WR File No.: CS4-01201sb3@1
WR Doc ID: 6669360

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington Report of Examination for Water Right Change

PRIORITY DATE	WATER RIGHT NUMBER
June 30, 1891	S4-83709-J (Court Claim No. 01201)

MAILING ADDRESS
Washington State Department of Ecology
1250 W. Alder Street
Union Gap, WA 98903-0009

Purpose and Quantity

Primary Reach
Up to 0.198 cubic feet per second (cfs) from May 1 through September 15, 89.10 acre-feet per year (ac-ft/yr), to be used for the purpose of instream flow trust water use, only in the primary reach of the Teanaway River.

Secondary Reach
NOT APPLICABLE, there is no secondary reach.

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Kittitas	Teanaway River	Yakima River	39 – Upper Yakima

Trust Water Right Place of Use (See Attached Map)

PRIMARY REACH – Begins at the historic diversion point for the abandoned Seaton Ditch on the Teanaway River, located 1,200 feet south and 600 feet west of the east quarter corner of Section 26, being within the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M.; and ends at the Seaton Water Users Association (SWUA) pump site diversion point immediately upstream of the Lambert Road bridge on the right (westerly) bank of the Teanaway River, located 50 feet north and 50 feet west of the SE corner of Section 33, being within the SE¼SE¼ of Section 33, T. 20 N., R. 16 E.W.M.

SECONDARY REACH – Not applicable. There is no secondary reach.

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LONGITUDE	LATITUDE
Begin Primary Reach	Teanaway River	3.4	20 N.	16 E.	26	-120.79631 W	47.19311 N
End Primary Reach	Teanaway River	0.6	20 N.	16 E.	33	-120.83616 W	47.17507 N

Datum: WGS84

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Complete	Complete	Complete

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.

Department of Revenue	Phone:	(360) 570-3265
Real Estate Excise Tax	Internet:	http://dor.wa.gov/
PO Box 47477	E-mail:	REETSP@DOR.WA.GOV
Olympia, WA 98504-7477		

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 find the change of water right as recommended will not be detrimental to existing rights or detrimental to the public interest.

Therefore, I ORDER approval of Trust Water Right Change Application No. CS4-01201sb3@1, subject to existing rights and the provisions specified above.

Your Right To Appeal

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.

Please send a copy of your appeal to:

Trevor Hutton, Section Manager
Water Resources Program
Ecology Central Regional Office
1250 West Alder Street
Union Gap, WA 98903

Signed at Union Gap, Washington, this 29th day of September, 2016.

Trevor Hutton

Trevor Hutton, Section Manager
Water Resources Program
Central Regional Office

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.

INVESTIGATOR'S REPORT
Stan Isley, Department of Ecology
Water Right Control Number CS4-01201sb3@1
S4-83709-J

BACKGROUND

Description and Purpose of Requested Change

On June 30, 2015, the Washington State Department of Ecology (Ecology) filed an application to change the purpose of use and the place of use of its portion of the former Daryle T. Starkovich Estate (SWUA member) water right confirmed under Court Claim No. 01201 in *The State of Washington, Department of Ecology v. James J. Acquavella, et al. (Acquavella).* The proposed new purpose of use is instream flow use in the Teanaway River as a Trust water right within the Washington State Trust Water Rights Program (Trust). The proposed new place of use is only within the primary reach of the Teanaway River, from the water right's original Seaton Ditch diversion point, downstream to the SWUA pump site diversion point at the Lambert Road bridge on the Teanaway River. The application was accepted and assigned Control No. CS4-01201sb3@1.

The Mack Creek Ranch (MCR) proposed diversion point change and similar downstream changes in point of diversion (POD) are concurrently being requested by MCR and the several other Subbasin 3 (Teanaway River) water right claimants who are members of the Teanaway River Ranch Owners Association (TRROA) and the Seaton Water Users Association (SWUA), all of whom participated in the Teanaway Restoration Project. Ecology is requesting authorization to change its conserved water portion of each of the original water rights associated with the Teanaway Restoration Project (i.e., the MCR, TRROA members', and SWUA members' water rights) to instream flow trust water use, only in the primary reach of the Teanaway River, from each water right's original diversion point, downstream to its new pump site diversion point.

The Teanaway Restoration Project, a water use efficiency and water conservation project, was funded by the Bonneville Power Administration (BPA) and was constructed in the year 2000, with the provision that a five-year demonstration period would be required for the TRROA and SWUA members' water rights to determine how much conserved water would be transferred to Trust for instream flow augmentation use in the Teanaway River.

The *Acquavella* Court's March 9, 2000 and June 14, 2007 Orders Pendente Lite, temporarily assigned the subject conserved water portions of these Teanaway Restoration Project water rights that are now owned by Ecology to instream flow use in the Teanaway River, and temporarily authorized the use of the new downstream Teanaway River pump site diversion points for the remainder (i.e., the off-stream use portion) of each of the Teanaway Restoration Project water rights.

WAC 173-152-050(2)(c) allows Ecology to prioritize processing of applications that are nonconsumptive and if approved would substantially enhance or protect the quality of the natural environment, such as transfers or changes of water into the Trust that provide a substantial environmental benefit. The Teanaway Restoration Project is one large interrelated water conservation project that has generated instream flow Trust water rights that provide substantial environmental benefit. Therefore, Ecology may priority process all of the associated Teanaway Restoration Project water right change applications

ahead of other competing applications. For each diversion point change application, a separate application was filed concurrently to place water no longer diverted as a result of this project into the Trust, and separate reports evaluate those applications.

Summary of Modifications to the Parent Daryle T. Starkovich Water Right

The *Acquavella* Court entered its Conditional Final Order for Subbasin No. 3 (Teanaway River) on February 8, 2001. Said CFO confirmed a water right to Daryle Thomas Starkovich for the diversion of 0.66 cfs, 178.2 ac-ft/yr for irrigation of 33 acres and 1.0 ac-ft/yr for stock water, from the Teanaway River, from May 1 through September 15 each year, with a June 30, 1891 priority date. This is the parent right for the water right proposed for change by this application.

The *Acquavella* Court entered an Order Pendente Lite (OPL) on March 9, 2000, authorizing the continuing use of 30% of the Starkovich water right, or 0.20 cfs, 53.46 ac-ft/yr, for instream flow augmentation in the Teanaway River. This continuing OPL also temporarily authorized the use of the new downstream Teanaway River pump site POD for the remainder (i.e., the continuing off-stream use portion) of the Starkovich water right, or 0.46 cfs, 124.74 ac-ft/yr.

The *Acquavella* Court entered a second OPL on June 14, 2007, authorizing the continuing use of "up to an additional 20%" of the Starkovich water right, or up to 0.13 cfs, 35.64 ac-ft/yr, for instream flow augmentation in the Teanaway River.

The *Acquavella* Court entered an "Order to Divide and Partially Substitute Party, Claim No. 01021, (Subbasin No. 3)", on March 10, 2011, dividing the Starkovich water right into three portions, as follows: 1) 0.198 cfs, 89.100 ac-ft/yr to Ecology ownership for transfer to the Trust for instream flow use (this is 30% of the original water right's diversion rate in cfs and 50% of the original water right's annual water duty in ac-ft/yr.); 2) 0.003 cfs, 0.513 ac-ft/yr, derived from permanently fallowing 0.19 acre of irrigation, to Ecology ownership for transfer to the Trust to mitigate for a proposed new well water supply for a new home on the Starkovich property; and 3) 0.459 cfs, 88.587 ac-ft/yr, remaining in Starkovich ownership, for continuing irrigation of 32.81 acres (this is 70% of the original water right's diversion rate in cfs and 50% of the original water right's annual water duty in ac-ft/yr, appurtenant to the 32.81 acres of continuing Starkovich irrigation water right), and 1.000 ac-ft/yr for stock watering, from May 1 through September 15 each year.

Ecology approved water right change application No. CS4-01201CTCLsb3(B) with the issuance of Ecology's Trust Water Right Report of Examination on October 21, 2011, transferring portion #2 of the former Starkovich water right described above to the Trust for instream flow use and mitigation for the proposed new well water supply for a new home on the Starkovich property.

Daryle Starkovich died in 2011.

The Daryle T. Starkovich Estate filed water right change application, No. CS4-01201sb3, with Ecology on June 30, 2015, requesting authorization to change the authorized POD to the new Seaton Water Users Association (SWUA) downstream pump site POD at Lambert Road Bridge on the lower Teanaway River, for the portion of the original Starkovich water right still retained by the Daryle T. Starkovich Estate. That retained portion of the water right is 0.459 cfs, 88.587 ac-ft/yr, for irrigation of 32.81 acres, and 1.0 ac-ft/yr, for stock water, from May 1 through September 15 each year (this is portion #3 of the original Starkovich water right described above).

Ecology concurrently filed water right change application No. CS4-01201sb3@1, on June 30, 2015, requesting authorization to change the purpose of use of the Ecology instream flow portion of the former Starkovich water right, 0.198 cfs, 89.10 ac-ft/yr (this is portion #1 of the original Starkovich water right described above, which is 30% of the original water right's diversion rate in cfs and 50% of the original water right's annual water duty in ac-ft/yr), to instream flow Trust water use in only the primary reach of the Teanaway River, from the originally-authorized Seaton Ditch point of diversion at Teanaway RM 3.4, to the new downstream pump site diversion point for the Daryle T. Starkovich Estate and SWUA members' water rights, located at Teanaway RM 0.6.

The *Acquavella* Court entered an Order to Substitute Party on September 10, 2015, substituting Daryle T. Starkovich Estate for Daryle Thomas Starkovich on Court Claim No. 01201.

Table 1: Existing Water Right Attributes[1]

Water Right Owner:	Washington State Department of Ecology
Priority Date:	June 30, 1891
Place of Use	That portion of the SE¼ of Section 33, T. 20 N., R. 16 E. W. M. lying northwesterly of State Highway 970 described as follows: Beginning at the northeast corner of said southeast quarter; thence west 1520 feet, more or less; thence S 4°02'47" E 1199.47 feet; thence N 57°15'24" E 65.15 feet; thence S 32°44'36" E 75 feet, to the northwesterly right-of-way of said highway; thence northeasterly along said right-of-way to the east line of said southeast quarter; thence north to the east line of said southeast quarter; thence north to the point of beginning; but EXCLUDING 0.19 acre (8,200 square feet) within that portion of the SE¼ of Section 33, T. 20 N., R. 16 E.W.M. lying northwesterly of State Highway 970, approximately described as follows: From the northeast corner of said southeast quarter; thence west 435 feet, more or less; thence S 125 feet to the point of beginning; thence S 115 feet; thence W 30 feet; thence S 43 feet; thence W 45 feet; thence N 158 feet; thence E 75 feet to the point of beginning. AND that portion of said southeast quarter lying southeasterly of said highway described as follows: Commencing at the northeast corner of said southeast quarter; thence south 565 feet, more or less, to a point on the southeasterly right-of-way of said highway; thence southwesterly 582 feet, more or less, along said right-of-way to the point of beginning; thence S 8°8'21" E 720.54 feet; thence S 79°0'44" W 586.65 feet; thence N 51°6'4" W 420.94 feet to the said right-of-way; thence northeasterly along said right-of-way to the point of beginning.

County	Waterbody	Tributary To	WRIA
Kittitas	Teanaway River	Yakima River	39 - Upper Yakima

Purpose	Rate	Unit	Ac-Ft/Yr	Begin Season	End Season
Irrigation of 32.81 acres and stock water	0.198	CFS	89.10	May 1	September 15

[1] As divided by the Yakima Adjudication Court in 2011 and 2015 – see pages 5-6 of this report.

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Longitude	Latitude
1) Teanaway River	528536	20 N.	16 E.	26	NESE	-120.79631 W	47.19311 N

CFS = Cubic Feet per Second; Ac-Ft/Yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

Table 2: Requested Trust Water Right Attributes

Water Right Owner:	Washington State Department of Ecology
Priority Date:	June 30, 1891
Place of Use	**PRIMARY REACH** – Begins at the historic diversion point for the abandoned Seaton Ditch on the Teanaway River, located 1,200 feet south and 600 feet west of the east quarter corner of Section 26, being within the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M.; and ends at the SWUA pump site diversion point immediately upstream of the Lambert Road bridge on the right (westerly) bank of the Teanaway River, located 50 feet north and 50 feet west of the SE corner of Section 33, being within the SE¼SE¼ of Section 33 T. 20 N., R. 16 E.W.M. **SECONDARY REACH** – Not applicable. There is no secondary reach.

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LONGITUDE	LATITUDE
Begin Primary Reach	Teanaway River	3.4	20 N.	16 E.	26	-120.79631 W	47.19311 N
End Primary Reach	Teanaway River	0.6	20 N.	16 E.	33	-120.83616 W	47.17507 N

County	Waterbody	Tributary To	WRIA
Kittitas	Teanaway River	Yakima River	39 - Upper Yakima

Purpose	Rate	Unit	Ac-Ft/Yr	Begin Season	End Season
Instream flow Trust water use, only in the primary reach of the Teanaway River.	0.198	CFS	89.10	May 1	September 15

CFS = Cubic Feet per Second; Ac-Ft/Yr = Acre-Feet per Year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the proposed change to instream flow Trust water use:

Public Notice

Public Notice of the application was given in the Ellensburg Daily Record on January 27, 2016 and February 3, 2016. No letters of protest or comments were received during the 30-day protest period, which expired March 4, 2016.

Consultation with the Department of Fish and Wildlife and the Water Transfer Working Group

The MCR water right change application was presented to the Yakima River Basin Water Transfer Working Group (WTWG) during the February 2, 2015 monthly meeting as WTWG Proposal 2015-26. The Department of Fish and Wildlife participates in the WTWG, as does the Yakama Nation, irrigation district representatives, U.S. Bureau of Reclamation (USBR), other agency staff, and interested parties. At the February 2, 2015 WTWG meeting, the WTWG gave the MCR diversion point change application its 'thumbs up' approval recommendation, and also concurrently gave its 'thumbs up' approval recommendation to Ecology's application to transfer the conserved water portion of the originally-confirmed MCR water right to instream flow trust water use in the Teanaway River.

Subsequently, at the April 6, 2015 WTWG monthly meeting, under WTWG Proposal 2015-36, WTWG gave its 'thumbs up' approval recommendation to the entire Teanaway Restoration Project, which includes the several downstream water right diversion point changes for the TRROA members' and the SWUA members' water rights, and the transfers of Ecology's conserved water portion of each of the TRROA members' and SWUA members' originally-confirmed water rights to instream flow trust water use in the Teanaway River.

State Environmental Policy Act

A water right application is subject to a State Environmental Policy Act (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:

- It is a surface water right application for more than 1 cubic foot per second (cfs), unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cfs, so long as that irrigation project will not receive public subsidies.
- It is a groundwater right application for more than 2,250 gallons per minute.
- It is an application that, in combination with other water right applications for the same project, collectively exceeds the amounts above.
- 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).
- 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.

This water right change application is a part of the larger Teanaway Restoration Project, which includes Ecology's administrative decisions on 26 water right change applications that propose to change the purpose of use of up to 4.886 cfs of surface water rights from irrigation to instream flow trust water right use in the Teanaway River. These administrative actions collectively require SEPA review and compliance. Ecology acted as lead agency, reviewed the SEPA Environmental Checklist describing and analyzing these actions, determined the subject actions do not have a probable significant adverse impact on the environment, and issued a Determination of Nonsignificance (DNS) on January 26, 2016. Notice of Ecology's DNS was published in the SEPA register on January 27, 2016, and also published in the Ellensburg Daily Record on January 27, 2016 and February 3, 2016. The SEPA comment period closed on February 10, 2016, with no comments received by Ecology.

The Bonneville Power Administration (BPA) was the lead agency that completed the initial construction-related SEPA and National Environmental Policy Act (NEPA) environmental review required prior to the actual construction of this Teanaway Restoration Project in 2000. On August 4, 1999, BPA

signed and entered the "Supplement Analysis for the Watershed Management Program EIS (DOE/EIS-0265/SA-15)", finding "1) That the proposed actions are substantially consistent with the Watershed Management Program EIS (DOE/EIS-0265) and ROD, and 2) that there are no new circumstances or information relevant to environmental concerns and bearing on the proposed actions or their impacts. Therefore, no further NEPA documentation is required."

Water Resources Statutes and Case Law

RCW 90.03.360 requires metering of all water users within fish critical basins. The Yakima River has been designated a fish critical basin. RCW 77.55.320, RCW 77.55.040, and RCW 77.55.070 require all diversions from surface waters of the state to be screened to protect fish.

RCW 90.03.380(1) and chapter 90.38 RCW provide that a water right that has been put to beneficial use may be changed. The POD, place of use (POU), and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change or transfer of water right, is required to make a tentative determination of the extent and validity of the right. This is necessary to establish whether a water right is eligible for change (*R.D. Merrill Co. v. PCHB*, 137 Wn.2d 118, 969 P.2d 458 (1999); *Okanogan Wilderness League v. Town of Twisp*, 133 Wn.2d 769, 947 P.2d 732 (1997)). It is not within Ecology's authority to adjudicate or make a final determination of the extent and validity of any water right or claim to a water right, only the Superior Court has such authority.

INVESTIGATION

In considering this application the investigation included, but was not limited to, research and review of:

- The State Water Code.
- Report of Referee, Supplemental Report of Referee, and Second Supplemental Report of Referee, Concerning the Water Rights for Subbasin No. 3 (Teanaway River), and the Court's February 8, 2001 Conditional Final Order (CFO) for Subasin No. 3 (Teanaway River).
- Stream flow and diversion data.
- Existing water rights on file for the subject Teanaway Restoration Project water users and other recorded water rights in the project vicinity.
- August 3, 1999 contract agreements (three agreements) between the USBR, the Bonneville Power Administration (BPA) and 1) Teanaway Ranch Incorporated (now Mack Creek Ranch, LLC (MCR)), 2) Teanaway River Ranch Associates (now Teanaway River Ranch Owner's Association (TRROA)) and 3) Seaton Water User's Association (SWUA).
- March 9, 2000 and June 14, 2007 Adjudication Court Orders Pendente Lite assigning portions of the subject Teanaway Restoration Project water rights to instream flow use in the Teanaway River and authorizing the use of the new downstream Teanaway River pump site diversion points for the remainder (i.e., the off-stream use portion) of each subject water right.
- Notes from many site visits conducted by Ecology staff and Teanaway Stream Patroller Stan Isley and others from August 1998 to the present date.
- Topographic and local area maps.
- Aerial photographs of the site.
- Kittitas County Assessor's Office records.

The Teanaway Restoration Project is a major water use efficiency improvement, water conservation, and instream flow augmentation project, funded in major part by BPA, and constructed and implemented in 2000.

1999 Contract Agreements

On August 3, 1999, BPA and the USBR signed and entered three contract agreements with the holders of a total of 26 individual Teanaway River water rights that were ultimately confirmed by the Yakima Adjudication Court's February 8, 2001 Conditional Final Order (CFO) for Subbasin No. 3 (Teanaway River).

- The first contract agreement (1999) was with Teanaway Ranch Incorporated, now owned by MCR, the holder of one Teanaway River irrigation and stock water right subsequently confirmed by the Court's Subbasin No. 3 CFO.
- The second contract agreement (1999) was with the members of the TRROA, whose members held 13 individual irrigation and stock water rights subsequently confirmed by the Court's Subbasin No. 3 CFO.
- The third and last contract (1999) was with the members of the SWUA, and then the parties amended the 1999 contract on February 19, 2002 to add an additional SWUA member water right. These SWUA members' 12 individual irrigation and stock water rights were all confirmed by the Court's Subbasin No. 3 CFO.

These three contract agreements were similar in nature, but had slightly different provisions.

- The 1999 MCR, BPA, and USBR contract provided that MCR would assign 30% of its irrigation water right, including 30% of its surplus water right, to the Trust for instream flow use in the Teanaway River, and that MCR would divert its remaining 70% of its water right, including 70% of its surplus water right, from the new pump site diversion point located downstream from its historic 3M Ditch diversion point at Teanaway River mile (RM) 7.5, and from MCR's Mack Creek diversion point. BPA agreed to fund the year-2000 construction of the new downstream pump site and low-pressure water delivery system, which was ultimately sited below the Red Bridge Road bridge at Teanaway RM 4.2.
- The 1999 TRROA, BPA, and USBR contract provided that the TRROA members would immediately assign 30% of their base irrigation water rights to Trust for instream flow use in the Teanaway River, and that the TRROA members would permanently retire/relinquish all of their surplus water rights. The contract further provided that the parties would await the completion of a 5-year demonstration/trial period, excluding any designated drought years, to determine whether SWUA members would transfer a further 20% of their base irrigation water rights to Trust for Teanaway River instream flow use. TRROA members agreed to divert their remaining 'up-to-70%' remainder of their base water rights from the new pump site diversion point located downstream from their historic Haida-Peterson Ditch diversion point at Teanaway RM 5.1. BPA agreed to fund the year-2000 construction of the new downstream pump site and high-pressure on-demand water delivery system, which pump site was ultimately sited below the Red Bridge Road bridge at Teanaway RM 4.2.
- The 1999 SWUA, BPA, and USBR contract, as amended on February 19, 2002, provided that the SWUA members would immediately assign 30% of their base irrigation water rights to Trust for instream flow use in the Teanaway River, and that the SWUA members would permanently

retire/relinquish all of their surplus water rights. The contract further provided that the parties would await the completion of a 5-year demonstration/trial period, excluding any designated drought years, to determine whether SWUA members would transfer a further 20% of their base irrigation water rights to Trust for Teanaway River instream flow use. SWUA members agreed to divert their remaining 'up-to-70%' remainder of their base water rights from the new pump site diversion point located downstream from their historic Seaton Ditch diversion point at Teanaway RM 3.4. BPA agreed to fund the year-2000 construction of the new downstream pump site and high-pressure on-demand water delivery system, which pump site was ultimately sited below the Lambert Road bridge at Teanaway RM 0.6.

Five-year Trial Period

The MCR contract agreement did not include any provision for a five-year demonstration/trial period.

The five-year demonstration/trial period for the TRROA and SWUA members' water systems began at the completion of system construction at the end of the 2000 irrigation season. Both 2001 and 2005 were declared drought years in the Yakima River Basin, and as such did not count as years of record for the five-year trial period according to the provisions of the 1999 TRROA and SWUA (as amended in 2002) contracts. The five-year demonstration concluded at the end of the 2007 irrigation season.

Water diversion records documented by the Teanaway River Stream Patroller, Stan Isley, show that the TRROA and SWUA members did indeed use up to 70% of their base water rights' instantaneous diversion rate limits in cubic feet per second during the five-year trial period (and since), but that the TRROA and SWUA members had used only 50% of their base irrigation water rights' annual duties, in acre-feet per year, during the trial period (and subsequently).

Thus according to the provisions of the 1999 TRROA and SWUA (as amended) contracts, the TRROA and SWUA members were not required to transfer any additional diversion rate, but are required to transfer an additional 20% of their base annual water duty, in acre-feet per year, to Trust for instream flow use in the Teanaway River.

The TRROA and SWUA members retained 70% of their base instantaneous diversion rate in cubic feet per second, and 50% of their base annual water duty, in acre-feet per year, for their continuing off-stream use for irrigation and stock watering.

Water Right Change Applications – 27 POD Change Applications and 26 Trust Water Change Applications

MCR filed with Ecology its one POD change application on December 17, 2014, and Ecology filed its one corresponding trust water right application for the Ecology portion of the original MCR water right concurrently on December 17, 2014.

TRROA members filed with Ecology 11 POD change applications on March 20, 2015; one application on April 1, 2015 (Johnson); and one application on April 8, 2015 (Sole). Ecology filed its 13 corresponding trust water right applications for Ecology's portions of each of the original TRROA members' water rights concurrently with the POD change applications on March 20, April 1, and April 8, 2015.

<u>NOTE:</u> Five of the 13 TRROA members' POD change applications, all of which were filed with Ecology on March 20, 2015, were subsequently the subject of Adjudication Court Orders to Divide and Partially Substitute Party entered on May 7, 2015 (4) and June 25, 2015 (Sparks/Blais) – see

details in the report section below. These were specifically the POD change applications for the: 1) Hancock water right, 2) Abeyta right, 3) G.D. Enterprises NW, LP, 1885-priority right, 4) Sparks/Blais right, and 5) Perkins/Fletcher/Bryan right. In each case the Court Order further divided the retained off-stream use portion of each water right into separate water rights appurtenant to each separate parcel and/or separate ownership within the original water right's POU.

SWUA members filed with Ecology 10 POD change applications on April 27, 2015; one application on June 26, 2015 (McClure); one application on June 30, 2015 (Starkovich); and one application on July 2, 2015 (Riley). Ecology filed its 12 corresponding trust water right applications for Ecology's portions of each of the original SWUA members' water rights mostly concurrently with the POD change applications on April 27, 2015 (10 trust applications); June 30, 2015 (one trust application); and July 2, 2015 (the McClure/Riley combined one trust application).

NOTE: The one McClure/Riley trust application is Ecology's portion of the originally-confirmed McClure water right from the February 8, 2001 Subbasin 3 CFO. Subsequent to filing this McClure/Riley trust application with Ecology, the author discovered that the Court entered an Order of Partition of that water right on January 11, 2007, partitioning the originally-confirmed McClure water right into two portions: one for irrigation of 5.5 acres and stock watering retained by June McClure, and one for irrigation of 3.0 acres and stock watering held by Joe Riley, June's son. Both parties co-signed the one combined Ecology trust water right application.

Court Orders to Divide and Partially Substitute Party

The Yakima Adjudication Court entered a total of 27 Orders to Divide and Partially Substitute Party for each of the subject Teanaway Restoration Project (i.e., MCR, TRROA members, and SWUA members) water rights during 2015.

- The Court entered MCR's Order to Divide and Partially Substitute Party on February 24, 2015. The Order divided the MCR irrigation and stock water right into two portions. The first portion (30% of the MCR right, including 30% of its surplus water) was transferred to Ecology for subsequent placement in Trust for instream flow use in the Teanaway River, and is quantified as 0.996 cfs, or up to 1.992 cfs for up to 30 days when surplus water is available in excess of that needed to satisfy all existing rights (normally in May and June), 323.7 acre-feet per year (ac-ft/yr). The second portion (70% of the MCR right, including 70% of its surplus water) is to be retained by MCR for continuing off-stream irrigation and stock water use, and is quantified as 2.324 cfs, or up to 4.648 cfs for up to 30 days when surplus water is available in excess of that needed to satisfy all existing rights (normally in May and June), 755.3 ac-ft/yr.
- The Court entered: 10 Orders to Divide and Partially Substitute Party for the TRROA members' water rights on May 7, 2015; one Order to Divide and Partially Substitute Party on June 25, 2015 (for TRROA members Sparks/Blais), and two Orders to Divide and partially Substitute Party on September 10, 2015 (TRROA members Sole and Johnson). The Orders divided the TRROA members' water rights into at least two portions. The first portion (30% of each of the TRROA members' confirmed water right's instantaneous diversion rate in cubic feet per second, and 50% of the TRROA members' confirmed base annual water duty, in acre-feet per year) was transferred to Ecology for subsequent placement in Trust for instream flow use in the Teanaway River, for a combined total of 2.08 cfs, 936.9 ac-ft/yr. The Orders recognized that the former surplus water portion of each of the TRROA members' water rights is permanently retired/relinquished, for a combined total of 6.935 cfs, 379.5 ac-ft/yr of relinquished surplus water rights. The remainder of each of the TRROA members' water rights, 70% of the confirmed

base diversion rate in cubic feet per second and 50% of the confirmed annual water duty, in acre-feet per year, remains authorized for continuing off-stream irrigation and stock water use, for a combined total of 4.855 cfs, 936.92 ac-ft/yr. However, the Orders further divided the retained off-stream use portions of several of the TRROA members' water rights as follows:

1) The retained Hancock off-stream irrigation and stock water right was divided into five separate water rights, one appurtenant to each of the five separate parcels/lots they own within the original water right's POU.
2) The retained Abeyta off-stream irrigation and stock water right was divided into two separate water rights, one appurtenant to each of the two separate parcels/lots he owns within the original water right's POU.
3) The retained G.D. Enterprises NW, LP, 1885-priority off-stream irrigation and stock water right was divided into two separate water rights, one appurtenant to each of the two separate parcels/lots within the original water right's POU.
4) The retained Sparks/Blais off-stream irrigation and stock water right was divided into four separate water rights, one appurtenant to each of the four separate parcels/lots within the original water right's POU, one of which is owned by the Blaises, and three of which are owned by the Sparkses.
5) The retained Perkins/Fletcher/Bryan off-stream irrigation and stock water right was divided into three separate water rights within the original water right's POU, each right appurtenant to a different one of the three separate parcels/lots within that original POU. The Perkinses are the sole owners of one lot, the Fletchers are the sole owners of a second lot, and the Bryans are the sole owners of the third and last lot.

- The Court entered 12 Orders to Divide and Substitute Party for the SWUA members' water rights on September 10, 2015 and one Order to Divide and Substitute Party on December 16, 2015 (SWUA member Ivan Osmonovich's 1882-priority water right). The Orders divided the SWUA members' water rights into two portions. The first portion (30% of each of the SWUA members' confirmed water right's instantaneous diversion rate in cubic feet per second, and 50% of the SWUA members' confirmed base annual water duty, in acre-feet per year) was transferred to Ecology for subsequent placement in Trust for instream flow use in the Teanaway River, for a combined total of 0.814 cfs, 366.124 ac-ft/yr. The Orders recognized that the former surplus water portions, of each of the five SWUA members' water rights that were confirmed the right to divert and use surplus water, are permanently retired/relinquished, for a combined total of 1.241 cfs, 68.20 ac-ft/yr of relinquished surplus water rights. The remainder of each of the SWUA members' water rights, 70% of the confirmed base diversion rate in cubic feet per second and 50% of the confirmed annual water duty, in acre-feet per year, remains authorized for continuing off-stream irrigation and stock water use, for a combined total of 1.896 cfs, 365.613 ac-ft/yr.
- NOTE: As explained above, on September 10, 2015, the Court entered a separate Order to Divide and Partially Substitute Party for the McClure 5.5 acre irrigation and stock water right, and a separate Order to Divide and Partially Substitute Party for the Riley 3.0 acre irrigation and stock water right, which had been the subject of a previous Order of Partition entered by the Court on January 11, 2007. That earlier 2007 Order partitioned the original 8.5 acre irrigation and stock water right confirmed to June McClure in the Court's February 8, 2001 CFO into the two separate McClure (irrigation of 5.5 acres and stock water) and Riley (irrigation of 3.0 acres and stock water) water rights.

Legal History

The surface water rights of Subbasin No. 3 (Teanaway River) were the subject of a general adjudication conducted in Kittitas County Superior Court entitled *State of Washington v. Frank Amosso and Minnie Amosso, his wife; et al.*, with Decree No. 6221 entered by the Court on June 16, 1921.

State of Washington Department of Ecology v. James J. Acquavella, et al.

The *State of Washington Department of Ecology v. James J. Acquavella, et al. (Acquavella)* adjudication began in 1977 and is still in progress at the time of this writing. *Acquavella* is an adjudication of all surface water rights and claims within the entire Yakima River drainage basin, which includes four adjudication pathways: 31 Subbasins, Major Claimants, Federal Reserved Water Rights, and Federal Non-Reserved Water Rights. The Teanaway River drainage basin is Subbasin No. 3. The Court's Conditional Final Order (CFO) for Subbasin No. 3 (Teanaway River) was entered on February 8, 2001. A final decree for *Acquavella* has not yet been issued by the Superior Court.

The Court's Subbasin No. 3 (Teanaway River) CFO confirmed a schedule of Teanaway Subbasin surface water rights with priorities that range from 1882 through 1973.

Additionally, the Court confirmed the Yakama Nation's Treaty Reserved Minimum Instream Flow Water Right for Fish and Other Aquatic Life, with a priority dating from time immemorial. This 'oldest-in-the-basin' Yakama Nation minimum instream flow water right exists throughout the Yakima Basin in streams that produce fish that the Yakamas catch at their Usual and Accustomed Fishing Sites within the Yakima River basin and the Columbia River basin. The Court did not quantify this minimum instream flow water right, noting simply that it is that minimum amount of water necessary to maintain fish and other aquatic life. The Court further provided that the USBR would determine the amount of water necessary to satisfy this water right based on annual prevailing conditions.

The lower Teanaway River is a designated Usual and Accustomed Fishing Site for the Yakama Nation. The Yakama Nation Treaty Reserved Minimum Instream Flow Water Right for Fish and Other Aquatic Life is appurtenant to the Teanaway River and its tributaries and is the oldest water right in Subbasin No. 3 (Teanaway River).

Teanaway River Subbasin Description

The West, Middle, and North Forks of the Teanaway River flow generally southeasterly out of the east-slope of the Cascade Mountains, through Wenatchee National Forest lands, through the Teanaway Community Forest managed jointly by the Washington State Department of Natural Resources and the Washington State Department of Fish and Wildlife, and on to their confluence near the northern end of the privately-owned agricultural lands in the Teanaway Valley. Then the Teanaway River continues flowing generally southerly to its confluence with the Yakima River approximately four miles easterly of the City of Cle Elum.

The majority of irrigation occurs in the middle and lower reaches of the Teanaway Valley, where Timothy Hay and pasture are the predominant irrigated crops. Historically, the nearly 2,000 irrigated acres within the Teanaway River Subbasin were irrigated with diversions of water from the river into

long, unlined, gravity-flow ditches, and inefficient on-farm flood irrigation practices. Water users created in-river push-up diversion berms to divert river water into their irrigation ditches.

Prior to the development of irrigation diversions beginning about 1882, the Teanaway River is believed to have produced a large number of resident and anadromous fish, including steelhead and spring chinook salmon, and likely bull trout and other species. The development of agricultural diversions caused a drastic decline in the number of fish produced in the Teanaway River Subbasin. Irrigation diversion berms, unscreened diversion ditches, and dewatering of river reaches below the diversions, partly or completely blocked upstream and downstream fish passage, and caused fish mortality at critical times of the year.

The Teanaway River has been the focus of fish and flow restoration efforts for several decades, with a concerted effort by the Washington Department of Fish and Wildlife, the USBR, the Yakama Nation, the Bonneville Power Administration, the Kittitas County Conservation District, and many other agencies and entities, to screen all water diversions, and improve fish passage and habitat and instream flows in the Teanaway River and its tributaries.

Beginning about 1995, BPA and Yakama Nation staff sought the assistance of the USBR and Ecology and other water management agencies to implement the Teanaway Restoration Project. BPA's interest was to restore fish habitat and numbers in the Teanaway River and other Columbia River Basin tributary streams as mitigation for lost fish and fish habitat caused by the construction and continuing operation of the Federal Columbia River Power System dams and reservoirs.

BPA and its partner agencies commenced negotiations with the Teanaway River Subbasin water users in late 1995, culminating in the execution and entry of the three Teanaway Restoration Project contract agreements described above.

Additionally, BPA has constructed the Cle Elum Supplementation Facility ('hatchery') and several satellite acclimation and smolt release facilities at various locations in the upper Yakima River basin, including the Jack Creek acclimation facility in the North Fork Teanaway River drainage. Annually, beginning about 2000, BPA and the Yakama Nation release spring chinook salmon fry into the Jack Creek acclimation facility in late winter. Those salmon fry then volitionally leave the facility and enter the North Fork Teanaway River to begin their migration to the Pacific Ocean when the fry begin their smoltification process in the spring.

The efforts of the many agencies and the participating water right holders in the Teanaway River Subbasin have yielded many benefits, including:

- Maintenance of Teanaway Subbasin agricultural irrigation, using much more efficient irrigation systems that require much less diverted water from the Teanaway River to fully irrigate the crops.
- A substantial increase in instream flow water quantities and improved fish habitat in the Teanaway River and its tributaries.
- Elimination of virtually all fish passage barriers caused by agricultural water diversions, and the successful screening of all water diversions in the Teanaway River Subbasin.
- Dramatic increase in the numbers of returning adult spring chinook salmon spawners and other fish to the Teanaway River Subbasin.

Historic numbers of returning adult spring chinook salmon spawners in the Teanaway River Subasin up through 1999 were low and the Teanaway chinook salmon were nearly extirpated. The Yakama Nation began actual counting of spring chinook salmon redds ('nests') in the Teanaway Subbasin in 1981. Counts ranged from zero redds to six redds in the 19 years from 1981 through 1999, but in 13 of those 19 years, the redd count in the entire Teanaway Subbasin was zero.

After the work of the Teanaway Restoration Project and other complementary projects to restore fish passage and improved instream flows, and with the start of operation of the Jack Creek Acclimation Facility, spring chinook redd counts in the Teanaway Subbasin jumped to 21 in 2000 and 2001, 110 in 2002 (when the adults of salmon fry released from the Jack Creek acclimation facility first returned to the Teanaway), and have jumped to as high as 253 redds in 2010.

Actual Water Use of Teanaway Restoration Project Water Rights

The author, Stan Isley, is the Court-appointed Teanaway River Subbasin Stream Patroller, and has monitored, and continues to monitor, the ongoing use of water for all of the water rights involved in the Teanaway Restoration Project since its implementation in 2000. Those water rights are the MCR, TRROA members', and SWUA members' retained irrigation and stock water rights, and Ecology's proposed instream flow use Trust water rights derived from each of the parent MCR, TRROA members', and SWUA members' water rights. The off-stream use POUs for all of these MCR, TRROA members', and SWUA members' water rights have been irrigated each year since project implementation in 2000, with only a few exceptions. Since project implementation in 2000, none of these retained off-stream use portions of the MCR, TRROA members', and SWUA members' water rights has had a five consecutive year period of non-use that would indicate full or partial relinquishment under RCW 90.14.140 and RCW 90.14.160. The instream use portion of each of the MCR, TRROA members', and SWUA members' water rights has been utilized for instream flow use each year since the project implementation in 2000, and has been temporarily authorized for such continuing instream flow use by Court Orders Pendente Lite entered on March 9, 2000, and June 14, 2007.

Proposed Uses

The applicants are proposing to change their PODs confirmed by the Court's 2001 CFO to downstream locations on the Teanaway River and to transfer the Ecology portion of each water right to primary-reach-only instream flow trust water use in the Teanaway River, as follows *(see also reference map at end of this report)*:

- MCR is proposing to change its Teanaway River diversion point for its retained portion (i.e., its continuing off-stream use portion) of its irrigation and stock water right, from the abandoned 3M Ditch diversion point, downstream to the new MCR/TRROA pump plant. The abandoned 3M Ditch diversion point is located 150 feet north and 800 feet west from the southeast corner of Section 10, being within the SE¼SE¼ of Section 10, T. 20 N., 16 E.W.M. (Kittitas County Parcel No. 204835, Teanaway River Mile (RM) 7.5). The new MCR/TRROA pump plant is located on the left (easterly) bank of the Teanaway River immediately downstream of the Red Bridge Road bridge, located 900 feet south and 2,100 feet west of the NE¼ corner of Section 25, being within the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M. (Kittitas County Parcel No. 910436, Teanaway RM 4.2). MCR will continue to use its authorized Mack Creek diversion point as a second water source under its irrigation and stock water right. The MCR Mack Creek diversion point is located 500 feet north and 150 feet west from the south quarter corner of Section 19, being within the SE¼SW¼ of Section 19, T. 20 N., R. 17 E.W.M. (Kittitas County Parcel No. 295435).

- Ecology is proposing to change its instream flow trust water portion of the former MCR irrigation and stock water right to instream flow trust water use, only in the primary reach of the Teanaway River, from the historic MCR 3M Ditch diversion point (Teanaway RM 7.5), downstream to the MCR/TRROA pump plant (Teanaway RM 4.2), where the instream flow trust water right will terminate.
- The TRROA members are proposing to change their Teanaway River diversion point for their retained portions (continuing off-stream use portions) of their irrigation and stock water rights, from the abandoned Haida-Peterson Ditch diversion point, downstream to the new MCR/TRROA pump plant. The abandoned Haida-Peterson Ditch is located 800 feet north and 800 feet east of the southwest corner of Section 13, being within the SW¼SW¼ of Section 13, T. 20 N., R. 16 E.W.M. (Kittitas County Parcel No. 706336, Teanaway RM 5.1). The new TRROA/MCR pump plant is located on the left (easterly) bank of the Teanaway River below the Red Bridge Road bridge, described above (Kittitas County Parcel No. 910436, Teanaway RM 4.2).
- Ecology proposes to change its instream flow trust water portions of each of the former TRROA members' irrigation and stock water rights to instream flow trust water use, only in the primary reach of the Teanaway River, from the historic Haida-Peterson Ditch diversion point (Teanaway RM 5.1), downstream to the TRROA/MCR pump plant (Teanaway RM 4.2), where the instream flow trust water right will terminate.
- The SWUA members are proposing to change their Teanaway River diversion point for their retained portions (continuing off-stream use portions) of their irrigation and stock water rights, from the abandoned Seaton Ditch diversion point, downstream to the new SWUA pump plant. The abandoned Seaton Ditch diversion point is located 1,200 feet south and 600 feet west of the east quarter corner of Section 26, being within the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M. (Kittitas County Parcel No. 528536, Teanaway RM 3.4). The new SWUA pump plant is located on the right bank of the Teanaway River immediately upstream of the Lambert Road bridge, located 50 feet north and 50 feet west of the SE corner of Section 33, being within the SE¼SE¼ of Section 33, T. 20 N., R. 16 E.W.M. (Kittitas County Parcel No. 514536, Teanaway RM 0.6).
- SWUA member June McClure also proposes to add a POD or point of withdrawal to her retained portion (continuing off-stream use portion) of her irrigation and stock water right: a sump/shallow well located on her property (near the east fenceline), located approximately 1,500 feet south and 1,800 feet east of the northwest corner of Section 34, being within the SE¼NW¼ of Section 34, T. 20 N., R. 16 E.W.M. (Kittitas County Parcels Nos. 735235 and 14524).
- Ecology proposes to change its instream flow trust water portions of each of the former SWUA members' irrigation and stock water rights to instream flow trust water use, only in the primary reach of the Teanaway River, from the historic Seaton Ditch diversion point (Teanaway RM 3.4), downstream to the SWUA pump plant (Teanaway RM 0.6), where the instream flow trust water right will terminate.

Other Water Rights Appurtenant to the Proposed Place of Use

The only other water rights appurtenant to the POUs for these Teanaway Restoration Project off-stream use water rights are permit-exempt domestic well water rights. Several other instream flow trust water rights share the same instream reach POU as these Teanaway Restoration Project instream flow trust water rights.

Hydrologic/Hydrogeologic Evaluation

For the purpose of this evaluation, the region of interest extends from the abandoned 3M Ditch at Teanaway RM 7.5, formerly used to deliver water to the MCR water right's POU, downstream to the new SWUA pump plant on the Teanaway River on the upstream side of the Lambert Road bridge at Teanaway RM 0.6.

The USBR maintains two stream flow gauging stations on the Teanaway River: the Forks Gauge located (in Section 5, T. 20 N., R. 16 E.W.M.) approximately 2.5 miles upstream of the abandoned 3M Ditch diversion point, and the Lambert Road Gauge located right at the Lambert Road bridge, immediately downstream of the SWUA pump plant water intake. Additionally, Ecology maintains a Teanaway River Gauge immediately below the TRROA/MCR pump plant intake and downstream of the Red Bridge Road bridge.

Previous analyses by Ecology hydrogeologists and other staff have been unable to identify any specific losing or gaining reaches in this subject reach of the Teanaway River. Briefly, a losing reach indicates that the stream has a tendency to discharge water to the aquifer over a given reach. A gaining reach occurs when groundwater is discharging or adding water to a creek over a specific reach.

Impairment Considerations

These Teanaway Restoration Project water rights have been historically managed by the Adjudication Court-appointed Teanaway Stream Patroller, Stan Isley, based on the priority class system established by the Court's February 8, 2001 Subbasin No. 3 (Teanaway River) CFO, and will continue to be thus managed under the forthcoming *Acquavella* Final Decree. These water rights are subject to regulation and curtailment of use when water is unavailable for their specific class of water right, according to that class' specific priority date, in keeping with the Prior Appropriation Doctrine's "first in time is first in right" tenet.

There are several PODs utilized by third-party, non-Teanaway Restoration Project water right holders in the reach of the Teanaway River from the abandoned 3M Ditch diversion point (historically used by MCR) at Teanaway RM 7.5, downstream to the MCR/TRROA pump plant diversion point at Teanaway RM 4.2. This intervening reach from Teanaway RM 7.5 to Teanaway RM 4.2 is the reach that is affected by the proposed MCR and TRROA POD change applications and the Ecology trust water right applications derived from those former MCR and TRROA water rights. The third-party non-project water rights in this reach are as follows:

<u>1884 Priority Water Right</u>

1) Downs, Milton and Geraldine, originally confirmed for 0.16 cfs, 52 ac-ft/yr for irrigation of 8 acres and stock water, from May 1 through September 15, within a portion of the NE¼SW¼ of Section 13, T. 20 N., R. 16 E.W.M. This original 3M Ditch (and Mason and Musser Creeks) water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion points of water from the 3M Ditch on the Teanaway River to pump sites only on Mason and Musser Creeks on the Downses' property within the W½ of said Section 13. This water right also was confirmed surplus water for up to 30 days when available.

<u>1885 Priority Water Rights</u>

1) Teanaway Valley Farms Inc., 0.755 cfs, 245.375 ac-ft/yr for irrigation of 37.75 acres, and 2.0 ac-ft/yr for stock water, both from May 1 through September 15, within a portion of the SW¼ of Section 13, T. 20 N., R. 16 E.W.M. This original 3M Ditch (and Mason Creek and Musser

Creek) water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion/withdrawal points of water from the 3M Ditch (and Mason and Musser Creeks) to two sources: a ring well on his property and also a portable pump on the Teanaway River, both within the SW¼ of said Section 13 (approximately Teanaway RM 5.2). This water right also was confirmed surplus water for up to 30 days when available.

2) Downs, Milton and Geraldine, confirmed for 0.44 cfs, 143 ac-ft/yr for irrigation of 22 acres, and 2.0 ac-ft/yr for stock water, both from May 1 through September 15, within a portion of the E½ of Section 14, T. 20 N., R. 16 E.W.M. This original 3M Ditch water right has been leased for instream flow trust water use in the Teanaway and Yakima Rivers in recent years. The Downses have not found an alternate diversion point for this water use since the 3M Ditch was abandoned. This water right also was confirmed surplus water for up to 30 days when available.
3) Goodwin, Greg (former Evenden), confirmed for 0.55 cfs, 178.75 ac-ft/yr for irrigation of 27.5 acres, and 2 ac-ft/yr for stock water, from May 1 through September 15, within a portion of the SW¼ of Section 13, T. 20 N., R. 16 E.W.M. This original 3M Ditch (and Mason and Musser Creeks) water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion points of water from the 3M Ditch (and Mason and Musser Creeks) to a portable pump on the Teanaway River within the SW¼ of said Section 13 (approximately Teanaway RM 5.2). This water right also was confirmed surplus water for up to 30 days when available.

<u>1889 Priority Water Rights</u>

1) Badda, Robert and Cecilia, originally confirmed for 0.24 cfs, 78.0 ac-ft/yr for irrigation of 12 acres and stock water, from May 1 through September 15, within a portion of the SW¼NE¼ of Section 14, T. 20 N., R. 16 E.W.M. This original 3M Ditch water right has been modified and reduced since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion point of water from the 3M Ditch to a portable pump on the Teanaway River within said Section 14, T. 20 N., R. 16 E.W.M. (approximately Teanaway RM 6.7). This water right also was confirmed surplus water for up to 30 days when available.
2) Carollo, Mike, confirmed for 0.014 cfs, 4.55 ac-ft/yr for irrigation of 0.7 acre and stock water, from May 1 through September 15, within a portion of the SW¼NE¼ of Section 14, T. 20 N., R. 16 E.W.M. This original 3M Ditch water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion point of water from the 3M Ditch to two side-by-side portable pumps on the Teanaway River within the NW¼ of said Section 14 (approximately Teanaway RM 7.1). This water right also was confirmed surplus water for up to 30 days when available.
3) Goodwin, Greg (former Evenden), confirmed for 0.05 cfs, 16.25 ac-ft/yr for irrigation of 2.5 acres, from May 1 through September 15, within a portion of the SW¼SE¼ of Section 13, T. 20 N., R. 16 E.W.M. This original 3M Ditch (and Mason and Musser Creeks) water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion points of water from the 3M Ditch to a portable pump on the Teanaway River within the SW¼ of said Section 13 (approximately Teanaway RM 5.2). This water right also was confirmed surplus water for up to 30 days when available.
4) Teanaway Valley Farms, Inc. water right, confirmed for 0.055 cfs, 17.875 ac-ft/yr, for irrigation of 2.75 acres, from May 1 through September 15, within a portion of the NE¼SE¼ of Section 14, T. 20 N., R. 16 E.W.M. This original 3M Ditch (and Mason Creek) water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion/withdrawal points of water from the 3M Ditch (and Mason Creek) to two sources: a ring well on his property and also a portable pump on the Teanaway River, both within the SW¼

of said Section 13 (approximately Teanaway RM 5.2). This water right also was confirmed surplus water for up to 30 days when available.

5) Tidwell, Don, originally confirmed for 0.30 cfs, 97.5 ac-ft/yr, for irrigation of 15 acres and stock watering, from May 1 through September 15, within a portion of the SW¼NE¼ of Section 14, T. 20 N., R. 16 E.W.M. This original 3M Ditch water right has been modified and reduced since the 2001 entry of the Teanaway Subbasin CFO, and has largely been transferred to instream flow use in the Teanaway River and water bank mitigation use. This water right also was confirmed surplus water for up to 30 days when available.

1903 Priority Water Right

1) Teanaway Valley Farms, Inc. (former Grywacz), confirmed for 0.25 cfs, 67.5 ac-ft/yr, for irrigation of 13.5 acres, and 0.01 cfs, 1.0 ac-ft/yr, for stock water, both from May 1 through September 15, within portions of Sections 13 and 14, T. 20 N., R. 16 E.W.M. This original Mason Creek water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion/withdrawal points of water from Mason Creek to two sources: a ring well on his property and also a portable pump on the Teanaway River, both within the SW¼ of said Section 13 (approximately Teanaway RM 5.2).

June 30, 1905 Priority Water Right

1) Fruhling, James and Sheryl, originally confirmed for 0.40 cfs, 110 ac-ft/yr, for irrigation of 20 acres and stock water from May 1 through September 15, within a portion of the SW¼SW¼ of Section 11, T. 20 N., R. 16 E.W.M. This original Ballard Ditch water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion point of water from the upstream abandoned Ballard Ditch diversion to a portable pump site located approximately 1,000 feet downstream of the abandoned 3M Ditch diversion point (approximately Teanaway RM 7.3) and approximately 200 feet south of the NW corner of Section 14, T. 20 N., R. 16 E.W.M.

   NOTE: The Ballard Ditch was historically located within the NE¼NE¼ of Section 8, T. 20 N., R. 16 E.W.M., approximately 2.5 miles upstream of the historic 3M Ditch diversion point, and outside the subject affected reach of the Teanaway River.

1910 Priority Water Right

1) Carollo, Mike, confirmed for 0.226 cfs, 73.45 ac-ft/yr for irrigation of 11.3 acres and stock watering from May 1 through September 15, within a portion of the E½NW¼ of Section 14, T. 20 N., R. 16 E.W.M. This original 3M Ditch water right has been modified since the 2001 entry of the Teanaway Subbasin CFO to change the authorized diversion point of water from the 3M Ditch to two side-by-side portable pumps on the Teanaway River within the NW¼ of said Section 14 (approximately Teanaway RM 7.1). This water right also was confirmed surplus water for up to 30 days when available.

There are several water rights confirmed to third-party non-Teanaway-Restoration-Project water right holders in the reach of the Teanaway River from the abandoned Seaton Ditch at Teanaway RM 3.4, downstream to the SWUA pump plant diversion point at Teanaway RM 0.6. This intervening reach from Teanaway RM 3.4 to Teanaway RM 0.6 is the reach that is affected by the proposed SWUA POD change applications and the Ecology trust water right applications derived from the former SWUA water rights. The third-party non-project water rights in this reach are as follows:

1882 Priority Water Right

1) Maggs, Clifford and Rene (former Bonetto), 0.09 cfs, 13.8 ac-ft/yr for irrigation of 4.6 acres from May 1 through September 15, within the NW¼NW¼SW¼ of Section 34, T. 20 N., R. 16 E.W.M., from a pump located within the NW¼SW¼ of said Section 34 (approximately Teanaway RM 1.0).

1883 Priority Water Rights

1) Harry Masterson Estate, originally confirmed for 4.8 cfs, 1,527.50 ac-ft/yr for irrigation of 235 acres and stock watering from May 1 through September 15, 1.0 cfs, 5 ac-ft/yr (consumptive) for stock water from September 16 through April 30, within portions of Sections 28 and 33, T. 20 N., R. 16 E.W.M. The originally-confirmed diversion point was the abandoned Masterson Ditch diversion downstream of Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2. This water right also was confirmed surplus water for up to 30 days when available. This water right has been modified and changed several times since the Teanaway CFO issued in 2001, and in 2015 was entirely assigned to instream flow and water banking mitigation uses.
2) Mundy, Wilbur and Mary Ann, originally confirmed for 0.90 cfs, 292.5 ac-ft/yr for irrigation of 45 acres and stock watering from May 1 through September 15, 1.0 cfs, 5.0 ac-ft/yr (consumptive use) for stock watering from September 16 through April 30, within portions of Sections 28 and 33, T. 20 N., R. 16 E.W.M. The originally-confirmed diversion point was the abandoned Masterson Ditch diversion downstream of Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2. This water right was confirmed surplus water for up to 30 days when available. This water right has been modified and changed several times since the Teanaway CFO was entered in 2001, and in 2015 was entirely assigned to instream flow use.
3) Suncadia (former Walker), three water rights, originally confirmed for a total of 2.74 cfs, 739.8 ac-ft/yr for irrigation of 137 acres, and 2.0 ac-ft/yr for stock watering, both from May 1 through September 15, within portions of Sections 25 and 26, T. 20 N., R. 16 E.W.M. The originally-confirmed two diversion points were the abandoned Masterson Ditch in the NW¼NE¼ of said Section 25, at Teanaway RM 4.2, and/or the abandoned Seaton Ditch in the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M., at Teanaway RM 3.4. These three rights have been modified and changed several times since the Teanaway CFO was entered in 2001, and in 2015 were entirely assigned to instream flow use in the Teanaway River and mitigation for consumptive water use at the Suncadia Resort near Roslyn.

1884 Priority Water Rights

1) Maggs, Clifford and Rene (former Bonetto), two water rights, confirmed for a total of 0.60 cfs, 90 ac-ft/yr, for irrigation of 30 acres from May 1 through September 15, within portions of Section 34, T. 20 N., R. 16 E.W.M., from a pump located within the NW¼SW¼ of said Section 34 (approximately Teanaway RM 1.0).

1885 Priority Water Right

1) Bugni, Estate of (now owned by Teanaway Ridge/Pat Deneen), confirmed for 1.5 cfs, 410.4 ac-ft/yr for irrigation of 76 acres from May 1 through September 15, within a portion of the NW¼ of Section 3, T. 19 N., R. 16 E.W.M., from the abandoned Bugni Ditch in the NE¼SW¼ of Section 34, T. 20 N., R. 16 E.W.M. (approximately Teanaway RM 1.4). This right has been modified and changed since the Teanaway CFO was entered in 2001, and has been transferred to a POU outside the Teanaway River Subbasin on the Olson Ditch via the Ellensburg Water Company Canal.

1889 Priority Water Rights

1) Monroe, Gary, and Judith Torgeson, originally confirmed for 0.20 cfs, 54 ac-ft/yr, for irrigation of 10 acres, from May 1 through September 15, within a portion of the NE¼ of Section 4, T. 19 N., R. 16 E.W.M. This right was originally confirmed to the abandoned Masterson Ditch diversion point downstream of the Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2, and the abandoned Seaton Ditch diversion point in the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M., at Teanaway RM 3.4. This water right has been

modified and divided since the entry of the Teanaway Subbasin CFO in 2001. The authorized diversion points are now portable pumps on the lower Teanaway River below Lambert Road bridge, at approximately Teanaway RM 0.4, outside (downstream) of the subject affected reach of the Teanaway River.

2) U.S. Bureau of Reclamation (former Istvan), two water rights, confirmed for a total of 0.40 cfs, 108 ac-ft/yr, for irrigation of a total of 20 acres, from May 1 through September 15, within a portion of the NE¼ of Section 4, T. 19 N., R. 16 E.W.M. These rights were originally confirmed to the abandoned Masterson Ditch diversion point downstream of the Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2, and the abandoned Seaton Ditch diversion point in the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M., at Teanaway RM 3.4. These water rights have been modified since the entry of the Teanaway Subbasin CFO in 2001 (actually by the Court's March 9, 2000 Order Pendente Lite, which continues in force) to transfer these rights to instream flow use in the Teanaway and Yakima Rivers.

<u>1890 Priority Water Rights</u>

1) Blackburn, Penny, three rights, originally confirmed for a total of 1.22 cfs, 394.3 ac-ft/yr, for irrigation of 61 acres, and 2 ac-ft/yr for stock watering, both from May 1 through September 15, within portions of Sections 27 and 34, T. 20 N., R. 16 E.W.M. These rights were originally confirmed to the abandoned Seaton Ditch diversion point in the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M., at Teanaway RM 3.4, or the abandoned Grubesich/Geiger Ditch diversion point located in the SW¼SW¼ of Section 26, T. 20 N., R. 16 E.W.M., approximately at Teanaway RM 2.6. These water rights have been modified since the entry of the Teanaway Subbasin CFO in 2001 to change the diversion point from the abandoned Seaton and Grubesich/Geiger Ditches to a pump site diversion point located in the SE¼ of said Section 34. These water rights also were confirmed surplus water for up to 30 days when available.
2) SwiftWater Ranch LLC (former Blackburn), originally confirmed for 0.32 cfs, 86.4 ac-ft/yr for irrigation of 16 acres, 1 ac-ft/yr for stock water, both from May 1 through September 15, within a portion of the SW¼SW¼ of Section 26, T. 20 N., R. 16 E.W.M. This right was originally confirmed to the abandoned Masterson Ditch diversion point downstream of the Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2, and the abandoned Seaton Ditch diversion point in the NE¼SE¼ of said Section 26, at Teanaway RM 3.4. This water right has been modified since the entry of the Teanaway Subbasin CFO in 2001 to change its use to instream flow use and water banking mitigation use. This water right also was confirmed surplus water for up to 30 days when available.
3) Suncadia (former Walker), originally confirmed for 0.68 cfs, 183.6 ac-ft/yr for irrigation of 34 acres, from May 1 through September 15, within a portion of Section 26, T. 20 N., R. 16 E.W.M. The originally-confirmed two diversion points were the abandoned Masterson Ditch diversion point downstream of the Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2, and the abandoned Seaton Ditch diversion point in the NE¼SE¼ of said Section 26, at Teanaway RM 3.4. This right has been modified and changed several times since the Teanaway CFO was entered in 2001, and in 2015 was entirely assigned to instream flow use in the Teanaway River and mitigation for consumptive water use at the Suncadia Resort near Roslyn.

<u>1898 Priority Water Rights</u>

1) Suncadia (former Walker), water rights (two rights), originally confirmed for a total of 0.34 cfs, 90.72 ac-ft/yr for irrigation of 16.8 acres, from May 1 through September 15, within portions of Section 26, T. 20 N., R. 16 E.W.M. The originally-confirmed diversion point was the abandoned Masterson Ditch diversion point downstream of the Red Bridge Road bridge in the NW¼NE¼ of Section 25, T. 20 N., R. 16 E.W.M., at Teanaway RM 4.2. These two rights have been modified

and changed several times since the Teanaway CFO was entered in 2001, and in 2015 were entirely assigned to instream flow use in the Teanaway River and mitigation for consumptive water use at the Suncadia Resort near Roslyn.

The above list documents the numerous water rights, some junior in priority to the Teanaway Restoration Project water rights, located in the intervening river reaches between the originally-confirmed and now-abandoned ditch diversion points for the Teanaway Restoration Project water rights and their proposed downstream pump site diversion points. Because water availability is expected to be equally as reliable at the new pump sites further downstream as at the original ditch diversion points, approval of the POD changes to the pump sites located further downstream is not anticipated to adversely affect junior upstream users by "calling" (i.e., regulating) them more frequently.

Indeed, this Teanaway Restoration Project's water right changes were initially implemented over 15 years ago under the temporary authorization of the Court's March 9, 2000 and June 14, 2007 Orders Pendente Lite. In these 15 years of operation, the downstream changes in POD and the protection of the primary-reach-only instream flow water uses in the intervening reaches between historic abandoned ditch diversion points and the new downstream pump site diversions have not caused any adverse impact to any third-party non-Teanaway-Restoration-Project water rights.

The Ecology primary-reach-only instream flow trust water rights created from this Teanaway Restoration Project enjoy the same priority dates as the parent water rights from which they are derived. These instream flow trust water rights have been, and will continue to be, managed according to their relative water right priority dates within the Teanaway River Subbasin schedule of rights confirmed by the Adjudication Court. They will be exercised and protected only when all potentially-affected senior-priority water rights are fully satisfied.

CONCLUSIONS

In accordance with chapters 90.03 and 90.38 RCW, the author makes the tentative determination that surface water right S4-83709-J, confirmed under Court Claim No. 01201 with a priority date of June 30, 1891, represents a valid water right that authorizes the use of up to 0.198 cfs, from May 1 through September 15, up to 89.10 acre-feet per year, of water in only the primary reach of the Teanaway River, for instream flow Trust water use.
Approval of this water right change, as conditioned, will not cause impairment of other existing water rights.
Approval of this water right change will not enhance or enlarge the subject water right.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a change to instream flow Trust water use be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

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

- 0.198 cubic feet per second
- 89.10 acre-feet per year

- Instream flow Trust water use in the Teanaway River, primary reach only, from May 1 through September 15

Place of Use:

PRIMARY REACH – Begins at the historic diversion point for the abandoned Seaton Ditch on the Teanaway River, located 1,200 feet south and 600 feet west of the east quarter corner of Section 26, being within the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M., Kittitas County Parcel No. 528536, Teanaway River Mile 3.4; and ends at the SWUA pump site diversion point immediately upstream of the Lambert Road bridge on the right (westerly) bank of the Teanaway River, located 50 feet north and 50 feet west of the SE corner of Section 33, being within the SE¼SE¼ of Section 33, T. 20 N., R. 16 E.W.M., Kittitas County Parcel No. 514536, Teanaway River Mile 0.6.
SECONDARY REACH – Not applicable. There is no secondary reach.

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE							
REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LONGITUDE	LATITUDE
Begin Primary Reach	Teanaway River	3.4	20 N.	16 E.	26	-120.79631 W	47.19311 N
End Primary Reach	Teanaway River	0.6	20 N.	16 E.	33	-120.83616 W	47.17507 N

Datum: WGS84

Stan Isley

Stan Isley, Permit Writer *Date*

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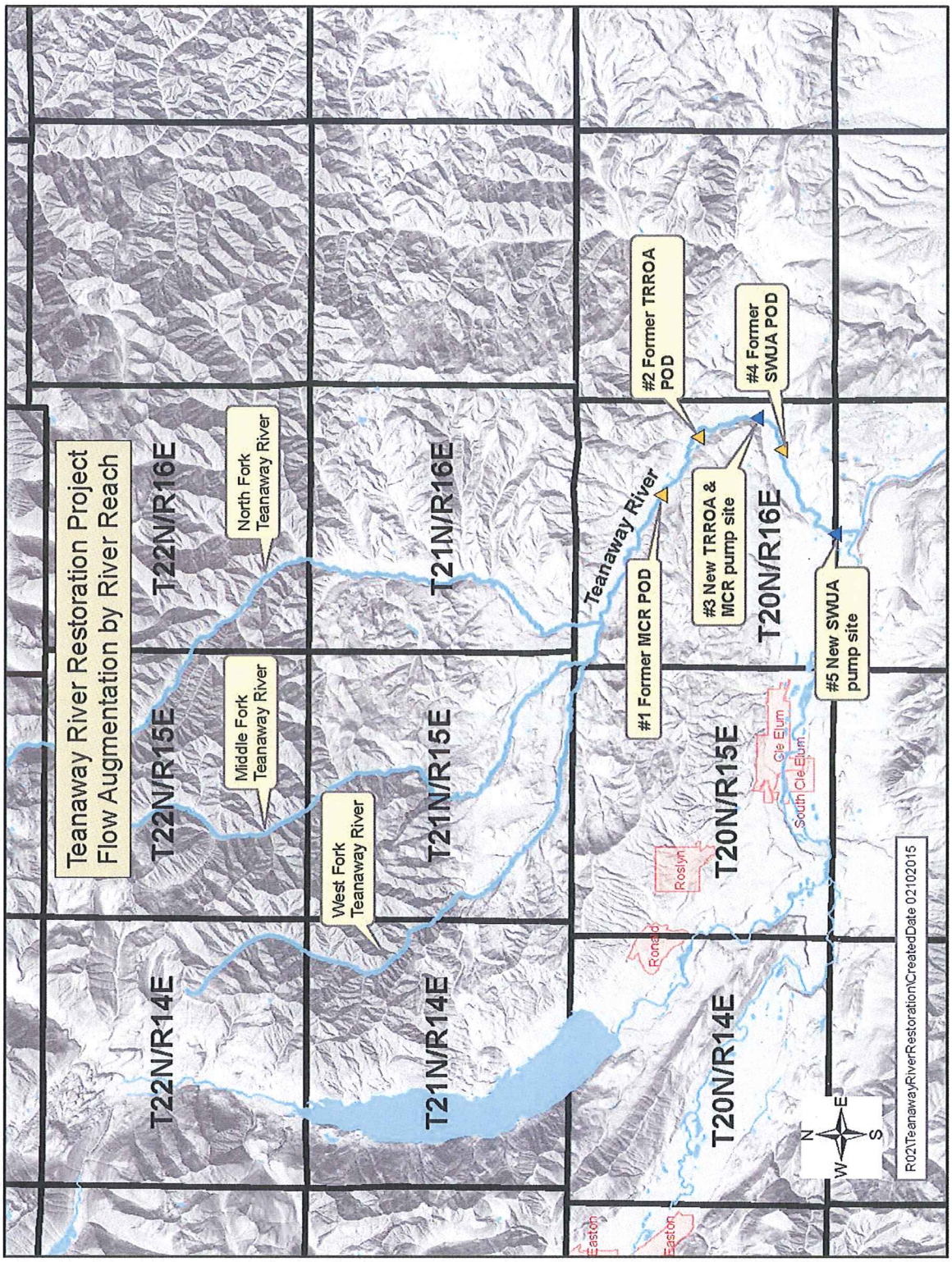
Teanaway River Restoration Project
Flow Augmentation by River Reach
T22N/R14E
T22N/R15E
T22N/R16E
T21N/R14E
T21N/R15E
T21N/R16E
T20N/R14E
T20N/R15E
T20N/R16E
North Fork Teanaway River
Middle Fork Teanaway River
West Fork Teanaway River
Teanaway River
#1 Former MCR POD
#2 Former TRROA POD
#3 New TRROA & MCR pump site
#4 Former SWUA POD
#5 New SWUA pump site
Roslyn
Cle Elum
South Cle Elum
Easton
N
E
S
W
R02\TeanawayRiverRestorationCreatedDate 02102015