File NR CS4-629CTCL
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DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Change Place of Use
Add Purpose of Use
Add Point of Diversion

PRIORITY DATE
May 10, 1905[1]

WATER RIGHT NUMBER
CS4-629CTCL

APPLICANT ADDRESS
KENNEWICK IRRIGATION DISTRICT & THE UNITED STATES BUREAU OF RECLAMATION ON BEHALF OF KID
12 W KENNEWICK AVE
PO BOX 6900
KENNEWICK, WA 99336-0401

Total Quantity

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
732	CFS	213,017

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE ADDITIVE	WITHDRAWAL OR DIVERSION RATE NON-ADDITIVE	UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Irrigation	301		CFS	84,674		04/01 - 10/31
Power	431		CFS	128,343		04/01 - 10/31
Instream Flow*	9		CFS	3,570		04/01 - 10/31

REMARKS

Quantities for each purpose of use are limited by the existing Settlement Agreement Amendment and actual use will be reduced according to a future trust water right application to be made as a part of the Red Mountain project complementary to this authorization.

* Exercised only in non-prorationing years. Quantity used for instream flow purpose will be deducted from the total quantity used for irrigation and power generation purposes. See Investigator's Report section on Proposed Use for further details.

IRRIGATED ACRES

ADDITIVE	NON-ADDITIVE
20,201	

Source Limitations

SOURCE FACILITY/DEVICE	A|S	WITHDRAWAL OR DIVERSION RATE	ANNUAL QUANTITY (AF/YR)	PERIOD OF USE
YAKIMA RIVER - Prosser		Up to 732 cfs (Less any withdrawal at Kiona and less any water to Trust.	210,339	April 1 – October 31
YAKIMA RIVER - Kiona		Up to 14 cfs	2,678	April 1 – October 31

A|S: A=Alternate; S=Standby/Reserve

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Benton	Yakima River	Columbia River	37-Lower Yakima

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
YAKIMA RIVER	102841000004000		08N	24E.W.M.	02	N2NE	46.21336	-119.77398
YAKIMA RIVER	117973000002002		09N	27E.W.M.	17	SWSW	46.25865	-119.47190

Datum: NAD83

[1] This change authorization does not address or affect KID's 1891 priority water right. See CFO in *State v. Acquavella.*

FILE COPY

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

1. Chandler Pumping Plant – 2,450 feet west and 1,700 feet south, more or less, from the northeast corner of Section 17, being within the W ½ NW ¼ SW ¼ NE ¼ Section 17, T.9 N., R.26 E.W.M.
2. 20,201 acres within the boundaries of the Kennewick Irrigation District (KID) as they exist as of February 1, 2010.
3. When water is used for an instream purpose, place of use is described as the river reach below Prosser diversion dam to the confluence of the Yakima River with the Mc Nary pool at River Mile 335 of the Columbia River.

Proposed Works

The project will add a water diversion site for a portion of the existing 1905 Yakima River surface water right held by the Kennewick Irrigation District and the United States Bureau of Reclamation (USBR) on behalf of KID. This involves moving a portion of USBR/KID's diversion from Prosser Dam to a new Kiona pump station site, for up to 14 cfs; the deliveries into the KID Main Canal (Chandler Pump Station site) will be reduced from the 345 cfs (maximum) currently authorized by amounts withdrawn at Kiona.

With completion, the total allowed diversions will be 345 cfs, with no change to the maximum allowed diversion per the USBR/KID's Condition Final Order under the Acquavella, et al., adjudication.

A new diversion will be constructed on the Lower Yakima River at the Kiona pump station site for up to 14 cfs, 2,678 acre-feet per year, to irrigate up to 1,785 acres, all within the KID's greater Red Mountain area. Pumps will be built to current standards to comply with fish screening and other environmental regulations. New mainlines/pipe will be used for water distribution throughout the greater Red Mountain area.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
January 1, 2013	January 1, 2043	January 1, 2043

Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume (acre-feet)
What rate should be reported?	Annual Peak Rate of Withdrawal (cfs)

Provisions

USBR/KID must, within 90 days of this authorization, submit a finalized Trust Water Rights Application in the amounts listed in the amendment to the Settlement Agreement. If this period of time is inadequate, the USBR/KID must inform Ecology to arrange an extension of time.

Measurements, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.

Department of Fish and Wildlife Requirements
The intakes must be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. http://wdfw.wa.gov/about/regions/

Water Use Efficiency
The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

Proof of Appropriation
The water right holder must file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of this authorization. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

Schedule and Inspections
Department of Ecology personnel, upon presentation of proper credentials, will have access at reasonable times to the project location, and to inspect at reasonable times records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Real Estate Excise Tax
This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia, WA 98504-7477 Internet: http://dor.wa.gov/. E-mail: REETSP@DOR.WA.GOV.

Findings of Facts
Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated.

Therefore, I ORDER the requested change to place of use, point of diversion and purpose of use under Change Application No. CS4-629CTCL, subject to existing rights and the provisions specified above.

Signed in Yakima, Washington, this 3rd day of August 2012.

Derek I. Sandison, Director
Office of Columbia River

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima, WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

The name and mailing address of the appellant;
Name and address of the appellant's attorney, if any;
The name and address of the Department of Ecology;
The specific application number of the decision being appealed;
A copy of the decision;
A brief explanation of Ecology's decision;
Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
Facts that demonstrate the appellant is entitled to obtain judicial review;
The appellant's reasons for believing that relief should be granted; and
A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed.** The appeal must be filed in the same manner as described above.

INVESTIGATOR'S REPORT
Trevor Hutton, Department of Ecology
Water Right Control Number CS4-629CTCL

BACKGROUND

The Kennewick Irrigation District (KID) is a local public agency of the State of Washington organized in 1917 and operated as a political entity of the State under the Revised Code of Washington Title 87. KID is one of several irrigation districts served by the United States Bureau of Reclamation's (USBR) Yakima Project. The Yakima Project extends for 175 miles on both sides of the Yakima River in south-central Washington using water from the Yakima River and five storage reservoirs located in and around the Cascade Mountain Range.

KID operates and maintains over 88 miles of canal from Chandler to Hover. Water is diverted from the Yakima River into the Main Canal at Chandler located approximately 11.5 miles southeast of Prosser. KID also delivers water around Badger Mountain via the Main Canal to the Badger East and Badger West Lateral Canals. KID operates and maintains over 150 pressurized service areas (commonly known as subdivisions) as well as two domestic water systems.

On October 22, 1990, KID applied for a right to use 82 cubic feet per second (cfs) or 18,548 acre-feet per year (af/yr) of water to irrigate 4,637 acres from March 15 to October 15 (application no. S4-30465). The water would be drawn from the Columbia River through an existing diversion and pump station. This water right application is pending.

Also in the mid-1990s, with the support of the USBR and the Department of Ecology (Ecology), KID began to assess the benefits and costs associated with relocating their existing point of diversion from Prosser Dam on the Yakima River to a pump station on the Columbia River, just downstream from the Yakima River confluence. The so-called "pump exchange" project would move the diversion of all or a portion of KID's water rights from the Yakima River to the Columbia River in order to improve in-stream flows in the lower 46 miles of the Yakima River. KID subsequently evaluated several alternatives for adding a point of diversion to the McNary pool but does not have an application pending at this time.

Since application No. S4-30465 was filed prior to the initiation of the "pump exchange" project, there are inconsistencies between the two proposals that cannot be reconciled at this time. The KID plan at the time of their 1990 application was to construct a pump station near the same location that is now being considered by the USBR for the pump exchange (Edison Street). KID's initial plan was to serve approximately 4,600 acres situated uphill from that location in and around the City of Kennewick. The Yakima River water rights held by USBR/KID could then be considered for a change of place of use within the District to serve the "extended lands" area using a pipeline installed from the 6.7 mile mark on the Main Canal to a delivery point approximately three miles north and east of the Main Canal. The "extended lands" lie directly south of Red Mountain and contain 6,300 acres currently classified as irrigable by the USBR.

In light of this history, the KID has proceeded to investigate near-term options to service existing and new lands within the district—prior to the approval of S4-30465. The current point of diversion change application submitted on October 29, 2010 represents further study by KID, Ecology, and others to meet the KID's near-term needs.

Description and Purpose of Proposed Change

The KID proposes to use the existing USBR/KID 1905 Yakima River water right adjudicated under a Conditional Final Order (CFO) as a part of the *Acquavella* adjudication, by adding a new point of diversion along the Lower Yakima River. The new point of diversion will allow the KID to divert up to 14 cfs and 2,678 acre-feet per year to irrigate 1,785 acres on Red Mountain. The proposal also includes adding an instream flow purpose to the right, with its associated place of use. The diversion of water at the new pump station will be accomplished under the terms and conditions of RCW 90.90, 90.42 (Trust Water), and the existing water code change/transfer provisions, 90.03.380--using the existing allowed water diversions under the USBR/KID's Yakima River CFO for Court Claim No. 629. In effect, the point of diversion is changing for a portion of the water right, but the total water diversion Qi and Qa remain the same.

The water right's beneficial use allowed for the proposed purposes and new points of diversion are based on the October 2001 CFO. Because KID has been prorated in 2001 and 2005, the Yakima County Superior Court's application of the drought exemption under RCW 90.14.140 for the *Acquavella* case would equally apply to the USBR/KID's CFO and use for this authorization. In 2010 Ecology recognized that there was a determined future development plan, which provides additional protection from relinquishment.

The proposed project allows for changes to the current point of diversion that will increase flows in the Lower Yakima River, while allowing KID to enhance the use of its existing water supplies. This important environmental and water resource management feature has been recognized by letter by WDFW and Ecology prior to engaging in application review.

Attributes of the Existing Water Right and Proposed Change

Attributes	Existing	Proposed
Name	Kennewick Irrigation District and the United States Bureau of Reclamation on behalf of KID	Kennewick Irrigation District and the United States Bureau of Reclamation on behalf of KID
Priority Date	May 10, 1905	May 10, 1905
Change Application Date		10/29/2010
Instantaneous Quantity (total)	732 cfs	732 cfs
Annual Quantity (total)	213, 017 af/yr	213,017 af/yr
Purpose of Use	Irrigation- 301 cfs & 84,674 afy	Irrigation- up to 301 cfs & 84,674 afy
	Power- 431 cfs & 128,343 afy	Power-up to 431 cfs & 128,343 afy
		Instream Flow- 9 cfs & 3,570 afy*
Period of Use	April 1 – October 31	April 1 – October 31
Place of Use	Chandler pump station and irrigation district boundary	Chandler pump station and irrigation district boundary with lower reach of Yakima river for instream flow purpose

Quantities for each purpose of use are limited by the existing Settlement Agreement amendment and actual use will be reduced according to a future trust water right application to be made as a part of the Red Mountain project complementary to this authorization.

*Exercised only in non-prorationing years. Quantity used for instream flow purpose will be deducted from the total quantity used for irrigation and power generation purposes. See Investigator's Report section on Proposed Use for further details.

Proposed Sources of Diversion

Source Name	Parcel	Twn	Rng	Sec	QQ Q	Latitude	Longitude
Yakima River - Existing	102841000004000	08N	24E.W.M.	02	N2 NE	46.21336	-119.77398
Yakima River - Kiona	117973000002002	09N	27E.W.M.	17	SW SW	46.25865	-119.47190

Legal Requirements for Proposed Change

Pre-trial order 12 (Acquavella)

The Pre-trial order 12 documents were submitted to the court for inclusion in the September 2011 monthly notice.

Public Notice

Notice of this application for change was published in the Tri-City Herald on 7/19/2011 and 7/26/2011. No comments were received.

The notice has been distributed to several state resources agencies, tribes, and interested parties. No comments have been received from these parties concerning the application.

State Environmental Policy Act (SEPA)

As co-lead agency for the SEPA review, KID prepared a SEPA checklist and subsequently issued a mitigated determination of non-significance (MDNS) on July 12, 2012. This environmental review covers the water right changes in flow/diversions resulting from the new point of diversion within the Lower Yakima River, as well as general construction impacts for the pump station site.

The water use under the proposed project is water budget neutral in nature, and the new diversion point provides additional flow in portions of the Lower Yakima River. There is no net increase to water use under this authorization relative to the existing CFO, and the flows for intervening reaches of the Yakima River are increased, due to the additional point of diversion.

Additionally, a component of the project includes the conversion of native shrub-steppe habitat to irrigated lands. Ecology has agreed to fund $500,000 of a proposed mitigation plan agreed to by the KID and the Washington Department of Fish and Wildlife (WDFW) in WDFW Interagency Agreement 11-1828.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a purpose of use may be added to a water right if the annual consumptive quantity is not increased. The annual consumptive quantity is the average of the two highest years within the most recent five-year period of ongoing beneficial use of the water right.

RCW 90.14.140(2)(c) states that a water right not used for more than 5 years is not relinquished if it is claimed for a determined future development to take place within 15 years of the last beneficial use of water under the water right. In addition, a series of court cases provide additional guidance in assessing such a plan. In order to be valid, a determined future development plan must satisfy a series of tests as established in *R.D. Merrill Company v. Pollution Control Hearings Board ; City of Union Gap and Ahtanum Ridge Business Park LLC v. Washington State Department of Ecology;* and *Protect Our Water v. Islanders for Responsible Water Management (Interveners),State of Washington, Department of Ecology, and King County Water District No. 19:*

- The project must be sufficiently complex as to require more than 5 years to complete;
- The plan must be determined and fixed within five years of the last beneficial use of the water;
- The party exercising the plan must have equity in the water right;

- The plan must remain fixed, and;
- Affirmative steps must be taken to implement the plan within 15 years.

Key Technical Issues

This investigation has included several issues related to adding a new point of diversion and instream flow changes.

First, the new application meets the criteria for priority processing under the "Hillis Rule" (WAC 173-152). The proposed project will not increase consumptive use and provides for significant environmental benefits by increasing flow regimes in the Lower Yakima River. This action has been reviewed by both Ecology and KID legal counsel. A letter in support of utilizing the Hillis rule has been received from WDFW and this application is being priority processed under the Hillis rule as noted in a Memorandum of Understanding (MOU) with WDFW, KID and USBR. This is in keeping with the priorities outlined in WAC 173-152-035.

Second, the authorization will rely on a portion of USBR/KID's existing CFO and Settlement Agreement Amendment. There will be no quantity increase to the existing water right. Under the change authorization, the total amount of water withdrawal from the existing right and proposed diversion changes cannot exceed the amount within the currently permitted water right.

A portion of Court Claim No. 629—for diversion at the new diversion point--will be placed into the State Trust Water Rights Program, and there will be no net increase to the amount of water diverted. There will be increased flows in the Yakima River below the Prosser Dam, consistent with the quantities outlined in the MOU and Settlement Agreement amendment.

Third, the KID and Ecology have jointly determined that the full amount of the existing (CFO) water right is eligible for changes to diversion points/flow regimes, and Trust Water protection, per the requirements of RCW 90.03.380, 90.14.140, 90.42, and 90.90. The quantities of water considered are based on the Conditional Final Order issued in October 2001, pursuant to the case law established in the Yakima-Tieton Irrigation District water right decision. While there have been more than five years of non-use for portions of the water right, the KID has been prorated in 2001 and 2005. This prorationing provides an exemption to relinquishment as there has been no continuous five year period of non-use without sufficient cause. Thus the beneficial use designation for the water right remains as it was determined in 2001.

Fourth, that portion of the water right allocated to a new point of diversion cannot increase the existing allowed Qi and Qa, but through the authorized change water duties per acre may be amended (the current water duty is 3.5 acre-feet per acre, per USBR contract provision). In this case, the water duty per acre for newly served lands may be reduced, allowing for some increases to the total irrigated acreage.

The water duty will be 1.5 acre feet per acre for lands served from the new Kiona pump station. Note that there are a small number of properties that have requested an increased water duty that will be constrained in total by the quantities and acreage limitations set forth in the Settlement Agreement Amendment.

Fifth, the existing pro-rationing stipulations for the existing CFO will remain in effect for the instream flow components per the new diversion sites. Flow targets at Prosser Dam will be increased based on the amount of water (flows) designated as instream flow or Trust Program water under the authorization and its complementary trust water right application.

And sixth, the change authorization cannot create impairment to other water right holders. The application has been reviewed regarding potential impairment, and it is concluded that impairment is not an issue likely to affect this authorization.

Moving the point of diversion downstream is consistent with the impairment standards under RCW 90.03.380; the change does not adversely affect existing rights in the Yakima River basin.

INVESTIGATION

This Report of Examination and Investigation was prepared by Ecology staff. Information was obtained from site inspections, technical reports and documents, research of KID and agency records, and discussions with the applicant's technical consultants and other interested parties; as well as discussions with staff from various state and federal agencies, Tribal staff, State Attorney General's office staff, and KID's legal counsel.

History of Water Use

Extent and Validity

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights. The Washington State Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of the extent and validity of the claim or right[2]. This is necessary to establish whether the claim or right is eligible for change.

KID and Reclamation were party to the *Acquavella* proceedings under Court Claim No. 629. In 2001, the CFO was issued to the United States of America for the use and benefit of the Kennewick Division of the Yakima Project, KID and their water users. The CFO established and confirmed the extent of the water right as follows:

- The total quantity applied to beneficial use is 782 cfs and 231,017 ac-ft, described more fully as:
    - 18,000 ac-ft with an August 6, 1891 priority date, of which 15,600 ac-ft to 18,000 ac-ft may be diverted at the KID Main Canal headworks and up to 2400 ac-ft may be diverted at Wanawish Dam.
    - 213,017 ac-ft with a May 10, 1905 priority date, of which 84,674 ac-ft is to be measured at the KID Main Canal headworks and 128,343 ac-ft to be calculated from 2 hydraulic pumps at the Chandler pumping plant.
    - 345 cfs to be measured at the KID Main Canal headworks, 431 cfs calculated from the 2 hydraulic pumps at the Chandler pumping plant and 6 cfs diverted at Wanawish Dam.
- 20,201 acres authorized to be irrigated from April 1 to October 31 by a total of 102,674 ac-ft.

In order to tentatively determine the extent and validity of Water Right S4-629CTCL in 2011, Ecology considered whether KID and Reclamation's use of water since 2001 when the CFO issued and the present were subject to any five year period of unexcused nonuse during which relinquishment could have occurred.

Investigation

For the purpose of Ecology's tentative determination of the extent and validity of Water Right S4-629CTCL, it is unnecessary to assess KID's historical use of the water right from 2001 to the present in light of the applicability of certain exceptions to relinquishment, discussed below. The perfection of Water Right S4-629CTCL was ascertained by the superior court in the *Acquavella* adjudication, as

[2] See *Okanogan Wilderness League v. Town of Twisp* (1997), *R.D. Merrill v. PCHB* (1999), and *Public Utility District No. 1 of Pend Oreille County v. Ecology* (2002).

confirmed in the CFO for USBR/KID. Thus, it is only necessary for Ecology to determine whether there could possibly have been partial relinquishment of Water Right S4-629CTCL, as confirmed in the CFO, from 2001 to the present.

Relinquishment

Ecology addressed possible relinquishment of Water Right S4-629CTCL under RCW 90.14.160. KID, Reclamation and Ecology do not agree on whether or how relinquishment applies to the subject KID water right, which is held by Reclamation for the benefit of KID and KID's water users. However, those issues are immaterial and need not be decided herein because Ecology concludes that no portion of KID's right could have been relinquished as a result of the applicability of certain statutory exceptions to relinquishment. In the Yakima Basin, major droughts occurred in 2001 and 2005 that prorated KID's water use. This reduced the amount of water that KID could exercise under its water rights. RCW 90.14.140(1)(a) recognizes drought as a sufficient cause for nonuse. This excuses any nonuse by KID prior to 2006.

Further, KID established, no later than in 2010, a determined future development (DFD) to make infrastructure improvements and changes to its water rights to serve 20,201 acres with greater reliability. Under RCW 90.14.140(2)(c), nonuse of a water right is excused from relinquishment if subject to a DFD. Several court cases have clarified the DFD relinquishment exemption (e.g. *R.D. Merrill v. PCHB*, 1999). DFD criteria are described in Ecology's Policy 1280, summarized below for applicability to KID's water right.

- *The DFD must be established by an equity interest holder in the water right.* KID established the DFD for S4-629CTCL.
- *The scope of the DFD must require more than 5 years to complete.* The scope of the DFD includes construction of a new pump station at Red Mountain which is the subject of this change application, efficiency improvements which are the subject of KID's 2009 Water Conservation Plan, annexation of new lands and transfer of district shares to serve those lands, filing of an application for new water rights from the Columbia River which will be used in part to maximize irrigation water delivery during droughts to the 20,201 acres currently served by KID.
- *The water right holder must have a firm definitive plan.* KID has progressed past the feasibility stage into active implementation of the plan. An MOU and Settlement Agreement have been signed by key stakeholders and change application CS4-629CTCL was filed for the Red Mountain pump project. KID applied for and received funding for a Water Conservation Plan, finalized the plan on April 7, 2009, and is actively budgeting for capital improvements to improve reliability and continue service to 20,201 acres. KID is coordinating annexations of new lands. KID is coordinating with the Office of Columbia River to develop water supply for the existing 82 cfs application filed 1990. KID has created a Local Improvement District to fund the project and has hired an engineering firm to design the irrigation system.
- *The plan must be fixed within 5 years of the last date of nonuse of water.* KID fixed its DFD no later than 2010, within five years of the last date of reduced water use. Based on this evaluation, Ecology concludes that there is no period of 5 years for which any nonuse of water would not be excused by one or more exemptions from or exceptions to relinquishment.[3] Therefore, the extent and validity of water right S4-629CTCL is as confirmed and stated in the 2001 CFO.

[3] KID and Reclamation have asserted that other exceptions to relinquishment are applicable to excuse any nonuse of water that may have occurred from 2001 to the present. Since Ecology has determined that the exceptions under RCW 90.14.140(1)(a) and RCW 90.14.140(2)(c) are applicable to excuse any nonuse, this ROE is not addressing the possible applicability of any other relinquishment exceptions.

Proposed Use

The project will add a water diversion site for a portion of USBR/KID's existing 1905 Yakima River surface water right[4]. This involves moving a portion of USBR/KID's diversion from Prosser Dam to a new Kiona pump station site, for up to 14 cfs. The deliveries into the KID Main Canal (Chandler Pump Station site) will be reduced from the 345 cfs (maximum) currently authorized by whatever flow rate is diverted at Kiona. With completion, the total allowed diversions will be 345 cfs, with no change to the maximum allowed diversion per KID's CFO under the *Acquavella* adjudication Court Claim No. 629.

Due to the disparity between water duties currently authorized in the district (3.5 acre-feet per acre)and the water needs for the Red Mountain lands to be put into production under this authorization (1.5 acre-feet per acre), a portion of the existing right is being changed to the purpose of instream flow as 'crop differential water'. While not expressly placed into the State Trust Water Rights Program, this water will serve to enhance stream flows in non-prorationing years. During drought years, this water will be utilized by the district to offset some of the effects of prorationing.

A new diversion will be constructed on the Lower Yakima River at the Kiona pump station site for up to 14 cfs, 2,678 acre-ft., to irrigate up to 1,785 acres, all within the greater Red Mountain area. Pumps will be built to current standards to comply with fish screening and other environmental regulations. New mainlines/pipe will be used for water distribution throughout the greater Red Mountain area.

Measuring and Reporting Water Use

RCW 90.03.360 requires that the owner of any water diversion maintain substantial controlling works and a measuring device. It must be constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Technical requirements for the measuring and reporting of water use are described in WAC 173-173. This decision contains provisions requiring the measuring and reporting of the quantities of water withdrawn or diverted.

Other Rights Appurtenant to the Place of Use

With a large place of use located in a heavily agricultural area, it is reasonable to expect a large number of water rights in the immediate vicinity. There are scores of other water rights that serve lands within and surrounding the district boundary. However, KID assesses and tracks the customers within their place of use and therefore allows KID a direct control on the fate of their water. As such, there is no indication of any direct relationship between adjacent water rights and this application.

Other applications and water rights are not likely to be directly, or indirectly, adversely affected by the proposed project.

Hydrologic Evaluation

The application as proposed is consistent with beneficial use and return flow considerations contained in RCW 90.03.380 and other applicable statutes. The project will not result in an increase to consumptive use, and will allow water to remain in the lower Yakima River in the reach between the current and proposed diversion points. More specifically, the proposed project is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through modifications to existing water rights, and to provide greater operational control to water managers.

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[4] This change authorization does not address or affect KID's 1891 priority water right. See CFO in *State v. Acquavella.*

Impairment Considerations

The applicant's technical information on water use has been reviewed within the same body of water for management purposes and potential impairment.

The project will be beneficial in the conservation and management of water resources from existing practices for the following reasons: 1) there will be no increase in diversion on an annual/seasonal basis after the project development, compared to existing diversions; and 2) better controls and monitoring on the quantity of water pumped will help ensure that the authorized quantity is not exceeded, as required under a metering and development plan.

The KID has published public notice of the proposed action in accordance with Ecology guidelines and reviewed any potential technical issues concerning impairment. Given the fact that no increase in water diverted from the existing surface water source will occur relative to that authorized by the CFO and allowed for beneficial use, there is no reason to expect any impairment to other water sources, consistent with the conditions and provisions provided under the existing water right.

Public Interest Considerations

Ecology finds that the proposal is consistent with policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through modification to existing water rights, to provide greater operational control to water managers, and to ensure no impairment exists.

The proposed project does provide for a continuation and expansion of the existing beneficial use as stated within USBR/KID's existing water right, increasing the economic benefits to the state and local area by allowing for continued use and development of irrigated lands. The development is taking place in the Red Mountain land-use management area of Benton County.

The proposed changes are consistent with the public interest requirements for beneficial water use, and consistent with the procedural, technical, and legal review requirements by the state.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

In conclusion, the project as proposed will have no negative impacts on the source or other water users, and would provide for increased operational use of the existing water right and economic growth in the Red Mountain area. This project represents many months of collaborative work between state, federal, tribal and private interests to provide an opportunity to enhance the environment through increasing river flows, while also allowing for increased agricultural production on lands that will bring new jobs and economic benefits to the surrounding area.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to place of use, point of diversion, and purpose of use be approved in the amounts and within the limitations listed below and subject to the provisions contained in the ROE.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

732 cfs
213,017 acre-feet per year
For the purposes of irrigation, power generation, and instream flows
Point of Diversion

Source Name	Parcel	Twn	Rng	Sec	QQ Q	Latitude	Longitude
YAKIMA RIVER	102841000004000	08N	24E.W.M.	02	N½ NE	46.21336	-119.77398
YAKIMA RIVER	117973000002002	09N	27E.W.M.	17	SW SW	46.25865	-119.47190

Place of Use

1. Chandler Pumping Plant - 2450 feet west and 1700 feet south, more or less, from the northeast corner of Section 17, being within the W ½ NW ¼ SW ¼ NE ¼ Section 17, T.9 N., R.26 E.W.M.
2. 20,201 acres within the boundaries of the Kennewick Irrigation District as they exist as of February 1, 2010.
3. When water is used for an instream purpose, place of use is described as the river reach below Prosser diversion dam to the confluence of the Yakima River with the Mc Nary pool at River Mile 335 of the Columbia River.

Sue Hatt — August 3, 2012

Report Writer — *Date*

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