

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

For Ecology Use Only	
Received:	DEPT OF ECOLOGY Date Received JAN 27 2015
Reviewed by:	CENTRAL REGION OFFICE
Date Reviewed:	

Applicant: Jason and Danica Bourne Application Number: KTT-14-05

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 1-20-15 (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 1-20-15 (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
Gregg Hall, Board Member
Kittitas County Water Conservancy Board

Date: 1/20/15
 Approve
 Deny
 Abstain
 Recuse
 Other

Lenny Morrison
Lenny Morrison, Board Member
Kittitas County Water Conservancy Board

Date: 1-20-2015
 Approve
 Deny
 Abstain
 Recuse
 Other

Chad Bala
Chad Bala, Board Member
Kittitas County Water Conservancy Board

Date: 1-20-15
 Approve
 Deny
 Abstain
 Recuse
 Other

Mark Crowley
Mark Crowley, Alternate
Kittitas County Water Conservancy Board

Date: 1/20/15
 Approve
 Deny
 Abstain
 Recuse
 Other

, Alternate
Kittitas County Water Conservancy Board

Date: _____
 Approve
 Deny
 Abstain
 Recuse
 Other

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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					
0.1960		39.20	Mitigation and Instream Flow; May 1 through September 15					
SOURCE			TRIBUTARY OF (IF SURFACE WATER)					
North Fork Teanaway River			Yakima River					
AT A POINT LOCATED:	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.	
PARCEL NO.	SE	NE	6	20	16E	39	Kittitas	
814835								
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD								
Primary Reach								
0.1960 cubic feet per second, 39.20 acre ft./year for the purpose of instream flow and mitigation for out of priority uses from May 1 through September 15.								
The primary reach begins from the authorized point of diversion on the North Fork Teanaway River being approximately 525 feet north and 250 feet west from the east quarter corner of Section 6, being within the SE1/4NE1/4 of Section 6, T. 20 N, R. 16 E.W.M.								
Secondary Reach								
	Unit	May	Jun	Jul	Aug	Sep	Oct	Total
Qa	acre ft.	2.88	4.67	6.11	4.67	2.61	0.54	21.48
Average Qi	cfs	0.047	0.079	0.099	0.076	0.044	0.009	-
The secondary reach includes the Teanaway and Yakima Rivers beginning at a point approximately 250 feet north and 2,150 feet west of the southeast corner of Section 5, located within the SW1/4SE1/4 of Section 5, T. 20 N., R. 16 E.W.M. and extends to the Columbia River.								
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,			
N/A								

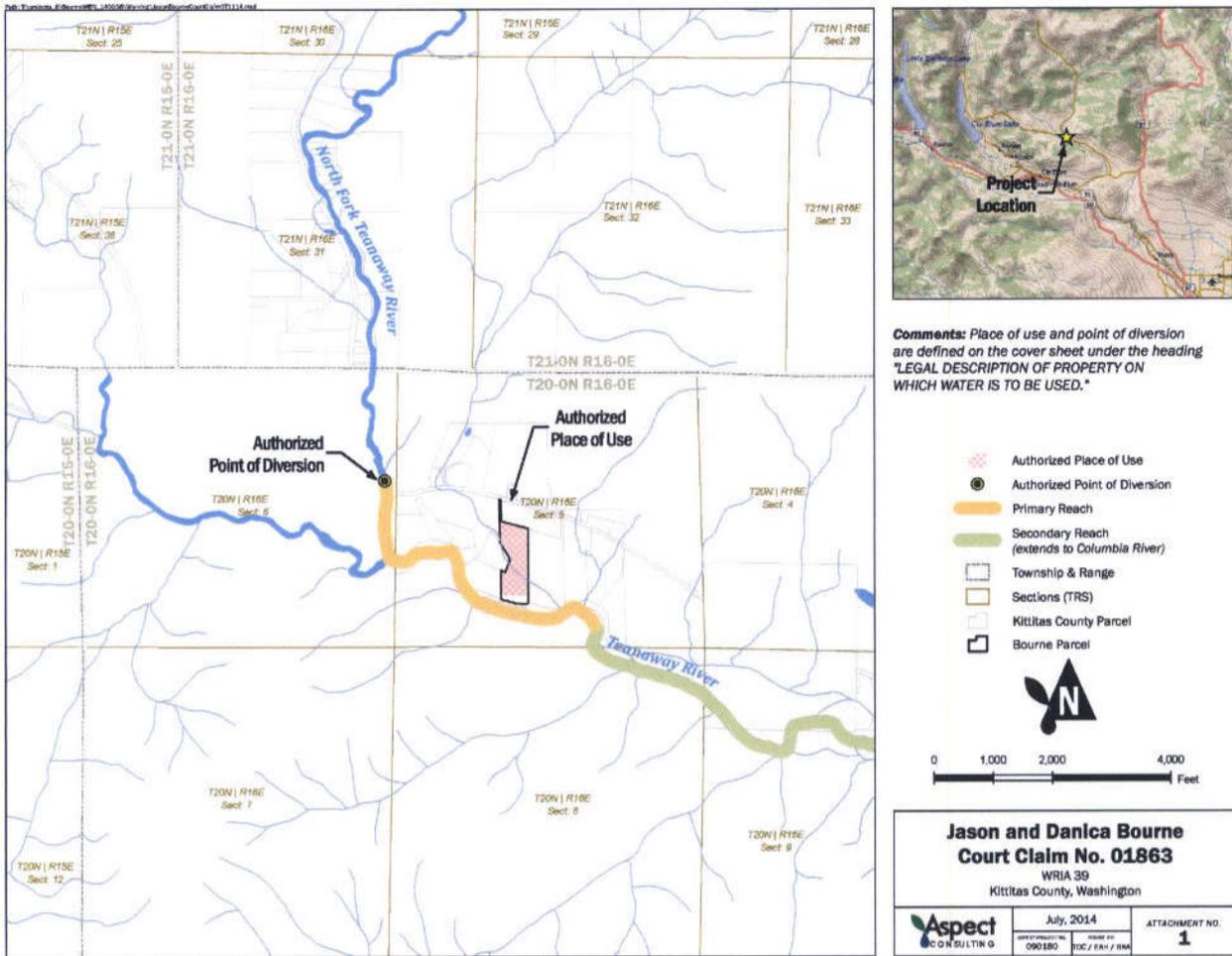


Figure 1: Project Location and Vicinity Map, Court Claim No. 01863

Previous change

The *Acquavella* Adjudication confirmed the right under Court Claim No. 01863 for 0.64 cfs and 128 acre ft./year from the North Fork Teanaway River for the irrigation of 32 acres to Norman J. Cromarty & Shirley B. Cromarty. Confirmed quantities assumed flood irrigation methods, with specified water duties of 0.02 cfs and 4.0 acre ft. per acre for timothy grass hay.

Under lease to the United States Bureau of Reclamation, Court Claim No. 01863 was placed into temporary trust for the 2001 irrigation season by an *Order Pendente Lite (OPL)*, signed in Yakima Superior Court on June 21, 2001. A copy of the signed *OPL* is included as Attachment 2. In 2003, the appurtenant portion of the claim was again placed in temporary trust under the name Norman J. Cromarty by an *OPL* signed August 14, 2003 (Attachment 3). Trust Water Right Application No. CS4-01863CTCL@5 then authorized the temporary transfer of 0.2 cfs and 39.2 acre ft./year for the 2005 through the 2009 irrigation season (Attachment 4). The appurtenant portion of the claim was again placed in temporary trust under the name Gail Ragen for the 2011 and 2012 irrigation season by an *OPL* signed April 14, 2011 (Attachment 5). At this time, the Court calculated the instantaneous rate to three significant digits, or 0.1960 cfs. In 2013, the same portion of the claim was donated to the TWRP under CS4-01863sb3@20 (Attachment 6), and then extended through 2014 (Attachment 7).

The authorized place of use has since been subdivided, new owners joined to the claim and most recently divided amongst the three current property owners by an Order to Join/Substitute Parties and Divide Water Right, signed January 8, 2015 (see Attachment 8). The Bourne portion of the claim is equal to 0.1960 cfs and 39.20 acre ft./year for irrigation of 9.8 acres, May 1 through September 15.

SEPA

The Board has reviewed the proposed project in its entirety. The subject application is categorically exempt under SEPA (WAC 197-11-305 and WAC 197 11 800(4)) because the instantaneous quantity is less than the 1.0 cfs threshold.

The information or conclusions in this section were authored and/or developed by Board Members Gregg Hall, Lenny Morrison, and Chad Bala, with assistance from Tyson D. Carlson, Aspect Consulting.

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

Public notice of the application was given in the The Daily Record of Ellensburg, Washington on May 30 and June 6, 2014. Protest period ended on July 6, 2014. Copy of the Public Notice and Affidavit of Publication is included as Attachment 9. 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 held on July 15, 2014 or other means as designated by the Board.

On April 25, 2014, the Board sent notification to all interested parties, including: 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. No comments were received.

The information or conclusions in this section were authored and/or developed by Board Members Gregg Hall, Lenny Morrison, and Chad Bala, with assistance from Tyson D. Carlson, Aspect Consulting.

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

The following information was obtained from review of photographs, research of Ecology and Court records, and conversations with the land owners, claimants, and other interested parties.

Site Visit

No site inspection was completed as part of this investigation. The water right has been in temporary trust since signing of the CFO, and no irrigation of the authorized place of use has occurred since that time.

Proposed project plans and specifications

The purpose of this application is to change the purpose of use and place of use under Court Claim No. 01863 to mitigation and instream flow in the Teanaway and Yakima Rivers from the authorized point of diversion to the Columbia River. The resulting water right will be managed in the State's TWRP and used for mitigation and to benefit instream flows in the Teanaway and Yakima Rivers.

Other water rights appurtenant to the property (if applicable)

A review of Ecology records indicates that no other water rights are appurtenant to the authorized place of use.

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: the water right has been the subject of the *Acquavella* Adjudication which established legal standing of this right through signing of the CFO on February 8, 2001. Since signing of the CFO, the water right has been put to beneficial use through near continuous lease and/or donation to the TWRP, except for a brief period during the 2002, 2004, and 2010 irrigation seasons. Therefore, because the water right has been put to continuous beneficial use within a consecutive five year window, the water right remains valid and is eligible for change.

Estimate of Water Use

The amount of water beneficially used in the TWRP was specified by the Court and/or Ecology as described above and documented in Attachments 2 through 8.

Trust Water Calculations

This section describes how the nonconsumptive and consumptive water use values were calculated to identify how much water will be transferred into the TWRP from trusting Bourne's portion of Court Claim No. 01863 for the purposes of mitigation and instream flow in the Teanaway and Yakima Rivers.

Ecology and Water Conservancy Boards use various estimation methods such as the Washington Irrigation Guide (WIG) to estimate water use. The updated WIG data (Peters, et al. 2013) 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 updated WIG uses the most current climate data and best available analytical methods to determine consumptive crop water use and irrigation water requirements, including new stations and new or emerging crops across the State. The monthly WIG data indicate that the updated Crop Irrigation Requirement (CIR) for clover – the surrogate crop used for timothy hay near Cle Elum area – is 2.00 ft./acre.

Subbasin No. 3 (Teanaway River) adjudicated water rights were confirmed for a period of use from May 1 through September 15. However, the updated WIG indicates an average growing season of May through October for clover. It is therefore recognized that a small portion of beneficial use may occur outside the authorized period of use during an average irrigation season.

Using Ecology's Guidance Document, GUID-1210, Determining Irrigation Efficiency and Consumptive Use, Table 1, average application efficiency (Ea) for flood irrigation methods is specified at 50 percent¹. The total irrigation demand (TIR) was then calculated based on the monthly CIR for clover in the Cle Elum area (TIR = CIR/Ea). The sum of the monthly TIR multiplied by the number of pasture acres fallowed (9.80 acres) is the total quantity of water available to transfer into the TWRP. The monthly TIR (in acre ft.) is then converted to an instantaneous rate (in cfs) by dividing by the number of days in each respective month, then by the conversion factor 1.9834 acre ft./day/cfs.

¹ Application efficiency (Ea) can also be calculated by dividing the annual CIR (2.00 feet/acre) by the court confirmed water duty (4.0 feet/acre), resulting in 50 percent.

Based on this analysis, the TIR for the 9.80 acre place of use is summarized in Tables 2 below.

Table 2 – Total Irrigation Requirement (TIR)

	Unit	May	Jun	Jul	Aug	Sep	Oct	Total
Qa	acre ft.	5.25	8.53	11.15	8.53	4.76	0.98	39.20
Average Qi	cfs	0.085	0.143	0.181	0.139	0.080	0.016	-

Monthly consumptive use (CU) for irrigation was then calculated by multiplying the TIR by the specified %CU and the area to be fallowed (CU = TIR x %CU). The average %CU for flood irrigation is specified at 55%. Total consumptive use is the sum of the monthly consumptive use.

Based on this analysis, Table 3 summarizes the amount of consumptive use from fallowing of 9.80 acres for mitigation and instream flows that will be transferred to the TWRP.

Table 3 – Consumptive Use (Secondary Reach)

	Unit	May	Jun	Jul	Aug	Sep	Oct	Total
Qa	acre ft.	2.88	4.67	6.11	4.67	2.61	0.54	21.48
Average Qi	cfs	0.047	0.079	0.099	0.076	0.044	0.009	-

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.

The primary reach begins from the authorized point of diversion on the North Fork Teanaway River being approximately 525 feet north and 250 feet west from the east quarter corner of Section 6, being within the SE1/4NE1/4 of Section 6, T. 20 N, R. 16 E.W.M. The portion of Court Claim 01863 being proposed for transfer into the TWRP will benefit the primary reach for the times and purposes to which they were prescribed as presented in Table 2 above.

Previous investigations by Ecology (No. CS4-01863CTCL@5) estimated that returns flows from historic irrigation returned to the Teanaway River approximately 5,000 feet downstream of the original point of diversion. It is assumed that no irrigation water, either surface or shallow groundwater, from the subject place of use returns back to the Teanaway River upstream of this point. Therefore, the secondary reach includes the Teanaway and Yakima Rivers beginning at a point approximately 250 feet north and 2,150 feet west of the southeast corner of Section 5, located within the SW1/4SE1/4 of Section 5, T. 20 N., R. 16 E.W.M. and extends to the Columbia River.

The consumptive use associated Court Claim No. 01863 is eligible for protection as a trust water right in the secondary reach as described in Table 3 above. The consumptive portion of the trust water right may serve as mitigation for out of priority water use from surface water sources and/or sources in continuity with the Yakima River. Any new appropriations 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

Court Claim No. 01863 is being changed to instream flow and mitigation for out of priority water use. These quantities will be managed by Ecology as outlined in the provisions below, unless superseded by a Trust Water Right Agreement with Ecology.

Impairment Considerations

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.

The authorized Teanaway River point of diversion is shared with five 1886 and 1887 priority date water rights originally confirm under Court Claim No. 01863 to Norman J. and Shirley B. Cromarty, totaling 1.86 cfs and 372 acre ft./year for the irrigation of 93 acres. Much of this water has been placed in trust, and the point of diversion is no longer active. In addition, no water right on the Teanaway River will be negatively affected by increased instream flows during the irrigation season. Therefore, based on these considerations, transferring Court Claim No. 01863 to trust is not expected to impair other water rights.

The information or conclusions in this section were authored and/or developed by Board Members Gregg Hall, Lenny Morrison, and Chad Bala, with assistance from Tyson D. Carlson, Aspect Consulting.

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

Tentative determination (validity and extent of the right)

Based on the information above, Court Claim No. 01863 represent a valid water right for 0.1960 cfs and 39.20 acre ft./year for the irrigation of 9.80 acres, May 1 through September 15.

Relinquishment or abandonment concerns

Since signing of the CFO, the water right has been put to beneficial use through near continuous lease and/or donation to the TWRP, except for a brief period during the 2002, 2004, and 2010 irrigation seasons. The Board finds that the right is in good standing and is eligible for change.

Consideration of comments and protests

No protests were received during the 30-day public comment period. No comments were made at the public meeting held by the Board on July 15, 2014. In addition, no comments were received following the Board notification to interested parties.

Impairment

Approval of this water right change will not enlarge the water right or impair existing water rights.

Public Interest

Pursuant to RCW 90.42.040(4)(a) exercise of a trust water right may be authorized only if the department first determines that the public interest will not be impaired. The Board and Ecology consider how the change in purpose and acceptance into the Trust Water Right Program will affect an array of factors such as wildlife habitat, recreation, water quality, and human health. The environmental amenities and values associated with the area were taken into account during the consideration of this change application. Consideration of these factors allows the author to reach the conclusion that this transfer will not impair the public interest.

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

Based on the above investigation and conclusions, the Board recommends that the request for change to Court Claim No. 01863 be approved in the amounts listed below and subject to the provisions established by the Department of Ecology for the management of the trust water.

Primary Reach

0.1960 cubic feet per second, 39.20 acre ft./year for the purpose of **instream flow** and **mitigation** for out of priority uses from May 1 through September 15.

The primary reach begins from the authorized point of diversion on the North Fork Teanaway River being approximately 525 feet north and 250 feet west from the east quarter corner of Section 6, being within the SE1/4NE1/4 of Section 6, T. 20 N, R. 16 E.W.M.

Secondary Reach

	Unit	May	Jun	Jul	Aug	Sep	Oct	Total
Qa	acre ft.	2.88	4.67	6.11	4.67	2.61	0.54	21.48
Average Qi	cfs	0.047	0.079	0.099	0.076	0.044	0.009	-

The secondary reach includes the Teanaway and Yakima Rivers beginning at a point approximately 250 feet north and 2,150 feet west of the southeast corner of Section 5, located within the SW1/4SE1/4 of Section 5, T. 20 N., R. 16 E.W.M. and extends to the Columbia River.

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

Conditions and limitations

The temporary donation authorized by extension letter signed January 10, 2014 will be terminated and the trusted water will be managed, unless superseded, by Ecology and made available to the Bournes under the following provisions:

Trust Water Agreement:

1. **Deed Conveyance:** Before any water right authorization is granted that relies on these trust water quantities as mitigation, the Deed shall be conveyed from the Bournes (or successor in interest) to Ecology as trustee of the water right.
2. **Deed Reversion:** Any quantities authorized herein that have not been obligated as mitigation for another water right authorization shall be eligible for reversion of the Deed to Bournes (or successor in interest) upon 90 days notice.
3. **Water Banking:** The Bournes retain the right to assign water conveyed to trust as mitigation for new uses.

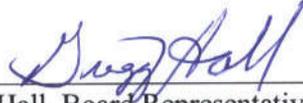
The real property to which the Bourne's portion of Court Claim No. 01863 is appurtenant shall remain fallow unless authorized by a future water right decision.

The information or conclusions in this section were authored and/or developed by Board Members Gregg Hall, Lenny Morrison, and Chad Bala, with assistance from Tyson D. Carlson, 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

This 20th day of January, 2015



Gregg Hall, Board Representative
Kittitas Water Conservancy Board

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