



Kittitas County
 WATER CONSERVANCY BOARD
 Application for Change/Transfer
 Record of Decision

For Ecology Use Only

Received:

Reviewed by: _____
 Date Reviewed: _____

Applicant: Brian Pat King Application Number: KIT-14-02

This record of decision was made by a majority of the board at an open public meeting of the Kittitas County Water Conservancy Board held on 4-15-2014 (date meeting was held).

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 4-15-2014 (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:

 Gregg Hall, Board Member
 Kittitas County Water Conservancy Board

Date: 4/15/14
 Approve
 Deny
 Abstain
 Recuse
 Other

 Lenny Morrison, Board Member
 Kittitas County Water Conservancy Board

Date: _____
 Approve
 Deny
 Abstain
 Recuse
 Other

 Chad Bala, Board Member
 Kittitas County Water Conservancy Board

Date: 4/15/14
 Approve
 Deny
 Abstain
 Recuse
 Other

 Mark Crowley, Alternate
 Kittitas County Water Conservancy Board

Date: _____
 Approve
 Deny
 Abstain
 Recuse
 Other

 , Alternate
 Kittitas County Water Conservancy Board

Date: _____
 Approve
 Deny
 Abstain
 Recuse
 Other

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Kittitas County
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



Surface Water Ground Water

DATE APPLICATION RECEIVED January 14, 2014	WATER RIGHT DOCUMENT NUMBER (i.e., claim, permit, certificate, etc.) Claim 00176	WATER RIGHT PRIORITY DATE June 30, 1887	BOARD-ASSIGNED CHANGE APPLICATION NUMBER KITT-14-02
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NAME Brian Patrick King			
ADDRESS (STREET) 4216 220 th PI SE	(CITY) Issaquah	(STATE) WA	(ZIP CODE) 98029

Changes Proposed: Change purpose Add purpose Add irrigated acres Change point of diversion/withdrawal
 Add point of diversion/withdrawal Change place of use Other (Temporary, Trust, Interties, etc.) State Trust Water
Right Transfer

SEPA
 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: Exempt Not exempt

BACKGROUND AND DECISION SUMMARY

Existing Right (Tentative Determination)

MAXIMUM CUB FT/ SECOND 0:01 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 2.4 AF for irrigation 0.0067 AF for stockwater	TYPE OF USE, PERIOD OF USE May 1 to September 1 for irrigation; Continuously for stock water				
SOURCE Big Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT A POINT LOCATED: PARCEL NO.	¼ SW1/4	¼ SE1/4	SECTION 29	TOWNSHIP N. 20	RANGE 14 E	WRIA 39	COUNTY. Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED 0.5 acres located within Lot 5 and Parcel H of Surveys, recorded under Kittitas County Recording No. 201004130016, being a portion of the SE1/4 of Section 20, T. 20 N., R. 14 E.W.M.							
PARCEL NO. 957094	¼	¼ SE1/4	SECTION 20	TOWNSHIP N. 20	RANGE, 14 E.W.M.		

Proposed Use

MAXIMUM CUB FT/ SECOND 0.01 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 2.4067 AF	TYPE OF USE, PERIOD OF USE Instream Flows for Water Banking Purposes				
SOURCE Big Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT A POINT LOCATED: PARCEL NO.	¼ SW1/4	¼ SE1/4	SECTION 29	TOWNSHIP N. 20	RANGE 14 E	WRIA 39	COUNTY. Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED In Big Creek downstream of the original point of diversion to the confluence with the Yakima River; within the Yakima River downstream of the confluence of the Yakima River and Big Creek to the confluence of the Yakima River and Columbia River.							
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,		

Board's Decision on the Application

MAXIMUM CUB FT/ SECOND 0.01 cfs (Primary Reach)	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 0.8767 (CU)	TYPE OF USE, PERIOD OF USE Instream Flows for Water Banking Purposes				
SOURCE Big Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT A POINT LOCATED: PARCEL NO.	¼ SW1/4	¼ SE1/4	SECTION 29	TOWNSHIP N. 20	RANGE 14 E	WRIA 39	COUNTY. Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD							
Primary Reach – The portion of Big Creek below the original point of diversion to the confluence with the Yakima River.							
	Qa (acre-feet)			Qi (cfs)			
Non-irrigation season (Sept 2 – April)	0.000558 (per month)			0.00001			
May	0.000558			0.00001			
June	0.552558			0.00930			
July	1.056558			0.01721			
August	0.768558			0.01252			
September 1 st	0.024558			0.00041			
Total	2.4067						
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.							
	Qa (acre-feet)			Qi (cfs)			
Non-irrigation season (Sept 2 – April)	0.000558 (per month)			0.00001			
May	0.000558			0.00001			
June	0.200660			0.00337			
July	0.383360			0.00624			
August	0.278960			0.00454			
September 1 st	0.008700			0.000440			
Total	0.8767						
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,		

DESCRIPTION OF PROPOSED WORKS

Proposal is to leave water for instream flows. The applicant has not proposed any new diversion works.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: At least 75 days after Board's ROD issuance	COMPLETE PROJECT BY THIS DATE: June 30, 2015	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: June 30, 2016
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REPORT

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

On January 14, 2014, Brian Patrick King of Issaquah, Washington filed an application for change the place of use, purpose of use and point of diversion for his water right which is a portion of the water right confirmed under Court Claim 00176 (proposed certificate number S4-83019-J) subject to the Court proceedings in *Ecology v. Acquavella*, Yakima County Superior Court Cause No. 77-2-01484-5. The application was accepted at an open public meeting on January 14, 2014, and the Board assigned application number KITT-14-02.

This application (KITT-14-02) involves the change in place of use and purpose of use from irrigation and stock water to instream flows for water banking purposes. The water right at issue in this report is a portion of a water right confirmed under Court Claim 00176 in *Ecology v. Acquavella*, in Subbasin No. 2 to C. Frederick Darling. Mr. King was an heir to the estate of C. Frederick Darling and received a portion of the Darling's land and water rights. This Background section will begin by describing the water right confirmed to the late C. Frederick Darling and his use up until his death in 2009, and then describe Mr. King's portion of the right.

The water right confirmed by the Court to C. Frederick Darling was as follows:

Claimant Name: C. Frederick Darling

Source: Big Creek

Use: Irrigation of 75 acres and stock water

Period of Use: May 1 to September 1 for irrigation; continuously for stock water

Quantities: 1.5 cubic feet per second, 360 acre-feet per year for irrigation; 2.0 acre-feet per year for stock water

Priority Date: June 30, 1887

Point of diversion/withdrawal: 1100 feet north and 750 feet east of the south quarter corner of Section 29, being within SW1/4SE1/4 of Section 29, T. 20 N., R. 14 E.W.M.

Place of Use: The southeast quarter of Section 20 lying north of Nelson Siding Road, EXCEPT, the north 1200 feet of west 700 feet and the east 400 feet thereof. ALSO, the northerly 300 feet of the westerly 1700 feet of that portion of the southeast quarter of Section 20 lying parallel to and southerly of the Nelson Siding Road; ALL being within Section 20, T. 20 N., R. 14 E.W.M.

Based on the Court's records and testimony from Mr. King, Mr. Darling diverted water from Big Creek and conveyed it through Section 29 to Section 20. The water right was authorized to be used continuously for stock water and for irrigation water from May 1st to September 1st. At the place of use the water was conveyed into a series of ditches that transacted the property. Mr. Darling would put a wood damming wedge in the irrigation ditches to flood different areas of his pastures and would use a sump pump in the ditch and run hoses to the metal sprinkler to reach other areas. Mr. Darling maintained 52 cattle up until December 2008 when his homestead house burned down. Some of the cattle were sold at that time to lessen the feeding and wintering duties. Mr. Darling died approximately six months later. At the time of his death he had 35 head of cattle.

Mr. Darling's estate was divided to his two brothers, George and David, and their heirs, and to cousins and other parties. Mr. King, a cousin of Mr. Darling, was the Personal Representative for Mr. Darling's estate. As part of the division of Mr. Darling's estate, seven of the heirs received water rights. The water rights were divided equally to the irrigated pasture land. During the probate proceedings, Mr. Darling's water rights were divided by the Court in Ecology v. Acquavella, on January 27, 2012. Mr. King was allocated a three acre parcel of Mr. Darling's land and 0.5 acres of irrigated area and a portion of the stockwater based on the area of land irrigated.

Attributes of the King water right as currently documented

Name on certificate, claim, permit: Brian King

Water right document number: Court Claim 00176, under Ecology v. Acquavella, Yakima County Superior Court Cause No. 77-2-01484-5.

As modified by certificate of change number: KITT-14-02

Priority date, first use: June 30, 1887

Water quantities: Qi: 0.01 cfs Qa: 2.4 acre feet per year for irrigation and 0.0067 acre-feet per year for stock water

Source: Big Creek

Point of diversion/withdrawal: 1100 feet north and 750 feet east of the south quarter corner of Section 29, being within SW1/4SE1/4 of Section 29, T. 20 N., R. 14 E.W.M.

Purpose of use: Irrigation of 0.5 acres and stock water

Period of use: May 1 to September 1 for irrigation; continuously for stock water

Place of use: 0.5 acres located within Lot 5 and Parcel H of Surveys, recorded under Kittitas County Auditor's Recording No. 201004130016, being a portion of the SE1/4 of Section 20, T. 20 N., R. 14 E.W.M.

Mr. King has applied to the Board to transfer his portion of the water right under Court Claim 00176 to instream flows for water banking purposes. Mr. King will apply separately to the Washington State Department of Ecology for acceptance of the water right into the State Trust Water Right Program. Mr. King will follow the area formerly irrigated by his portion of the water right confirmed under Court Claim 00176 in order to avoid any impact to the Total Water Supply Available ("TWSA"). Water cannot be used for that parcel unless it is secured from a different source or trust water right and approved by the Department of Ecology.

SEPA

The Board has reviewed the proposed project in its entirety. Under WAC 197-11-800(4) appropriations of one cubic foot per second or less of surface water is categorically exempt from the State Environmental Policy Act. The application is to transfer 0.01 cubic feet per second and is therefore categorically exempt.

The information or conclusions in this section were authored and/or developed by Jessica Kuchan, WSBA No. 38304, attorney for applicant.

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

Public notice of the application was given in the Ellensburg Daily Record on January 24, 2014, and January 31, 2014. Protest period ended on March 2, 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 on March 18, 2014, of the Board or other means as designated by the Board. The application was presented to the Water Transfer Working Group on April 7, 2014.

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

The following information was obtained from:

- a site inspection conducted by Board Member Chad Bala on February 27, 2014;

- technical reports, including the Washington Irrigation Guide;
- research of department records;
- records filed with the Court in Ecology v. Acquavella, Yakima County Superior Court No. 77-2-01484-5,
- declarations and affidavit of Brian Patrick King
- letter from Darrel R. Ellis, attorney for Brian Patrick King, as Personal Representative of C. Frederick Darling's estate;
- maps and conversations with the applicant.

Proposed project plans and specifications

The applicant proposes to transfer the water right to instream flows for water banking purposes. The formerly appurtenant property will be fallowed. 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 Mr. King's water rights to 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 between Mr. King and Ecology.

Other water rights appurtenant to the property (if applicable)

There are no other water rights appurtenant to Mr. King's property (Parcel 957094). As explained above, the water right is a portion of the original water right confirmed under Court Claim 00176 to Mr. Darling. Other heirs to Mr. Darling own other portions of the water right for property adjacent to Mr. King's property.

Public Interest

The proposed transfer is not subject to RCW 90.44.100. However, this change application would provide public benefit because it will increase the flows in Big Creek downstream of the historic point of diversion. Furthermore, if accepted into the State Trust Water Right Program by Ecology, it will be able to provide mitigation for new users in the Big Creek area, which is an area that is unable to be served by any other water bank currently in existence.

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 RCW 90.14.130 through 90.14.180. 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. The water right was originally confirmed to Mr. Darling for irrigation of 75 acres and stock watering of 45 cows. The pastures were irrigated and cows were maintained on the property. Based on the testimony provided by Mr. King, Mr. Darling had 52 cows up until his homestead house burned down in December 2008, and had 35 cows at the time of his death in 2009. The property was then subject to a probate proceeding until 2012, which included dividing the land and water up amongst seven heirs. Under RCW 90.03.380, the most recent period of continuous beneficial use of the right was the five year period preceding Mr. Darling's death, or 2005-2009.

Since the water right was divided up amongst the heirs by the Court, the Board focused on Mr. King's portion of the water right. Mr. King's water right is based on irrigation of pasture and stock water for Parcel 957094. Mr. King's parcel is on the west side of the historic place of use for the water right. The parcel contains 0.5 acre of area that was part of the pasture, the rest is in timber. Irrigation water was provided to the parcel by one of the flood irrigation ditches used by Mr. Darling and was maintained as pasture grass for his cows.

The total consumptive use allocated under Court Claim 00176, and particularly the portion owned by Brian King, was estimated using the methodologies and information presented in the Washington Irrigation Guide (WIG) and Ecology Water Resources Guidance (GUID-1210). Pertinent input parameters and assumptions to the calculation are as follows:

Irrigation Method: Surface/Flood
 WIG Station: Cle Elum, Washington
 Crop: Pasture Grass
 Crop Irrigation Requirement: 18.11 inches per year (1985 WIG)
 Water Right/Duty: 2.4 acre-feet for 0.5 acres (4.8 acre-feet per acre water duty)

Acres Irrigated Under King's Portion of Court Claim 00176: 0.5 acres

Mr. King's water right is to irrigate 0.5 acres, or 2.4 acre-feet per acre. The WIG estimates that the crop irrigation requirement for pasture grass is 18.11 inches per year (1985 WIG version) (1.51 acre-feet per acre).

The CIR of 0.76 acre-feet per year indicates an irrigation efficiency of 31.66 percent ($31.66\% \times 2.4 = 0.76$) which is close to the typical irrigation efficiency range for surface flow irrigation as described in Ecology GUID 1210 (estimated by Ecology to be 35% to 65%). Ecology GUID 1210 also indicates that surface/flood irrigation methods have an additional evaporation consumptive loss of 5 percent. Therefore, the total consumptive loss for the irrigation of 0.5 acres of pasture grass with an annual water right of 2.4 acre-feet is 0.87 acre-feet per year ($36.66\% \times 2.4 = 0.87$ acre-feet per year).

Mr. King's portion of Court Claim 00176 also allocates 0.0067 acre-feet (approximately 6 gallons per day) of water for consumptive use by stock. The Report of Referee for Subbasin No. 2, acknowledged that Mr. Darling maintained 45 head of cattle. According to Mr. King's testimony 52 cattle were on the property up until December 2008 and 35 cattle until Mr. Darling's death in May 2009. Report of Referee, Subbasin No. 2, pg. 42, confirmed by Ecology v. Acquavella, Conditional Final Order for Subbasin No. 2 (Feb. 13, 1997). The United States Environmental Protection Agency Manual of Individual and Non-Public Water Supply Systems (US EPA, May 1991) indicates that horses, mules, cattle and steers typically consume approximately 12 gallons per day of water. This is also consistent with the testimony accepted by the Referee for Court Claim 00176. Ecology v. Acquavella, Yakima County Superior Court Cause No. 77-2-01484-5, Report of Referee Subbasin No. 2, at page 42.

The total water right of 2.4 acre feet for irrigation and 0.0067 acre-feet for stock water, as allocated under Court Claim 00176, can be divided into 0.76 acre-feet used consumptively by the crop, 0.11 acre-feet consumptively lost as evaporation during irrigation, 1.53 acre-feet of non-consumptive irrigation return flow, and 0.0067 acre-feet consumptively used by livestock. Total consumptive water use allocated for Mr. King's portion of Court Claim 00176 is 0.8767 acre-feet.

In order to calculate the instantaneous volume and the total volume per month the WIG crop demand timing table was reviewed. The water right only authorizes use until September 1st, so in order to quantify the annual volume, the WIG timing quantities were adjusted to reflect a shorter irrigation season for Court Claim 00176. Specifically, the WIG quantity for September was redistributed to June, July, August and September 1st. Thus under the Board's consumptive use estimate, in order to ensure the use of the subject water right is not enlarged, the quantity left instream is as follows:

	Qa (acre-feet)	Qi (cfs)
Non-irrigation season (Sept 2nd – April)	0.000558 (per month)	0.00001
May	0.000558	0.00001
June	0.200660	0.00337
July	0.383360	0.00624
August	0.278960	0.00454
September 1st	0.00870	0.000440
Total	0.8767	

The information or conclusions in this section were authored and/or developed by Jessica Kuchan, WSBA No. 38304, attorney for the applicant.

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

Tentative determination (validity and extent of the right)

Mr. King's portion of Court Claim 00176 is appurtenant to property Mr. King owns (Kittitas County Parcel No. 957094). The evidence shows that water was beneficially used on Mr. King's property for the maintenance of pasture grass for cows and stock water. In accordance with Chapter 90.38 RCW, the Board makes a tentative determination that Mr. King's portion of Court Claim is a valid water right authorized to withdraw up to 0.01 cfs, 2.4067 acre feet per year. The actual quantity that is transferrable is described above.

Approval of this change of purpose and place of use to instream flow will not impair existing water rights so long as the requirement to fallow as described above is imposed. Thus, the Board has required a condition to fallow parcel 957094.

Creating an instream flow right allowed under Chapter 90.38 RCW is not contrary to the public interest.

Relinquishment or abandonment concerns

The Board has determined that no part of the water right has been relinquished or abandoned.

Hydraulic analysis

See above.

Consideration of comments and protests

No comments or protests were received.

Impairment

Under RCW 90.38.040(5)(a), an instream flow right may be exercised only if it does not impair existing rights. The instantaneous quantities described above are proposed to become instream flows within Big Creek and the Yakima River. By no longer diverting the water under the water right, that water will remain instream, subject to hydrologic conditions. The intent is to increase flow downstream of the historic point of diversion. As such, there will be no impairment of any water rights as a result of instream flow uses.

Total Water Supply Available ("TWSA")

Total Water Supply Available is a term of art that describes the entire Yakima River basin outflow. Some TWSA water comes from artificial storage, used to fulfill Bureau of Reclamation's contracted water rights. A measuring point of TWSA is at Parker, Washington.

Under the Board's consumptive use estimate, so long as Mr. King's parcel is fallowed, TWSA will not be impacted.

Public Interest

See the Board's discussion of the public interest above.

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)]

See "Board's Decision on Application" on page 2.

The information or conclusions in this section were authored and/or developed by Jessica Kuchan, WSBA No. 38304, attorney for applicant.

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 Mr. King's 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, Parcel 957094 shall be fallowed. Water can only be used on Parcel 957094 if mitigated from another source or trust water right and authorized by the Department of Ecology.

Mitigation (if applicable)

Not applicable

Construction Schedule

There will be no construction necessary or associated with the transfer to instream flow purposes.

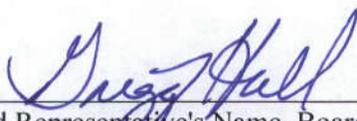
Other

None.

The information or conclusions in this section were authored and/or developed by Jessica Kuchan, WSBA No. 38304, attorney for applicant.

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 5th day of April, 2014



Board Representative's Name, Board Representative

Kittitas County Water Conservancy Board

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