

*Other*

The primary reach, that portion of the stream that benefits from the reduced diversion, begins at the historical point of conversion and continues downstream to the confluence of Big Creek and the Columbia River.

Downstream of the primary reach, flow in the secondary reach is increased by the consumptive amount of water normally lost by irrigating the crop. The secondary reach for this application begins at the confluence of the Yakima River and Big Creek.

**The information or conclusions in this section were authored and/or developed by Jeff Slothower.**

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

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

The Board's tentative decision is set forth on page 2.

*Relinquishment or abandonment concerns*

The water right has not been abandoned or relinquished and all of the water right as confirmed in the 2007 ROE is available for transfer.

*Hydraulic analysis*

See above discussion of water use and consumptive use analysis.

*Consideration of comments and protests*

There are no comments or protests.

*Impairment*

An instream flow right may be exercised only if it does not impair existing water rights. Using the water right for instream flow purposes in the Primary and Secondary Reach will increase flows from the historic point of diversion downstream. As such, there will be no impairment of any water rights as a result of instream flow uses. Additionally, there will not be any negative impact to TWSA. There will be no impairment of any other water users because the entire water right will be used for in stream flow purposes. The transfer does not result in an increase in the quantity of water consumed or beneficially used. The transfer will not result in a negative impact to Total Water Supply Available (TWSA). No impairment will occur to any other water right holder as a result of the transfer.

*Public Interest*

This is a surface water right transfer which is not subject to RCW 90.44.100.

*Other*

The board also considered the previous provisions associated with the water right as identified in the background section of this report when making its decision.

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

The Board authorizes the requested change. The attributes of the changed water right are set forth on page 2 under "Board's Decision on the Application."

**The information or conclusions in this section were authored and/or developed by Jeff Slothower.**

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

*Conditions and limitations*

1. With the purpose of use of the water being changed from irrigation and stock watering to instream flows no portion of the water right may be diverted from the historic point of diversion. Future use of the instream flow right will be controlled through a trust water right agreement with the Department of Ecology.
2. 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 Washington State Department of Fish and Wildlife, as applicable.
3. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions and to inspect at reasonable times any measuring device used to meet the above conditions, as applicable.
4. Under the Board's consumptive use estimate, above, in order to avoid an increase in consumptive use and a decrease to TWSA, the historic place of use and the place of use authorized in the 2007 transfer shall be fallowed. Water can only be used on the historic place of use and the place of use authorized in the 2007 transfer if mitigated from another source or trust water right and authorized by the Department of Ecology.

*Mitigation (if applicable)*

None necessary.

*Construction Schedule*

There will be no construction necessary or associated with the transfer of the water to in stream flow purposes and therefore a schedule is not necessary.

*Other*

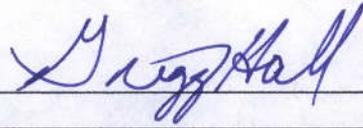
None.

**The information or conclusions in this section were authored and/or developed by Jeff Slothower.**

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

This 15th day of April, 2014

  
 \_\_\_\_\_, Board Representative  
 Kittitas County Water Conservancy Board

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