DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION FOR TRUST WATER RIGHT

PRIORITY DATE	WATER RIGHT NUMBER	APPLICATION NUMBER	TRUST TERM
April 1, 1887	Claim No. 112291	CS4-112291CL@1	April 1, 2012 through October 31, 2032

WATER RIGHT OWNER
HELENSDALE RECLAMATION DISTRICT
PO BOX 171
MALOTT WA 98829

Purpose and Quantity

Trust water right for the purpose of instream flow, with quantities allocated to primary and second reaches in the following manner.

	Primary Reach	
Period	**Flow (cfs)**	**Acre-feet**
04/01 - 04/30	0.003	0.01
05/01 - 05/31	1.49	76.02
06/01 - 06/30	2.56	152.1
07/01 - 07/31	3.21	197.06
08/01 - 08/31	2.32	142.48
09/01 - 09/30	1.53	90.93
10/01 - 10/31	0.36	7.08
ANNUAL TOTAL		**665.68**

Trust Water Right Place of Use (See Attachment 1)

WATERBODY	TRIBUTARY TO	COUNTY	WATER RESOURCE INVENTORY AREA
Okanogan River	Columbia River	Okanogan	49-Okanogan

REACH	WATERBODY	RIVER MI	LATITUDE	LONGITUDE
Begin Primary Reach	Loup Loup Creek	1.33	48.29810	-119.70708
End Primary Reach	Loup Loup Creek	0	48.28056	-119.70545

Latitude/Longitude Coordinates may approximate reach segments. Datum: NAD83/WGS84

The Primary Reach is located at a point 1,630 feet north and 1,270 feet east of the southwest corner of Section 4, Township 32 North, Range 25 E.W.M.

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. The mailing address is:

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 and Decisions

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 the requested change of place and purpose of use under Trust Water Right Application No. CS4-112291CL@1, be approved subject to existing rights and the provisions specified above.

YOUR RIGHT TO APPEAL

You have a right to appeal this Decision to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Decision. 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 all of the following within 30 days of the date of receipt of this Decision:

- File your appeal and a copy of this Decision 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 Decision 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.

ADDRESS AND LOCATION INFORMATION

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

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://www.leg.wa.gov/CodeReviser

Signed at Yakima, Washington, this 1 day of OCTOBER 2012.

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

INVESTIGATOR'S REPORT

BACKGROUND

Description and Purpose of Proposed Change

Washington Water Trust (WWT) is requesting a transfer (change) of an existing irrigation water right to instream use on behalf of the Helensdale Reclamation District for a 20 year lease period. WWT is seeking to lease all of Claim No. S4-112291CL and put the water into the Trust Water Program to benefit Loup Loup Creek from a point located 1,630 feet north and 1,270 feet east of the southwest corner of Section 4, Township 32 North, Range 25 E.W.M. and ending at the confluence of Loup Loup Creek and the Okanogan River. The lease period will be for 20 years beginning on the first day of the 2012 irrigation season. Under this agreement, Helensdale Reclamation District (HRD) will change the purpose of use of its Loup Loup Creek water right from irrigation to instream flow, and will continue to use surface water rights from the Okanogan River under Water Right Certificate No. 849 (Claim No. S4-112290CL) according to the current use. Water Right Certificate No. 849 is a supplemental water right to Claim No. S4-112291CL and was issued during a period of severe drought to compensate for the inability to irrigate from a dry Loup Loup Creek (Ecology 2008).

This change in water rights source, and subsequent lease, will benefit Endangered Species Act listed steelhead in Loup Loup Creek, which is completely dry most summers as a result of irrigation. This water will provide public benefit for fish restoration in the system, and as such qualifies for priority processing under Chapter 173-152 WAC. Because upgrades are necessary to the current delivery system, the lease term is scheduled to begin upon completion of construction of the new system or receipt of the Report of Examination from Ecology, whichever is later.

Table 1: Attributes of the Existing Water Right and Proposed Change Claim No. S4-112291CL

Attributes	Existing	Proposed
Name	**Helensdale Reclamation District**	**Washington Water Trust**
Priority Date/ Change Application Date	April 1, 1887	May 13, 2011
Instantaneous Quantity	2,120.51 gpm	Same
Annual Quantity	754 acre-feet	Same
Purpose of Use	Irrigation	Instream flow
Period of Use	April 1 through October 15	Same
Place of Use	All lands in Section 9, T. 32 N., R. 25 E.W.M. under Helensdale Reclamation District, as recorded in the Okanogan County Courthouse records.	Approximately 1.3 river miles of Loup Loup Creek upstream of the confluence of Loup Loup Creek and the Okanogan River.
Point of Diversion	Loup Loup Creek, NW¼ of SW¼ in T32N, R25E.W.M., Section 4	Same

Legal Requirements for Proposed Change
The following is a list of requirements that must be met prior to authorizing the proposed change from irrigation to instream flow enhancement in Loup Loup Creek.

- **Public Notice**
  A notice of application was duly published in accordance with RCW 90.42.040(5) in the Omak-Okanogan County Chronicle on January 25th and February 1, 2012. A protest letter was submitted jointly by RLF Wenatchee Land Holdings LLC, Zirkle Fruit Company, and the Pleasant Valley Water Users Association. This letter of protest is addressed in the *Consideration of Protests* section below.

- **State Environmental Policy Act (SEPA)**
  This Application is subject to the provisions of the State Environmental Policy Act (SEPA), Chapter 43.21 RCW, due to the fact that the cumulative quantity of water proposed for trust water constitutes a withdrawal of more than one cubic foot per second. Ecology, acting as lead agency, determined the subject action does not have a significant adverse impact on the environment and an environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). A final Determination of Non-Significance was issued by Ecology on January 19 2012. No comments were received.

- **Water Resources Statutes and Case Law**
  This application is subject to legal requirements in statute, administrative rules, and relevant case law, which must be considered prior to issuance of the requested change(s). Among these legal requirements:

  - The Washington State Supreme Court has held that Ecology, when processing a Water Right Change Application, is required to make a tentative determination of extent and validity of the Claim or water right. This is necessary to establish whether the Claim or water right is eligible for change. *R.D. Merrill v. PCHB and Okanogan Wilderness League v. Town of Twisp*.

  - RCW 90.03.380(1) allows for a water right that has been put to beneficial use to be changed. The point of diversion, place of use, and purpose of use may be changed if the change would not result in harm or injury to existing water rights.

  - RCW 90.14.160 states that any person entitled to divert water through an appropriation authorized through a general adjudication, who abandons or voluntarily fails, without sufficient cause, to divert all or any part of said water right for a period of five successive years after July 1, 1967, shall relinquish such water right or portion thereof, to the state.

  - RCW 90.42 states that a valid water right can be changed to instream flows.

INVESTIGATION

History of Water Use

The place of use identified by Claim No. S4-112291CL includes "All lands in Section 9, T. 32 N., R. 25E.W.M. under Helensdale Reclamation District, as recorded in the Okanogan County Courthouse records" (Attachment 1). Use of the water right is also limited to irrigation of 188.49 acres of land.

The history of water use under the water right was described as of 1911 in Helensdale Investment Company vs. J.C. Cloninger et al. in the Superior Court of the State of Washington in and for the County of Okanogan. The following quote was taken from the findings of fact made by the court:

- *That the Helensdale Investment Company is the successor to the following land with water rights appurtenant thereto from Loop Loop Creek for irrigation, stock and domestic purposes...:*
    - *...Lots One and Two (1&2) of Section Nine (9), Lots One, Two and Three (1, 2 & 3) of Section Ten (10), Township Thirty-two (32) North, Range Twenty-five (25) E.W.M., Washington, containing 161.25 acres.*
    - *...The Southeast Quarter of the Northwest Quarter (SE¼NW¼) and Lots Three, Seven, Eight and Ten (3, 7, 8 & 10) of Section Nine (9), in Township Thirty-two (32) North, Range Twenty-five (25) E.W.M., Washington, containing 166.45 acres.*
    - *...The South Half of the Northeast Quarter (S½NE¼) and Lot Four (4) of Section Ten (10) in Township Thirty-two (32) North, Range Twenty-five (25) E.W.M., Washington, containing 123.05 acres.*

HRD was required to start metering its diversions from Loup Loup Creek and the Okanogan River in June of 2002 (Order No. DE 02WRCR-4296). In response to this order, HRD installed a flume and staff gage at the Loup Loup Creek diversion in order to measure flows. HRD also installed a Hydro-Flow model 2200 meter at the Okanogan River diversion in 2003. Diversion records sent to Ecology since that time are incomplete and lack the year of the records, the units of measure, and do not provide a clear understanding of how much water HRD diverted. For this reason, the information is insufficient for use to determine the extent and validity of the water right.

WWT provided an affidavit dated 5/1/12 from Diana Lowell, representing the Helensdale Reclamation District, to document the accuracy of the Okanogan County assessor information, water system capacity, and the historic use of water from Loup Loup Creek and the Okanogan River. The affidavit states:

> *We do not track acreages by crop type under our current tracking system, but can verify the accuracy of both Okanogan County Assessor records and aerial photos to quantify this use. Our delivery system involves using the Loup Loup claim each year as water is available in Loup Loup Creek, after which we pump water to serve the district from the Okanogan River Surface Water Certificate No. 849 (WRATS No. S4-01770CWRIS). This practice can be verified by the Okanogan PUD records showing minimal or no pumping in the early part of each year and the presence of crops requiring year-round irrigation, including orchards and lawns.*

In the most recent five years, we have continued the historic practice of diverting our Loup Loup Claim from our point of diversion shown in the water right. From that point, it passes through a measurement flume and drops into a 12-inch mainline pipe that serves water to the district through a gravity-fed series of lines and sub-lines on the District. This system is designed to allow up to 4.72 cfs of water to enter our irrigation system as water is available in Loup Loup Creek, which is sufficient to fulfill the 754 ac-ft water annual quantity in the claim if available throughout the irrigation season. When water is not available at the full extent of the water right, we continue to divert what is available from Loup Loup Creek until there is not enough flow to allow our system to work effectively. When the measured reading drops below 1.5 cfs on the measurement flume, we will feed the top part of the system with the Loup Loup water, and use the pump in the Okanogan River to feed the bottom part of the system. When Loup Loup Creek gets below 0.75 cfs on the measurement flume, we stop using the Loup Loup Creek water and divert entirely from the Okanogan River. Additionally, if 1.5 cfs, or 0.75 cfs, is not adequate to meet the irrigation requirements of our district members, we will pump from the River to meet this demand.

The availability of water in Loup Loup Creek varies radically from year to year due to rainfall and runoff conditions in the watershed, as well as unknown impacts of either authorized or unauthorized upstream diversions. The PUD records of pumping from the Okanogan River describe when water is no longer available from Loup Loup Creek at our diversion point, but due to the costs of pumping, we certainly would use the Loup Loup diversion throughout the irrigation season if water was available.

Site Visit

On October 10, 2011, Alyssa Neir of Golder met with Greg McLaughlin of Washington Water Trust to visit the Loup Loup Creek and Okanogan River diversions. The Loup Loup Creek diversion is located at approximately river mile 1.34 on Loup Loup Creek (Arterburn, et al., 2007). The diversion gate was in the down position, so all of Loup Loup Creek was being diverted during the time of the site visit, except for the water escaping under the diversion gate. The water is diverted into a gated channel that feeds into a metal flume. The flume has a staff gage installed on it. The staff gage requires manual readings. Flows in the flume at the time of the site visit were approximately 2 cfs, which represents almost the entire flow of Loup Loup Creek at that time. The water flows through the flume and into HRD's distribution system. The connection point between the Loup Loup Creek water and Okanogan River water is marked by a pressure gage located at the intersection of Okanogan Street and N. Malott Rd.

HRD does not currently store diverted water and there is no variable control of the water diversions to match demand. The system is either on or off and any water that isn't used goes directly to the Okanogan River. Evidence for water use observed during the site visit included irrigation, active pasture lands, orchards, vineyards, and other agricultural areas.

Extent and Validity

Okanogan County Assessor Data

A review of the Okanogan County assessor data for the parcels within the HRD was used to identify the type of permanent irrigation system used, the types of permanent crops and the date that the crops were planted. A total of 24 parcels of the 104 parcels within the HRD have permanent crops planted, including apples, pears, and cherries, totaling 66.21 acres (Table 2). The other 80 parcels are a combination of residential, agricultural, and undeveloped land that could be using water for pasture/turf, alfalfa, row crops, or stockwatering. The assessor data provided information through 2011, but no new permanent crops were added after 2006.

Table 2. Permanent Crops within the Helensdale Reclamation District, Okanogan County (2011)

Year	Apples		Cherries		Pears		Total	
Planted	# Parcels	Acres	# Parcels	Acres	# Parcels	Acres	# Parcels	Acres
1980	14	11.13	0	0	2	9.57	16	20.7
1985	4	15.98	0	0	1	0.61	5	16.59
1990	0	0	0	0	7	11.81	7	11.81
1999	2	3.75	0	0	0	0	2	3.75
2000	1	4.15	1	2.6	0	0	2	6.75
2005	6	3.42	0	0	0	0	6	3.42
2006	5	3.19	0	0	0	0	5	3.19
Total*	**32**	**41.62**	**1**	**2.6**	**10**	**21.99**	**43**	**66.21**

* Some parcels have more than one permanent crop type.

Landsat Evaluation

Landsat satellite data was used to indicate the existence of crops through infrared imagery. For the period from 2005 through 2011, these images suggest water use as described below in Table 3.

Table 3. Estimated Historical Irrigated Acres within the Place of Use of Claim No. S4-112291CL

Year	Estimated Irrigated Area (acres)	Date
2005	129.77	6/20/2005
2006	132.10	7/25/2006
2007	126.11	7/28/2007
2008	133.62	8/15/2008
2009	159.26	8/18/2009
2010	165.36	9/22/2010
2011	150.62	7/23/2011

Source: WWT (2012a)

Estimated Application Efficiency

Water use under Claim No. S4-112291CL is limited to 2,120.51 gpm, 754 ac-ft of water to irrigate 188.49 acres of land from April 1 through October 15. The Okanogan County assessor's data indicates that the water right has historically been used to grow apples, cherries, pears, alfalfa and pasture/turf. Water use data are not available, so the water use was estimated using information from the Washington Irrigation Guide (WIG) to estimate the application efficiency. The application efficiency can be calculated by dividing the crop irrigation requirement by the total water use (subject to the extent and validity of the water right).

Application Efficiency = Crop Irrigation Requirement / Total Water Use

The WIG provides methods for estimating the net crop irrigation requirement based on the type of crop that is grown (USDA NRCS 2007). The closest climatic station to the place of use is for Omak, WA. The application efficiency used to develop the water right limitations was calculated using the 754 ac-ft of water per year allowed under the water right and the monthly net irrigation requirements for alfalfa and pasture/turf, apples with cover, cherries with cover, and pears with cover (Table 5). Although the WIG does not completely cover the irrigation season allowed under the water right, the information in the WIG was used as the best available basis for water use estimates, given the limited specific information provided by HRD's metering.

The irrigation season begins on May 1 and ends on October 10 for pears and plums with cover (Table 5). The distribution of the crop types was estimated using the assessor's data for the permanent crops planted as of 2006 and assuming that the remainder of the total irrigated area under the water right is split equally between alfalfa and pasture/turf.

Ecology (2005) provides a table of estimated ranges in application efficiency for different application methods. The application efficiency varies with the application method. Based on the assessor's data, the permanent crops are irrigated using solid set irrigation systems. Therefore, it was assumed that all three permanent crops would have the same application efficiency. There was no way to know what irrigation type was used on the remainder of the irrigated area. The total irrigation requirement is calculated as the net irrigation requirement divided by the irrigation efficiency. The two application efficiencies (for permanent and non-permanent crops) were then adjusted until the total irrigation requirement for the year was equal to 754 ac-ft. The application efficiency for the permanent crops was estimated to be 60 percent for permanent crops and 55.7 percent for the rest of the irrigated area (Table 4).

Table 4. Estimated Application Efficiency

Crop	Apples	Cherries	Pears	Average Alfalfa and Pasture/Turf	Total
Irrigated Area (acres)	41.62	2.6	21.99	122.28	188.49
Net Irrigation Requirement (in/year)	31.67	32.9	29.53	25.66	119.76
Application Efficiency (%)	60.0%			55.7%	--
Total Estimated Water Use (acre-feet/yr)	183	12	90	469	754

Estimated Water Use

The total irrigation requirement (or estimated water use) can be calculated by dividing the net irrigation requirement by the application efficiency. Applying the estimated application efficiency to the net irrigation requirement by month and the 2010 irrigated area based on the Landsat data and assessor data results in an estimated water use of 665.68 ac-ft per year for the irrigation of 165.36 acres (Table 5).

Table 5. Estimated Total Crop Irrigation Requirement

	Apples		Cherries		Pears		Alfalfa and Pasture/Turf		Total	
Month	ac-ft/ month	gpm/ day	ac-ft/ month	gpm/ day	ac-ft/ month	gpm/ day	ac-ft/ month	gpm/ day	ac-ft/ month	gpm/ day
Jan	0	0	0	0	0	0	0	0	0	0
Feb	0	0	0	0	0	0	0	0	0	0
Mar	0	0	0	0	0	0	0	0	0	0
Apr	0	0	0.01	1.13	0	0	0	0	0.01	1.13
May	15.95	144.61	1.44	10.53	9.83	71.88	48.8	442.45	76.02	669.47
June	43.35	327.53	2.71	20.48	20.74	156.7	85.3	644.49	152.1	1,149.20
July	55.96	409.17	3.5	25.59	27.09	198.08	110.51	808.03	197.06	1,440.87
Aug	40.64	297.15	2.54	18.57	19.64	143.6	79.66	582.46	142.48	1041.78
Sept	25.38	191.76	1.59	12.01	12.19	92.1	51.77	391.15	90.93	687.02
Oct	1.68	38.08	0.1	2.27	0.7	15.87	4.6	104.27	7.08	160.49
Nov	0	0	0	0	0	0	0	0	0	0
Dec	0	0	0	0	0	0	0	0	0	0

Month	Apples		Cherries		Pears		Alfalfa and Pasture/Turf		Total	
	ac-ft/ month	gpm/ day	ac-ft/ month	gpm/ day	ac-ft/ month	gpm/ day	ac-ft/ month	gpm/ day	ac-ft/ month	gpm/ day
Season	**182.96**	**409.17**	**11.89**	**25.59**	**90.19**	**198.08**	**380.64**	**808.03**	**665.68**	**1,440.87**

Source: USDA NRCS (2007)

1. The irrigation season begins on May 7 and ends on October 10 for Alfalfa, Pasture/turf, and Apples with cover. The irrigation season begins on April 28 and ends on October 10 for cherries with cover.
2. Refer to Table 5 for the monthly net irrigation requirements and the irrigation seasons. Refer to table 6 for the application efficiencies. Refer to table 2 for the irrigated area of permanent crops. The area for alfalfa and pasture/turf is the difference between the 2010 irrigated area in Table 3 and the area of permanent crops.
3. The Total Irrigation Requirement = Net Irrigation Requirement/Application Efficiency (Ecology 2005).

Proposed Use

HRD has proposed to temporarily transfer 754 ac-ft of water into the Washington State Trust Water Program to be used for instream flows, enhancement, and maintenance of fisheries (steelhead passage) in Loup Loup Creek from in April 1 through October 15 from 2012 to 2032.

Other Water Rights Appurtenant to the Proposed Place of Use

Water Right Certificate No. 849 authorizes HRD to divert 5 cfs from a point of diversion from the Okanogan River when water from Loup Loup Creek is not available (an alternate water right to Claim No. S4-112291CL (the subject of this report)). Certificate No. 849 does not provide a maximum annual quantity and was issued during a period of severe drought to compensate for the inability to irrigate from a dry Loup Loup Creek (Ecology 2008). Claim No. S4-112290CL is also for the same use as Certificate No. 849, possibly making it redundant (see Table 6). HRD intends to use Certificate No. 849 (and Claim S4-112290CL) as their authorization to divert water while Claim No. S4-112291CL is in the trust water program.

Table 6. Other Water Rights Appurtenant to the Place of Use

File No.	Certificate No.	Priority Date	Qi (cfs)		Qa (acre-feet/yr)		Source
			Additive	Non-Additive	Additive	Non-Additive	
S4-*01770CWRIS	849	7/1/1926	--	5	--	--	Okanogan River
S4-112290CL	Based on Cert #849	4/1/1923	--	5	--	754	Okanogan River

Trust Water Calculations

The proposed transfer to instream flows is quantified by a monthly amount available in the primary reach. These quantities are located in the Total columns in Table 5, denoted with by a black box.

Trust Water Place of Use

The place of use of a Trust Water Right for instream flows is defined within a primary and secondary reach. The primary reach is the portion of a water body that benefits from both the former consumptive use and return flow waters of a Trust Water Right. It is the reach between the original diversion point and the point where the last return flows reenter the stream or river. The primary reach for this Trust Water begins at the point of diversion for Claim No. S4-112291CL located 1,630 feet north and 1,270 feet east of the southwest corner of Section 4, Township 32 North, Range 25 EWM and continues to the confluence of Loup Loup Creek and the Okanogan River (see Attachment 1). There is no secondary reach for this project because HRD will continue to supply irrigation water from the Okanogan River under Certificate No. 849.

Impairment Considerations

"Impair" or "impairment" means to: 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, and/or; 2) to prevent the beneficial use of the water to which one is entitled, and/or; 3) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150).

HRD plans to cease diverting water from Loup Loup Creek and continue to deliver water to the lands historically irrigated under Claim No. S4-112291CL with water diverted under Water Right Certificate No. 849 (Claim No. S4-112290CL). Upstream diverters on Loup Loup would not be regulated to protect this instream flow right until the claim is adjudicated with respect to other rights on the tributary.

The proposed early-season diversion from the Okanogan River would impact approximately 0.2 miles of the Okanogan River (the distance from the Okanogan River diversion to the confluence of the Okanogan River and Loup Loup Creek) within T32N R25E-Section 9. A review of the WRTS online database identified one surface water permit and one surface water certificate authorizing diversions from the Okanogan River within T32N R25E-Section 9 (Table 10). Per the water right certificate, the point of diversion from the Okanogan River under S4-01262CWRIS is located 1200 ft west and 825 ft south from the east quarter corner of Section 9. This location is upstream of the HRD diversion from the Okanogan River. Per the water right certificate, the point of diversion from Loup Loup Creek under S4-*05992CWRIS is located on Government Lot 5 within Section 9. This location is downstream of HRD's diversion from Loup Loup Creek and is not downstream of the Okanogan River diversion. Based on this review, no impairment to existing water rights is expected from approval of this transfer.

Table 7: Other Water Rights within T32N R25E, Section 9

Water Right Tracking #	Cert #	Status	Priority Date	Qi (cfs)	Qa (acre-feet)	Irrigated acres	Purpose	Source
S4-01262CWRIS	S4-01262C	Active	9/22/1970	0.06	5.0	1.5	Irrigation	Okanogan River
S4-*05992CWRIS	03020	Active	4/1/1944	2.0		100		Loup Loup Creek

Source: Ecology (2011)

Public Interest Considerations

This Trust Water Right will be used exclusively for instream flows and enhancement and maintenance of fisheries as allowed under RCW chapters 90.03. 90.42 and 90.54. Water use changes associated with this Application are expected to provide significant environmental benefits to Loup Loup Creek by providing critical passage flow to promote access of high-quality habitat upstream of the HRD diversion structure. This transfer directly responds to recommended actions in the Upper Columbia Steelhead biological opinion and the NPCC Sub-basin plan.

Consideration of Protests and Comments

A protest letter was submitted jointly by RLF Wenatchee Land Holdings LLC, Zirkle Fruit Company, and the Pleasant Valley Water Users Association (referred to collectively as signatories). The letter stated that the use of the signatories' water rights will potentially be affected by the proposed project, and the signatories requested formal notification of actions taken on the application. The letter also noted that the signatories are not necessarily opposed to the trust enrollment, but want assurance that the trust enrollment would not exceed historic and valid use of the water right.

The proposed change of purpose of use to instream flow is subject to RCW 90.03.380 which provides that the right is limited to the amount beneficially used. The extent and validity of the claim were evaluated as described above and 165 acres have been irrigated. No enlargement of this water right would occur by this transfer to the Trust Water Program.

The protestants are upstream diverters on Loup Loup Creek. Helensdale's Loup Loup Creek water right is based on a claim filed under RCW 90.14. This claim has not been adjudicated by Okanogan County Superior Court. Ecology does not have authority to determine, absent adjudication by a superior court, whether the Helensdale's water right claim is superior in priority to the claims or certificates held by RLF, Zirkle Fruit, and PVWUA. Therefore, before or as part of any regulation of the protestants rights, Ecology would first be required to file an action in superior court if it would seek to have the diversion of the protestants' water rights reduce in favor of the Helensdale claim.

References

Arterburn, John, Keith Kistler, and Chris Fisher. 2007. Anadromous Fish Passage Barriers in the Okanogan Basin. Prepared for the Colville Tribes Department of Fish and Wildlife Anadromous Fish Division-Omak Office. January 2007.

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CONCLUSIONS

It is the conclusion of this examiner that, in accordance with chapter 90.42 RCW, water is available to transfer Claim No. S4-112291CL to trust, and such a transfer will not impair existing water rights, will enhance flows in Loup Loup Creek, and is not detrimental to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend the request for change to Water Right Change Application No.CS4-112291CL@1 be approved in the amounts and within the limitations listed below.

Trust Water Right Attributes

665.68 ac-ft/yr from April 1 to October 15 for instream flow purposes in the primary reach.

The primary reach begins at a point located 1,630 ft. north and 1,270 ft. east of the southwest corner of Section 4, Township 32 North, Range 25 EWM to the confluence of Loup Loup Creek and the Okanogan River.

Report by: _____ October 1, 2012
Carl Einberger — Date
Golder Associates Inc., Project Hydrogeologist

Reviewed by: Sage Park for Kelsey Collins _____ 10/1/12
Kelsey Collins, Water Resources Program — Date

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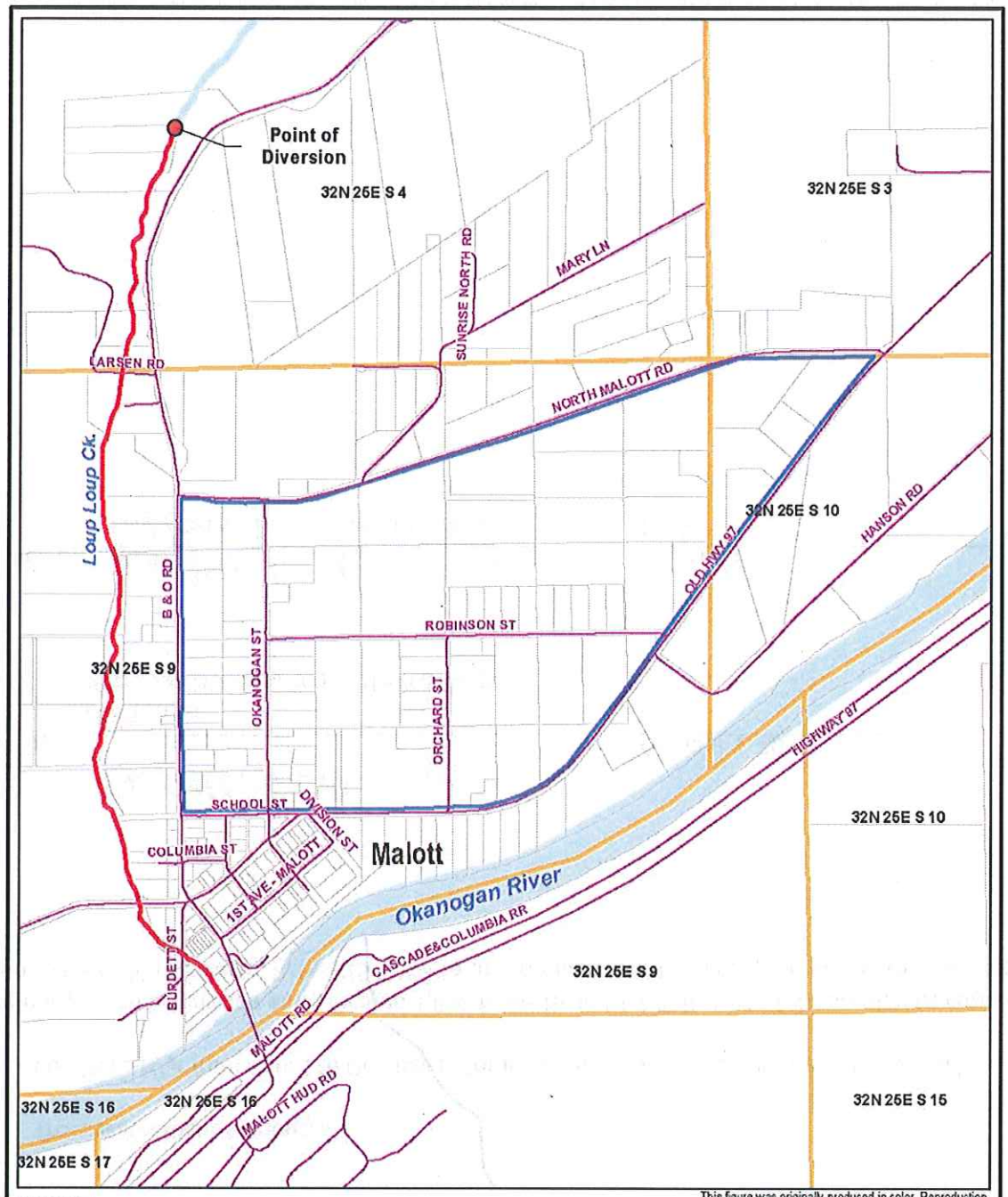
ATTACHMENT 1



LEGEND

- Primary Reach
- Roads
- Place of Use
- Parcels
- PLSS Section Line

0 1000
Scale in Feet

Map Projection:
Washington State Plane North
NAD 83 Feet

Source:
Golder Associates Inc.

N

This figure was originally produced in color. Reproduction in black and white may result in a loss of information.

ATTACHMENT **1**

PRIMARY REACH, WATER RIGHT CLAIM S4-112291CL (CS4-112291CL@1), HELENSDALE RECLAMATION DISTRICT, T32N R25E SEC.4, WRIA 49, OKANOGAN COUNTY, WASHINGTON

WSDOE/OKANOGAN FLOW ENHANCEMENT/WA

013150002 9F04_HelensdalePrimaryReachMap.mxd | 6/12/2012 | THAMMOND

Golder Associates