DEPT OF ECOLOGY Received JAN 13 2012 CENTRAL REGION OFFICE

DEPARTMENT OF ECOLOGY State of Washington

STATE OF WASHINGTON

APPLICATION FOR CHANGE/TRANSFER OF WATER RIGHT

For filing with the Department of Ecology or with County Conservancy Boards

A NON-REFUNDABLE MINIMUM FEE OF $50.00 PAYABLE TO THE DEPARTMENT OF ECOLOGY MUST ACCOMPANY THIS APPLICATION

(Check all that apply.)

- ☐ Change purpose(s) of use
- ☐ Add purpose(s) of use
- ☐ Change point(s) of diversion/withdrawal
- ☒ Add point(s) of diversion/withdrawal
- ☐ Change/transfer place of use
- ☐ Other (i.e. consolidation, intertie, trust water)

Explain:

FOR OFFICE USE ONLY OKJW

CHANGE No. CS4-67009J **WRIA** 49

DATE ACCEPTED 03/09/12 **BY** S

FEE $ ✓ **REC'D** 01/13/2012

CHECK No. ✓

ECY Coding: 001-002-WR10285-000011

SEPA: ☐ **Exempt** ☐ **Not exempt**

*****IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS (PLEASE PRINT OR TYPE CLEARLY)*****

1. Applicant Information:

APPLICANT/BUSINESS NAME	PHONE NO:	FAX NO.
WA Department of Fish & Wildlife	Terra Hegy (360) 902-2608	(360) 902-2946
ADDRESS: 600 Capital Way N.		
CITY: Olympia	STATE: WA	ZIP CODE: 98501-1091

CONTACT NAME (IF DIFFERENT FROM ABOVE)	PHONE NO.	FAX NO.
Dale Swedberg, Chiliwist Creek Wildlife Area Manager	(509) 223-3358	
ADDRESS: 1680 Sinlahekin Rd., P O Box C		
CITY: Loomis	STATE: WA	ZIP CODE: 98827

LEGAL LAND OWNER or PART OWNER NAME OF PROPOSED PLACE OF USE	PHONE NO.	FAX NO.
WA Dept of Fish & Wildlife	(360) 902-8149	()
ADDRESS: c/o Real Estate, Lands Program, 600 Capital Way N.		
CITY: Olympia	STATE: WA	ZIP CODE: 98501-1091

2. Water Right Information:

WATER RIGHT OR CLAIM NUMBER	RECORDED NAME(S)
S4-67009JWRIS	John F. & Opal McGimpsey

DO YOU OWN THE RIGHT TO BE CHANGED? ☒ YES ☐ NO

IF NO, PROVIDE OWNER(S) NAME and ADDRESS:

HAS THE WATER BEEN PUT TO BENEFICIAL USE IN THE LAST FIVE (5) YEARS? ☒ YES ☐ NO

Please attach copies of any documentation that demonstrates consistent, historical use of water since the right was established. Also, if you have a water system plan or conservation plan, please include a copy with your application. SEE ATTACHED NARRATIVE ON HISTORY OF WATER USE

S4-67009JWRIS CHILIWIST CR ADJ CERT NO. 9

FOR OFFICE USE ONLY

APP. NO.____ PERMIT NO. ____ CERT. NO.____ CERT. OF CHANGE NO. CS4-67009 J

3. Point(s) of Diversion/Withdrawal:

A. Existing

SOURCE	NO.	¼	¼	SEC.	TWP.	RGE.	PARCEL #	WELL TAG #
Chiliwist Creek-upper pond	1	NE	SW	13	32	24E	3224130014	
Chiliwist Cr- lower pond	2	NW	SE	13	32	24E	3224130014	

B. Proposed

SOURCE	NO.	¼	¼	SEC.	TWP.	RGE.	PARCEL #	WELL TAG #
Chiliwist Creek Upper Pond	1	NE	SW	13	32	24E	3224130014	
Chiliwist Creek – lower pond	2	NW	SE	13	32	24E	3224130014	
Well (proposed)	3	NE	SW	13	32	24E	3224130014	

DO YOU OWN THE EXISTING AND PROPOSED POINT(S) OF DIVERSION/WITHDRAWAL?

EXISTING: ☒ YES ☐ NO PROPOSED: ☒ YES ☐ NO – IF NO, PROVIDE OWNER(S) NAME:

Please include copies of all water well reports involved with this proposal. Also, if you know the distances from the nearest section corner to the above point(s) of diversion/withdrawal, please include that information in Item No. 6 (remarks) or as an attachment.

4. Purpose of Use: same

A. Existing

PURPOSE OF USE	GPM or CFS	ACRE-FT/YR	PERIOD OF USE
67009: IR, ST, DS	1.22 cfs	276	April 1- October 1

B. Proposed

PURPOSE OF USE	GPM or CFS	ACRE-FT/YR	PERIOD OF USE
67009: IR, ST, DS	1.22 cfs	276	April 1-October 1

5. Place of Use:

A. Existing

LEGAL DESCRIPTION OF LANDS WHERE WATER IS PRESENTLY USED:

S 1/2NE, NE SW, SE of Sec. 13, T32N, R24E

¼	¼	SEC.	TWP.	RGE.	COUNTY	PARCEL #	# OF ACRES
		13	32 N	24E	Okanogan	3224130014 3225181009 3224130012 3225181002	69

DO YOU OWN ALL THE LANDS IN THE EXISTING PLACE OF USE? ☒ YES ☐ NO – IF NO, PROVIDE OWNER(S) NAME:

B. Proposed

LEGAL DESCRIPTION OF LANDS WHERE NEW USE IS PROPOSED:

S 1/2NE, NE SW, SE of Sec. 13, T32N, R24E

¼	¼	SEC.	TWP.	RGE.	COUNTY	PARCEL #	# OF ACRES
		13	32N	24E	Okanogan	3224130014 3225181009 3224130012 3225181002	69

DO YOU OWN ALL THE LANDS IN THE PROPOSED PLACE OF USE? ☒ YES ☐ NO – IF NO, PROVIDE OWNER(S) NAME:

Attach a detailed map of your proposed change/transfer. The map should show existing and proposed point(s) of diversion/withdrawal, place of use and any other features involved with this application. If platted property, please include a certified copy of the plat map. BOTH ATTACHED

Are there any ADDITIONAL WATER rights OR CLAIMS RELATED to the same property as the ONE PROPOSED FOR CHANGE/TRANSFER?
☒ YES ☐ NO – IF YES, PROVIDE THE WATER RIGHT/CLAIM NUMBER(S): G4-01209CWRIS

6. Remarks and Other Relevant Information:

See attached **Application Supplemental Information** and cover letter.

Points of diversion:

1 Upper pond: 1900'N and 2500' E of SW corner of sec. 13.
2 Lower pond: 1750'N and 2475' W of SE corner of sec. 13.
3 (proposed) approx. 2100' N. and 2300'E of SW corner of sec. 13.

IF FOR SEASONAL OR TEMPORARY, START DATE ___/___/_____ END DATE ___/___/_____

Certain applications may incur a Real Estate Excise Tax liability for the seller of the water rights. The Department of Revenue has requested notification of potential taxable water right related actions and therefore may be provided with a copy of this request.

Please contact the State Department of Revenue for further information. The phone number is (360) 570-3265. The address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia, WA 98504-7477.

7. Signatures:

I certify that the information above is true and accurate to the best of my knowledge. I understand that in order to process my application, I am hereby granting staff from the Department of Ecology or the County Conservancy Board access to the above site(s) for inspection and monitoring purposes. If assisted in the preparation of the above application, I understand that all responsibility for the accuracy of the information rests with me.

	Jennifer Quan	
1/9/12		
(Applicant Signature)	***(Applicant Signature)***	***(Date)***
	Jennifer Quan	
1/9/12		
(Water Right Holder)	***(Water Right Holder)***	***(Date)***
	Jennifer Quan	
1/9/12		
(Land Owner(s) of Proposed Place of Use)	***(Land Owner(s) of Proposed Place of Use)***	***(Date)***

IMPORTANT! APPLICATION FILING INFORMATION IS PROVIDED ON THE NEXT PAGE.

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

☐ APPLICATION FEE NOT ENCLOSED ☐ MAP NOT INCLUDED or INCOMPLETE

☐ ADDITIONAL SIGNATURES REQUIRED ☐ SECTION _____ IS INCOMPLETE

☐ OTHER/EXPLANATION:_____

STAFF: _____ ***DATE:*** _____/_____/_____

Application Supplemental Information

Washington Department of Game acquired the property on Chiliwist Creek in 1977. Crops grown on the Wildlife Area benefit wildlife in the following ways: The irrigated crops provide a concentrated food source for deer, especially during the drier parts of the season. The irrigated crops, alfalfa or alfalfa-grass mix, also attract high concentrations of insects during brood rearing season so adult birds catching and carrying food to the nest do not have to travel far, and young gallinaceous birds do not have to travel long distances to meet dietary needs.

This application is for a well in the vicinity of the Upper Pond point of diversion to add to the surface water diversions currently in use. The use would not change; irrigation would continue to benefit wildlife. In addition, it will benefit aquatic life associated with Chiliwist Creek since the surface water flow would not be periodically reduced or stopped due to pumping for irrigation. Because of this benefit to the aquatic and terrestrial environments, we request this application receive priority processing under the Hillis Rule.

History of Irrigation and Infrastructure Deterioration

For 27 years (1977-2004) Paul Stout and Stan Stout leased the property as sharecroppers. Irrigation was done using hand lines. The irrigation practices in terms of rotation and number of sprinklers are available if Ecology needs to see these. Exhibit 1 shows the fields irrigated from the PODs. The blue circles show the three PODs, from left to right, the upper pond, the lower pond, and existing well.

Stout asserted to Dale Swedberg in 2009, manager of Chiliwist Wildlife Area, that the last year he irrigated was 2004. He also stated that he had used the full amount of the water right in order to irrigate 80 acres. In March 2005, Stout filed a tort claim against the state, thus, that year there was no irrigation due to pending litigation. When the case was settled late in 2005, Stout opted to discontinue the agricultural lease. The intent to continue the irrigated agricultural use was demonstrated by the fact that an ad was placed seeking a new sharecropper in 2005 but there was no response to the advertisement. Efforts to find an interested lessee continued through 2006. In 2007 an individual was found who agreed to take over the lease and initiate irrigation. In addition in 2007, two wheel lines were picked up in the Methow and delivered to the Chiliwist and assembled, but the sharecropper failed to initiate use of the wheel-lines despite encouragement to do so. In the spring of 2008, a new party indicated strong interest. In the fall, a new sharecropping arrangement was made with these individuals who demonstrated initiative in trying to get the irrigation operational.

They discovered over 800 feet of mainline that needed replacement before any irrigation could be done. The mainline was replaced at no small expense. Additionally, they found that the pump, when taken in for overhaul, for the Upper Pond was beyond repair. A replacement pump was acquired and installed. Then, another mainline blew out, causing additional expenses. In 2009, it was discovered that the upper and lower ponds, in fact, needed to be larger impoundments due to the fact that Chiliwist Creek surface flows were inadequate to meet irrigation needs. Despite best efforts to make the new sharecropping arrangement work, the

sharecroppers sued WDFW, thus putting the sharecropping lease in limbo until the suit was settled in mid- to late 2010.

After the 2009 debacle, the Wildlife Area manager realized that the upper pond would need to be rehabilitated to fully use the surface water right. He discovered this by analysis of aerial photos showing various sizes of the two ponds and surmised the upper pond had filled in substantially. In 2010, it was discovered that the impoundment dam was eroding and that it had to be repaired. In late 2010, the manager began negotiating with a new lessee to irrigate all fields. The lease was signed and the new sharecropper began irrigating from the well which was supplemental to the two surface water rights.

At the same time, the manager began investigating dredging of the upper pond in order to make it more fully functional. This work was completed in 2011 after funding and permits were obtained. However, the dredging is far from sufficient to meet irrigation needs.

Detail of Water Right Certificates appurtenant to this property

There are 3 certificates pertaining to water use on the Chiliwist Wildlife Area. Certificate S4-67009JWRIS (the subject of this application) and certificate S4-67011JWRIS are surface water rights in the original names of Paul and Eula Stout with priority dates of 1895 and 1955. Both became adjudicated certificates in 1975 in the names of John F. and Opal McGimpsey. Certificate S4-67009JWRIS allows for irrigation of 69 acres at 276 AF per year. Certificate S4-67011JWRIS allows for irrigation of 91 acres at 354 AF per year.

Both surface water certificates have the same two points of diversion, the upper pond, which collects water from Chiliwist Creek; and the lower pond, which captures overflow from the upper pond.

Certificate S4-67009JWRIS has a Class II priority and another party has a class II certificate as well (S4-67005JWRIS). The Chiliwist adjudication decree requires pro-rating these two rights, stating "in the case of failure of the supply of water to satisfy completely the total amount awarded to a given class, the amount remaining for said class shall be apportioned to the lands in said class in proportion to the amount of water allotted to each tract of land in said class respectively, subject to use by rotation."

Certificate, S4-67011JWRIS, is a Class IX. In addition, a well near the lower pond operates under groundwater certificate G4- 01209CWRIS under the name Stout with a priority date of Oct 11, 1966, allows 160 gpm Qi, 100 AF, to irrigate 44 acres. This well is used as a supplement to, rather than in addition to, the other two PODs. Thus, any water drawn from the well must be subtracted from the allowable amount pertaining to the other two points of diversion.

The application under consideration here is to add a point of diversion as a groundwater well.

Insufficient Water Available to WDFW

It has been suspected for several years that upstream users were withdrawing water from Chiliwist Creek that should have come to WDFW land due to the fact that on several occasions the sharecropper had reduced the number of sprinklers he was using to irrigate by 5 sprinklers (out of 20 to 30 or so). Ecology watermaster for this basin, Susan Burgdorff-Beery, looked into this complaint and determined that there was not excessive use by the upstream Class II user. In addition, complaints made to Ecology in 1994 were found to be without merit according to an Ecology letter March 11, 1994, and furthermore, that stream flows that are at times insufficient to satisfy existing adjudicated water rights due entirely to natural conditions.

Most of Okanogan County has experienced drought conditions for the last 10 years. WDFW analysis of a local river with few diversions, the Similkameen River near Nighthawk, showed that for 4 out of the last 10 years, stream flows failed to meet or exceed 75% of the mean monthly discharge for most of the irrigation season (May to October). 75% of the mean monthly discharge was the criteria used in a statewide drought declaration that the Governor made in 2001 and 2005. According to WDFW's analysis, the years that met drought criteria were 2001, 2003, 2005, and 2006.Therefore, in 2005 and 2006, the shortage of precipitation and existence of low stream flow meets, in our opinion, the exception for use spelled out in RCW 90.14.140 regarding sufficient cause for non-use, i. e. "Drought, or other unavailability of water". Other non-use due to litigation and infrastructure has been discussed above and applies for the years 2007 and 2010.

Water Flows in Chiliwist Creek

WDFW and Ecology scientists took flow measurements on Chiliwist Creek above the upper pond. The results were as follows:

April 7, 2011 1.47 cfs
May 26, 2011 1.48 cfs
July 20, 2011 1.266 cfs
Sept. 28, 2011 1.44 cfs

The fact that this, a "wet" year, creek flows were barely sufficient to satisfy the Class II water right of 1.22 cfs, and not the Class IX of 1.62 cfs at all, further reinforces the idea that surface water in the creek is not consistently available. The creek likely goes underground above the Chiliwist diversions since staff from WDFW and Ecology observed significantly higher spring flows than flows where measurements were taken on the Wildlife Area (pers.com. Terra Hegy, Instream Flow Biologist). Susan Burgdorff-Beery stated she has never noticed a shortage of water in the creek at the highway bridge downstream and believes the creek must resurface somewhere below WDFW property. This leads to WDFW's request for a well that can be used in lieu of the upper irrigation pond to fulfill the agency's water rights.

Future Water Needs

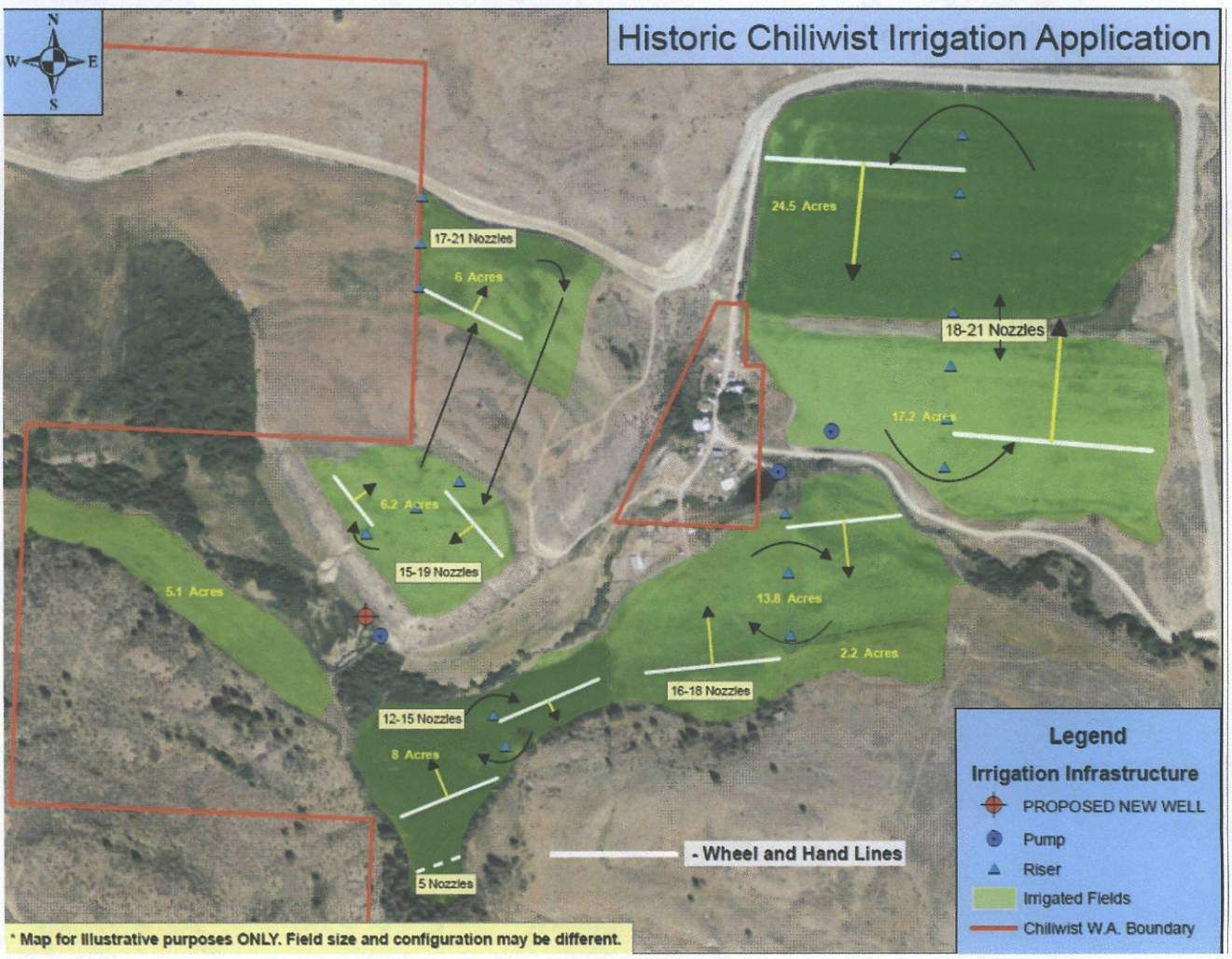
In 2011, a pivot irrigation system was installed which will increase water use efficiency by 20%. Next year the lessee plans to put in one more pivot irrigation

system, thus there should be additional water savings – approx 20% over wheel line water use. Plans are to put saved water into trust. The Colville tribe favors the project. WDFW intends to put meters on all pumps as soon as funding allows. To date the manager has been calculating use by electric records and wants a more accurate measurement. In addition, a ramp flume and data recorder will be installed in the creek above the upper pond for a more accurate idea of water flow in the creek.

The applicant proposes no increase in quantity withdrawn; surface water withdrawals will be less.

WDFW requests that a preliminary permit be issued in order that the agency may proceed to hire a licensed hydrogeologist to do a study and meet Ecology's requirements (i.e., the well will not impair other users, it will draw from same source of water, etc). Once the study is done and a permit approved, funding is available for the agency to proceed to drill the well.

Exhibit 1



Red circle = proposed new point of diversion
Blue circles = current points of diversion
Red line = border of WDFW lands

Exhibit 2

	Use in Acre Feet of Chiliwist Pumps					
	Both ponds fall under adjudicated certificates G4-67009JWRIS & G4-67011JWRIS				groundwater well under G4-01209CWRIS	
Year	Upper pond	Lower Pond	Total AF	if no use, why	Existing well	TOTAL ACRE FEET
1997	47.7	129.5	177.2			354.3
1998	65.1	126.1	191.2			382.4
1999	63.5	152.4	216.0			432.0
2000	94.7	136.4	231.1		110.1	572.3
2001	88.2	100.5	188.7		111.0	488.5
2002	95.5	109.3	204.8		113.4	523.1
2003	85.6	90.6	176.3		152.0	504.6
2004	74.0	92.1	166.1		167.9	500.0
2005	0	0	0	drought & litigation	0.0	0.0
2006	0	0	0	drought	0	0.0
2007	0	0	0	non use by lessee	0.0	0.0
2008	0	0	0	infrastructure problems	0.8	0.8
2009	24.7	0	0	not enough surface water available; litigation	78.0	102.7
2010	0.0	0.0	0.0		42.9	42.9
2011					yes	0.0

Exhibit 3

(map of parcels involved with this application)