

State of Washington  
**REPORT OF EXAMINATION  
FOR WATER RIGHT APPLICATION**

**PRIORITY DATE**  
March 8, 2010

**WATER RIGHT NUMBER**  
S4-35271

**MAILING ADDRESS**  
ROBERT & CAROL INOUYE  
1780 NILE RD  
NACHES WA 98937-8925

**SITE ADDRESS (IF DIFFERENT)**

**Quantity Authorized for Withdrawal or Diversion**

WITHDRAWAL OR DIVERSION RATE	ANNUAL QUANTITY (AC-FT/YR)
8 cfs from November 1 <sup>st</sup> through February 28 <sup>th</sup> (29 <sup>th</sup> in leap years)	6289
12 cfs from March 1 <sup>st</sup> through June 30 <sup>st</sup>	
8 cfs from July 1 <sup>st</sup> through July 31	
6 cfs from August 1 through September 30 <sup>th</sup>	
4 cfs from October 1 through October 31 <sup>st</sup>	

**Purpose**

PURPOSE	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AC-FT/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Fish propagation						1/1thru 12/30

ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION			
	NON-ADDITIVE	UNITS	WATER SYSTEM ID	CONNECTIONS		
0	0					

**Source Location**

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA					
YAKIMA	RATTLESNAKE CREEK	NACHES RIVER	38-NACHES					
SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
RATTLESNAKE CREEK	15150444003		15N	15E	04	SESE		

340 feet north and 830 feet west from the SE corner of Section 4 being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 15 N., R. 15 E.W.M., being within Yakima County Parcel No. 15150444003 in WRIA 38.

**Place of Use (See Attached Map)**

**PARCELS**  
15150444003, 15150332001, AND 15150331007

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**  
Being within the SW1/4 of Section 3 and the E1/2SE1/4 of Section 4, T. 15 N., R. 15 E.W.M., all situated in Yakima County, Washington.

**Proposed Works**

To divert water from Rattlesnake Creek into a 0.75 mile manmade side channel for the purpose of fish habitat and rearing.

**Development Schedule**

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
October 1, 2012	April 1, 2013	January 1, 2014

## Measurement of Water Use

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

## Provisions

### Measurements, Monitoring, Metering and Reporting

An approved measuring device shall 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.

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.

WAC 173-173 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.

### Department of Fish and Wildlife Requirement(s)

The water diverted into the side channel shall be reduced to 4 cfs when the flow in Rattlesnake Creek is less than 30 cfs at a point within 100 feet downstream of the authorized point of diversion.

### 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 shall 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 the permit. 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, shall 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.

### Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S4-35271, subject to existing rights and the provisions specified above.

**Your Right To Appeal**

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

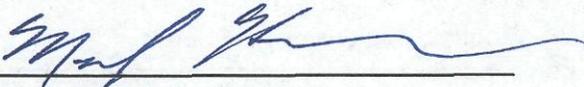
To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Signed at Yakima, Washington, this 13 day of NOVEMBER 2012.



Mark Kemner, LHG, Section Manager  
Water Resources Program/CRO

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

• **BACKGROUND**

This report serves as the written findings of fact concerning Water Right Application Number S4-35271.

**Project Description**

On March 8, 2010, Robert and Carol Inouye of Naches, Washington, filed Application No. S4-35271 with Washington State Department of Ecology (Ecology) to appropriate water for Rattlesnake Creek tributary to the Naches River. The application was amended on January 3, 2012 and further amended on March 15, 2012. The application proposes to divert water from Rattlesnake Creek into a 0.75 mile manmade side channel for the purpose of fish habitat and rearing. At the time of the filing of this application, the quantity of water that would be required for the proposed purpose was not known. Ecology issued a Preliminary Permit on October 29, 2010. The applicant worked closely with the Yakama Nation and the Washington Department of Fish and Wildlife (WDFW) to determine the required amount of water to be diverted. The Yakama Nation and WDFW are co-managers for fish and have projected the water needed will be from four cubic feet per second (cfs) to seven cfs.

The proposed point of diversion is located 340 feet north and 830 feet west from the SE corner of Section 4 being within the SE¼SE¼ of Section 4, T. 15 N., R. 15 E.W.M., being within Yakima County Parcel No. 15150444003 in WRIA 38. The water will return to Rattlesnake Creek approximately ¾-mile downstream.

*Priority Processing*

This application is being priority processed because it qualified under the criteria under which an application may be processed prior to competing applications (WAC 173-152):

- The proposed water use is non-consumptive and if approved would substantially enhance or protect the quality of the natural environment.

**Table 1 Summary of Requested Water Right**

<b>Applicant Name:</b>	Robert & Carol Inouye
<b>Date of Application:</b>	March 8, 2010
<b>Place of Use</b>	Yakima Count Parcels 15150444003, 15150332001, and 15150331007

County	Water body	Tributary To	WRIA
Yakima	Rattlesnake Creek	Naches River	38-Naches

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Fish propagation	12	CFS	6289	01/01	12/31

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Rattlesnake Creek	15150444003	15N	15E	04	SE SE		

**Legal Requirements for Approval of Appropriation of Water**

RCWs 90.03 and 90.44 authorize the appropriation of public water for beneficial use and describes the process for obtaining water rights. Laws governing the water right permitting process are contained in RCW 90.03.250 through 90.03.340 and RCW 90.44.050. In accordance with RCW 90.03.290, determinations must be made on the following four criteria in order for an application for water rights to be approved:

- Water must be available
- There must be no impairment of existing rights
- The water use must be beneficial
- The water use must not be detrimental to the public interest

This report serves as the written findings of fact concerning all things investigated regarding Water Right Application Number S4-35271.

### ***Public Notice***

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be diverted and used. Notice of this application was published in the Yakima Herald-Republic on February 1, 2012 and February 8, 2012.

### ***Consultation with the Washington Department of Fish and Wildlife***

The Department must give notice to the Washington Department of Fish and Wildlife (WDFW) of applications to divert, withdraw or store water. Paul LaRiviere of the WDFW submitted a letter of support and recommendations for this project on February 3, 2012. The letter recommends that the quantities of water that would have the greatest benefit to the side channel habitat while not being detrimental to the natural creek flow is:

- 8 cfs from November 1<sup>st</sup> through February 28<sup>th</sup> (29<sup>th</sup> in Leap years)
- 12 cfs from March 1<sup>st</sup> through June 30<sup>st</sup>
- 8 Cfs from July 1<sup>st</sup> through July 31
- 6 cfs from August 1 through September 30<sup>th</sup>
- 4 cfs from October 1 through October 31<sup>st</sup>

WDFW also recommended that the water diverted into the side channel should be reduced or discontinued if the flow in Rattlesnake Creek is less than 35 cfs in the reach affected by the side channel.

### ***State Environmental Policy Act (SEPA)***

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- (a) It is a surface water right application for more than 1 cubic feet per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

*WDFW issued a Determination of Nonsignificance #11-104 on December 30, 2011.*

## • INVESTIGATION

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### Site Visits

A site visit was conducted on November 8, 2011 by Eric Hartwig of the Ecology and Jon Kohr of WDFW. The site visit included inspection of the proposed point of diversion, proposed place of use and habitat measurements in the side channel at 4 cfs flow.

### Research

In consideration of this application, Ecology reviewed available documents pertaining to the application's site conditions. At the time of the filing of the application the amount of water that would need to be diverted was not known.

At the time of the filing of this application the quantity of water that would be required for the proposed purpose was not known. Ecology issued a Preliminary Permit on October 29, 2010. The Preliminary Permit was issued to allow the applicant to determine the water requirements that would provide the best habitat benefit with the least amount of impact to the bypass reach on Rattlesnake Creek. The Preliminary Permit required that the applicant would submit a report by November 30, 2013, in accordance with the following:

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1. **Project scope** - Describe project scope, the specific location, proposed water source, water use, timing requirements, and fish species that will using the side channel.
2. **General Description** - Describe the general geologic setting of the side channel.
3. **Site Specific Description** – Describe site-specific surface water features:
  - a. Specific locations of proposed and existing project point of diversion.
  - b. Specific location of proposed and existing project points where water returns to Rattlesnake Creek.
4. **Professional Opinion** - The applicant shall include a professional opinion from a fish biologist addressing the effectiveness of the project that shows the benefit to the fish species that will utilize the side channel.
5. **Water Quantities** - The applicant shall submit a report of the amount of water that is diverted into the side channel, the amount of conveyance water, and the amount of water that flows through the side channel and back into Rattlesnake Creek.

The applicant worked closely with the Yakama Nation and the Washington Department of Fish and Wildlife (WDFW) to fulfill the requirements of the Preliminary Permit. A site report was submitted by Mr. Inouye to Ecology on November 19, 2011 that satisfied the requirements set forth in the Preliminary Permit. The findings in this report were supported by WDFW and the Yakama Nation

Paul LaRiviere of the WDFW submitted a letter of support and recommendations for this project on February 3, 2012. This letter is discussed previously in this report.

The Yakama Nation submitted a letter of support for this application on January 9, 2011.

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Both WDFW and the Yakama Nation letters recommended that the quantities of water that would have the greatest benefit to the side channel habitat while not being detrimental to the natural creek flow is:

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- 8 cfs from November 1<sup>st</sup> through February 28<sup>th</sup> (29<sup>th</sup> in Leap years)
- 12 cfs from March 1<sup>st</sup> through June 30<sup>st</sup>
- 8 Cfs from July 1<sup>st</sup> through July 31
- 6 cfs from August 1 through September 30<sup>th</sup>
- 4 cfs from October 1 through October 31<sup>st</sup>

WDFW letter also recommended that the water diverted into the side channel should be reduced or discontinued if the flow in Rattlesnake Creek is less than 35 cfs in the reach affected by the side channel.

A release from the Bureau of Reclamation was received for the water required for this application on August 28, 2012.

#### Other Rights Appurtenant to the Place of Use

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The property that the side channel is proposed to pass through has two confirmed Yakima Adjudicated Court Claims.

Court Claim No. 07735 was confirmed to Robert Inouye and authorizes the diversion of 0.25 cfs for stock and wildlife water.

Court Claim No. 2206 was confirmed to the Boise Cascade Corporation to divert 1 cfs and 2.2 acre-feet per year.

#### ***Consideration of Protests and Comments***

In response to public notice of this application, the Department of Ecology received two letters of protest. Both letters are from members of the Rattlesnake Ditch Association. One letter is signed by two members and the second letter is signed by five members.

The following concerns were outlined in the letters:

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- The canal belongs to the farmers.
  - The applicant is asking for a lot more water than the farmers are allowed.
  - The protestants feel there will be a conflict with this arrangement.
  - There are land owners on the ditch that did not receive a water right through the Yakima Adjudication and feel that it would be unfair to issue a new surface water right.
  - That beavers will utilize the canal and dry up the ditch.
  - The protestants would like the applicant to have a separate headwork's.
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In response to the protest letters, the applicant has amended this application to move the diversion for the side channel approximately 100 feet downstream. In doing so the water will no longer be intermingled with the irrigation water and will alleviate any conflicts between land owners. Beaver activity in the side channel will not affect the water available to the irrigators.

The issuance a new surface water right in the Yakima Basin must be non-consumptive and not diminish the total water storage availability. To issue a non-consumptive water right, a release of water from the Bureau of Reclamation is required.

## **Four Statutory Tests Conclusions**

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The conclusions based on the above investigation are as follow:

### *Beneficial Use*

In accordance with RCW 90.54.020(1), the proposed water use is for fish and wildlife maintenance and enhancement is a beneficial use. Based on the quantities available under proposed project, quantities requested are reasonable and beneficial.

### *Availability*

Based on the collective information summarized above of this report and subject to the limitations herein, water is found to be available.

### *Impairment of Other Water Rights*

With the proposed limitations placed upon this permit, impairment of other rights will not occur.

### *Public Welfare*

Based on the need to provide to enhance the habitat for juvenile fish within the Rattlesnake creek basin and consultation with the Yakama Nation and the Washington Department of Fish and Wildlife, the water use will not be detrimental to the public welfare.

## **Conclusions**

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- In conclusion,
  - Water is physically available at the quantities sufficient to meet project demand.
  - RCW 90.54.020 recognizes domestic and irrigation uses as beneficial uses of water.
  - Approval of the proposed appropriation will not result in impairment of existing water rights:
  - Approval of the proposed appropriation is not detrimental to the public interest.
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## **RECOMMENDATIONS**

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Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above

### **Purpose of Use and Authorized Quantities**

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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:

8 cfs from November 1 through February 28<sup>th</sup> (29<sup>th</sup> in Leap years)

12 cfs from March 1 through June 30

8 Cfs from July 1 through July 31

6 cfs from August 1 through September 30

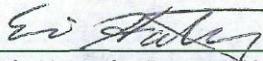
4 cfs from October 1 through October 31

6289 acre-feet per year

For non consumptive Fish propagation

### **Point of Diversion**

340 feet north and 830 feet west from the SE corner of Section 4 being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 15 N., R. 15 E.W.M., being within Yakima County Parcel No. 15150444003 in WRIA 38.



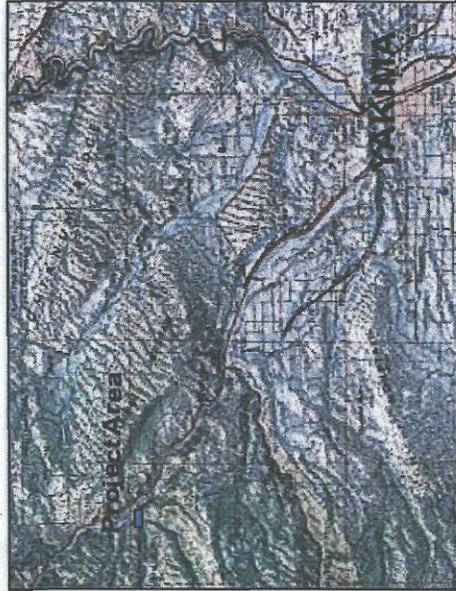
Eric Hartwig, Report Writer

11-9-2012

Date

Robert and Carol Inouye  
 Side Chanel  
 Application No. S4-35271

# Attachment 1



## Legend

-  roads2\_1990
-  township\_2000
-  sections\_2000

