



STATE OF WASHINGTON
 DEPARTMENT OF ECOLOGY
IRRIGATION EFFICIENCIES PROGRAM
 TRUST WATER RIGHT
 REPORT OF EXAMINATION
 Change of Purpose and Place of Use

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
1889			Adjudicated Surface Water Certificate No. 248 together with Certificate of Change No. 1110

NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM		
Tice Ranch (Louis E. Tice)		
ADDRESS/STREET	CITY/STATE	ZIP CODE
20556 Hwy 20	Twisp, WA	98856-9744

TRUST WATER RIGHT ATTRIBUTES		
SOURCE		
Beaver Creek		
TRIBUTARY OF (IF SURFACE WATERS)		
Methow River		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
1.089		25.45

QUANTITY, TYPE OF USE, PERIOD OF USE

1.089 cubic feet per second from the old diversion point to the new diversion point (described as Primary Reach 1), 0.358 cubic feet per second from the new diversion point to the next diversion (described as Primary Reach 2) and 25.45 acre-feet per year for the purpose of instream flows from May 1 to September 15 within Beaver Creek from May 1, 2011 through Sept 15, 2030.

PLACE OF USE and AFFECTED REACHES
 [See Attachment for map of the trust water right location]

APPROXIMATE LOCATION OF HISTORIC DIVERSION

Primary Reach 1 Beginning
 Approximately 1475 feet south and 2170 feet west from the northeast corner of Section 23, within the SW¹/₄NE¹/₄ of Section 23, T. 33 N., R. 22 E.W.M. at River Mile 2.0.
 GPS location in Decimal Degree: Latitude 48.3477, Longitude -120.04439 (Datum WGS84)

Primary Reach 1 Ending/Primary Reach 2 Beginning
 Approximately 570 feet south and 450 feet west from the center of Section 23, within the NE¹/₄SW¹/₄ of Section 23, T. 33 N., R. 22 E.W.M. at River Mile 1.6.
 GPS location in Decimal Degree: Latitude 48.3432, Longitude -120.04833 (Datum WGS84)

Primary Reach 2 Ending
 Approximately 940 feet south and 670 feet west from the center of Section 23, within the NE¹/₄SW¹/₄ of Section 23, T. 33 N., R. 22 E.W.M. at River Mile 1.55.
 GPS location in Decimal Degree: Latitude 48.34231, Longitude -120.04927 (Datum WGS84)

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
	23	33 N.	22 E.W.M.	48	Okanogan

Beaver Creek: Approximately between River Miles 2.0 to 1.55

PROJECT SUMMARY

This irrigation efficiencies project consists of moving the point of diversion downstream approximately 2250 feet and to eliminate an irrigation canal to the fields. There are 54.45 acres of hand/wheel lines that will be converted to pivot sprinkler irrigation system with drop-tubes and micro-sprinklers.

The conserved non-consumptive water is estimated at 29.94 acre-feet per year at an instantaneous rate of 0.421 cubic feet per second*. Eighty five percent of saved water, 25.45 acre-feet and 0.358 cubic feet per second, are required to be placed in the Washington State Trust Water Rights Program to augment instream flow in Beaver Creek.

*The entire 1.089 cubic feet per second are placed into trust from the old point of diversion to the new point of diversion downstream.

TRUST WATER RIGHT TERM	
BEGIN DATE	END DATE
Date of ROE/2011	Date of ROE/2030

**PORTION OF WATER RIGHT
NOT PLACED INTO TRUST**

PRIORITY DATE	CLAIM NO.	PERMIT NO	CERTIFICATE NO
1889			Adjudicated Surface Water Certificate No. 248 together with Certificate of Change No. 1110

NAME		
Tice Ranch (Louis E. Tice)		
ADDRESS/STREET	CITY/STATE	ZIP CODE
20556 Hwy 20	Twisp, WA	98856

WATER RIGHT CLAIM ATTRIBUTES

SOURCE		
Beaver Creek		
TRIBUTARY OF (IF SURFACE WATERS)		
Methow River		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER	MAXIMUM ACRE FEET PER YEAR
0.731		146.06
QUANTITY, TYPE OF USE, PERIOD OF USE		
0.731 cubic feet per second May 1 to September 15 and 146.06 acre-feet per year for the irrigation of 72.6 acres*.		
*Emergency Rule Amendment to Chapter 173-548 WAC to reduce acres by 25% for a total of 54.45 acres is in effect.		

LOCATION OF WITHDRAWAL

APPROXIMATE LOCATION OF WITHDRAWAL					
Approximately 570 feet south and 450 feet west from the center of Section 23, within the NE ¹ / ₄ SW ¹ / ₄ of Section 23, T. 33 N., R. 22 E.W.M. at River Mile 1.6.					
GPS location in Decimal Degree: Latitude 48.3432, Longitude -120.04833 (Datum WGS84)					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
NE ¹ / ₄ SW ¹ / ₄	23	33 N.	22 E.W.M.	48	Okanogan
PARCEL NUMBER					
9100300000					

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
N/A	N/A	N/A

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED
[See Attachment for map of the place of use and point of withdrawal]

54.45 acres under pivot irrigation within the N¹/₂SW¹/₄ of Section 23 and the remaining 18.15 acres (not being irrigated per Emergency Rule Amendment to Chapter 173-548 WAC) within the SE¹/₄SW¹/₄NE¹/₄, the E³/₄N¹/₂SE¹/₄ and the S¹/₂SW¹/₄SE¹/₄NE¹/₄ of Section 22 and the west 1650 feet of the N¹/₂SW¹/₄ of Section 23 less roads; all within Township 33 N., Range 22 E.W.M. in Okanogan County.

DESCRIPTION OF WATER SYSTEM

A mainline installed at the point of diversion on Beaver Creek to a center with drop tubes and micro-sprinkler heads.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Begun	December 31, 2011	December 31, 2012

PROVISIONS

TRUST WATER RIGHT PROVISIONS

INSTREAM FLOW

Consistent with 90.42.080(1)(a), this trust water right shall be managed by the Department of Ecology as an instream flow right for Beaver Creek, as described in this trust water report.

Provisions related to PORTION OF WATER RIGHT NOT PLACED INTO TRUST

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

WATER AVAILABILITY

Water is limited to the authorized quantities of Tice Ranch adjudicated surface water right less the amounts placed into the trust program and the reduction in irrigated acres per the Emergency Rule Amendment to Chapter 173-548 WAC.

METER INSTALLATION

An approved measuring device shall be installed and maintained for each of the sources authorized by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

RECORD WEEKLY, REPORT ANNUAL TOTALS

Water use data shall be recorded weekly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to the Department of Ecology by January 31st of each calendar year.

AUTHORITY TO ACCESS DATA AND MEASURING DEVICE

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above provisions, and to inspect at reasonable times any measuring device used to meet the above provisions.

AUTHORITY TO ACCESS PROJECT

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times wells or diversions and associated distribution systems for compliance with water law.

CONSERVATION

Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.

FINDINGS OF FACT AND ORDER

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 point of withdrawal, change of place and purpose of use for a portion of Adjudicated Surface Water Certificate No. 248, together with Certificate of Change No. 1110 under Trust Water Application No. CS4-CV3P1110, 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 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, Ste 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 _____ day of _____ 2011.

Mark C. Schuppe, Section Manager
Water Resources Program/CRO

BACKGROUND

Applications

A Trust Water Application for Adjudicated Surface Water Certificate No. 248 together with Certificate of Change No. 1110 (Certificate No. 248/chg.1110) was submitted by Bob Clark of the Okanogan County Conservation District on behalf of Tice Ranch, Louis E. Tice, to the Department of Ecology (Ecology) on November 24, 2009, as Draft and on May 28, 2010 as Final. The application number was assigned as No. CS4-CV3P1110 in the Water Right Tracking System (WRTS). The applicant proposes to place a portion of the water right certificate into the state's Trust Water Rights Program (TWRP) for the purpose of instream flow to be used exclusively for instream flows within Beaver Creek for a period of 20 years and to change the point of diversion (POD) downstream to a new point of diversion.

Water right change applications may be processed prior to applications submitted at an earlier date when the proposed water use, if approved, would substantially enhance or protect the quality of the natural environment (WAC 173-152-050(3)(a)). This application has been determined to meet WAC 173-152-050(3)(a) criteria and has, therefore, been afforded priority processing.

Description and Purpose of Proposed Changes for the Irrigation Efficiencies Project

The project site is located approximately 3.5 miles southeast of Twisp, along State Highway 20 within Section 23, Township 33 N., Range 22 E.W.M., within Water Resource Inventory Area (WRIA) 48.

This irrigation efficiencies project consists of moving the POD downstream approximately 2250 feet and to eliminate a gravity fed open irrigation canal to the fields currently irrigated by hand/wheel lines. A pressurized pipe system and fish screen will be installed from a new pump station to a center pivot with drop tubes and micro-sprinkler heads for the irrigation of 54.45 acres authorized.

Beaver Creek is identified as a priority stream for instream flow restoration. Saved water from this project will increase flows within the lower portion of Beaver Creek resulting in increased habitat functions benefiting fish and water quality for approximately 2250 feet from the existing Beaver Creek point of diversion located within the SW¹/₄NE¹/₄ of Section 23, Township 33, Range 22 E.W.M., to the proposed new POD and ending at the next water diverter on Beaver Creek located another 250 feet downstream within the NE¹/₄SW¹/₄ of Section 23, T. 33 N., R. 22 E.W.M.

The conserved non-consumptive water is estimated at 29.94 acre-feet per year (ac-ft/yr). Eighty five percent of saved water, 25.45 acre-feet, will be placed in the Washington State Trust Water Rights Program to augment instream flow in Beaver Creek. There are two Primary Reaches benefitting from moving the POD to a new POD downstream: Primary Reach 1 from the existing POD to the new POD and Primary Reach 2 from the new POD to the next water diverter on Beaver Creek. The annual acre-feet savings is saved through both Primary Reaches. The Instantaneous quantity can be broken into two Reaches: Primary Reach 1 is the entire diverted right of 1.089 cubic feet per second (cfs) from the existing POD to the new POD. Primary Reach 2 is the savings from irrigation efficiencies in the amount of 0.421 cfs from the new POD to the next water diverter on Beaver Creek. The savings will be from May 1 through September 15 for the purpose of instream flows within Beaver Creek for 20 years.

The place of use (POU) description for Certificate No. 248/chg.1110 includes lands outside of the 72.6 authorized acres. There are 54.45 acres under this irrigation efficiencies project new pivot system. There are 18.15 acres remaining for irrigation as described in the certificate, however, through an Emergency Rule to Chapter 173-548 WAC they are not being irrigated in exchange for domestic well use. There are 2.2 acres under the pivot that will fall outside the current POU description. Through this change those acres will be included in the POU description as described in Certificate No. 248/chg.1110.

Attributes of the Certificate together with Certificate of Change and Proposed Change for the Irrigation Efficiencies Project

The following table summarizes the attributes of Certificate No. 248/chg.1110 and the proposed quantities to place into the Trust Water Right Program.

Table 1
Summary of Attributes and Proposed Changes to Tice Ranch Certificate No. 248/chg.1110

	Existing Attributes of Claim	Proposed Changes
Name	James Watson (Certificate) James Simons (Certificate of Change)	Tice Ranch (Louis E. Tice)
Priority Date Date of Final Application for Trust	1889	May 28, 2010
Instantaneous Quantity (Qi)	1.45 cfs	0.36 cfs <i>(number is rounded on the application from water savings calculations)</i>
Annual Quantity (Qa)	<i>None stated on certificate; estimated at 2 acre-feet per acre in the Beaver Creek Adjudication Report of Referee</i>	25.5 acre-feet <i>(number is rounded on the application from water savings calculations)</i>
Period of Use	May 1 through September 15	May 1 through September 15
Source	Beaver Creek	Beaver Creek
Point of Diversion / Withdrawal	SW ¹ / ₄ NE ¹ / ₄ of Section 23, T. 33 N., R. 22 E.W.M. and SW ¹ / ₄ SE ¹ / ₄ of Section 14, T. 33 N., R. 22 E.W.M.	NE ¹ / ₄ SW ¹ / ₄ of Sec. 23, T. 34 N., R 25 E.W.M.
Purpose of Use	Irrigation of 72.6 acres	Instream Flow
Place of Use	SE ¹ / ₄ SW ¹ / ₄ NE ¹ / ₄ & E ³ / ₄ N ¹ / ₂ SE ¹ / ₄ of Section 22 and west 1650 feet of N ¹ / ₂ SW ¹ / ₄ of Section 23, less roads in T. 33 N., R. 22 E.W.M.*	One 2,250 foot primary reach extending from existing POD on Beaver Creek to a new POD and a second primary reach extending from the new POD to the next diverter on Beaver Creek within Sec. 23, T. 33 N., R. 22 E.W.M.

*The Place of Use will include 2.2 acres under the new pivot system outside of this description through this change.

Statement of Authorities

The state law that governs claims (Chapter 90.14 RCW) provides that water users whose uses were initiated prior to the water code and not represented by a state issued permit or certificate were to file a water right claim or the right was considered to be waived (90.14.071 RCW). Typically, claims represent water uses that pre-date the adoption of the state water code, Chapter 90.03 RCW, on June 6, 1917. The state water code provides under 90.03.460 RCW that water use projects that were under development at the time of the adoption of the water code were unaffected by the new statutory framework and did not have to comply with the permit provisions of the code, provided that reasonable diligence was used in completing the project. The Supreme Court held in Brown v. Chase, 125 Wash. 542, 217 P. 23 (1923), that a riparian landowner has a “reasonable time” after adoption of the Surface Water Code to put water to beneficial use. In Proctor v. Sim, 134 Wash. 606, 236 P. 114 (1925), the Supreme Court held that the water code protected existing rights, the “beneficial use of which are either directly or prospectively, within a reasonable time, proper and necessary for the irrigation of their lands...” In Ecology v. Abbott, 103 Wn.2d 686, 694 P.2d 1071 (1985), the Supreme Court held that the length reasonable time was ultimately determined to be 15 years from the enactment of the Water Code, of up until 1932.

Trust water rights are governed state-wide by Chapter 90.42 RCW and in the Yakima River Basin, by Chapter 90.38 RCW. The statutes¹ limit the portion of a water right eligible for transfer to the TWRP to the extent the water right was exercised in the five years prior to application. A water right accepted into the TWRP may not be enlarged. When a portion of a water right is accepted in the TWRP, the portion remaining with the landowner and the portion in trust combined may not exceed the greatest amount exercised within the last five years before application. Any trust water right found to impair an existing water right will be modified to prohibit impairment.

Legal Requirements for Proposed Change for the Irrigation Efficiencies Project

The following is a list of requirements that must be met prior to authorizing the proposed change in purpose of use and point of diversion:

- **Public Notice**

A notice of application was duly published in accordance with RCW 90.42.040(5) in the Methow Valley News on August 11 and August 18, 2010. One protest was received.

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

This application is not exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21 RCW, due to the fact that the cumulative quantities of water for this project under all water rights, including those proposed for trust water herein, constitute a diversion of more than one (1) cubic foot per second. The Department of Ecology (Ecology), acting as lead agency, determined that 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 August 9, 2010.

- **Water Resources Statutes and Case Law**

Tentative Determination/Extent and Validity

Ecology cannot adjudicate a claim to a water right; only the Superior Courts have this authority. However, the Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*.

INVESTIGATION

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

- The State Water Code, administrative rules, and policies
- Other recorded water rights in the vicinity
- A site visit conducted by Department of Ecology staff Laurie Dahmen
- Correspondence and conversations with Bob Clark of the Okanogan County Conservation District
- Correspondence and conversations with Jack Myrick of the Conservation Commission
- Correspondence with Ecology staff
- Correspondence with Paul LaRiviere of the Department of Fish and Wildlife
- Correspondence with Mike Rothgeb, Tice Ranch Manager
- Topographic and local area maps
- Aerial photographs of the site

History of Water Use

Historic use data was calculated by Bob Clark of the Okanogan County Conservation District. Mr. Clark calculated the historic quantity of water used on the acres for this project based on information provided by Tice Ranch and Susan Burgdorff-Beery, Okanogan Watermaster. An extent and validity determination of the water right claim, including aerial photograph review and project review, was conducted by Laurie Dahmen from the Department of Ecology. The water right is tentatively determined valid and have been used to the full extent for the irrigation of 54.45 acres, the portion of the water right entered into this irrigation efficiencies program, not including the 18.15 acres not irrigated through an emergency rule (mentioned above). Water savings were calculated by Mr. Myrick of the Conservation Commission.

Proposed Use

The purpose of instream flow is to enhance instream flows for fish maintenance and habitat enhancement within the lower reach of Beaver Creek.

¹ RCW 90.38.020(4), 90.38.020(6), 90.42.080(4) and 90.42.080(8)

Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing surface and ground water rights in the surrounding area. In order to evaluate the pending trust water applications, it is necessary to review all water rights appurtenant to the place of use (POU) described under Certificate No. 248. There is one water right certificate, Beaver Creek Adjudicated Surface Water Certificate No. 229, within the POU description.

Certificate No. 229 issued to James B. Couche of Twisp, Washington on May 15, 1922 with a priority date of 1901 and Class 11 from Beaver Creek, May 1 through September 15 each year in the amount of 0.45 cfs for 22.65 acres from a POD located within the SW¼NE¼ of Section 23, Township 33 N., Range 22 E.W.M. It appears this water right may no longer be used. When Certificate No. 248 had a change in POU on May 25, 1970 (Certificate of Change No. 1110), the land is irrigated by Certificate No. 248.

No other overlapping water rights for the acres in this irrigation efficiency project were found.

Department of Fish and Wildlife Project Evaluation

The following was provided in a letter to Laurie Dahmen (Department of Ecology) dated May 28, 2010 by Paul LaRiviere with the Washington State Department of Fish and Wildlife (WDFW) who assessed the project for benefits to Salmon Creek:

Beaver Creek is 22.3 miles in length and flows to the Methow River just south of the town of Twisp. It is a large watershed with potential for fish production, however is limited by flow and passage barriers. Most of the irrigation occurs in the lower 8 miles of Beaver Creek, with senior water users in the lowest 1.0-mile reach of Beaver Creek creating fish passage problems. There are numerous surface water diversions in Beaver Creek and water use exceeds flow during late summer and early fall in most years. Beaver Creek is considered a high priority stream for water acquisition and projects that reduce impacts to fish. A weir removal and passage restoration (USGS 2010) has increased Endangered Species Act (ESA) Threatened steelhead. Other fish that utilize the Beaver Creek drainage include ESA Threatened spring Chinook, and possibly summer/fall Chinook.

Mr. LaRiviere states the result of this project will provide immediate instream flow benefits in a critical reach within Beaver Creek. A number of critical fish stocks and various life stages benefit from improved passage conditions as well as improved eco-connectivity values.

Trust Water Right Calculations

While an entire water right (or water right claim), or portion thereof, may be accepted into trust, the extent to which that water right may be exercised is based on the highest water use within the last five years that will be foregone for the period of trust. The calculation for the extent to which a water right may be exercised as a Trust Water Right is not a tentative determination of the water right and is not a finding of relinquishment or abandonment. Water use records indicate that the subject water right certificate has been used to the full extent during the last five years on the subject acres for this irrigation efficiency project. Therefore, the entire quantity of water savings may be exercised during the period of trust.

Bob Clark from the Okanogan County Conservation District provided water use information and Jack Myrick from the Washington State Conservation Commission calculated projected water use from the new irrigation system as requested by Tice Ranch.

There are 1.089 cfs and 171.51 acre-feet appurtenant to the 54.45 acres in this irrigation efficiencies project authorized in Certificate No. 248/chg.1110 (*this is calculated with the Emergency Rule 25% reduction*). Mr. Myrick designed a system to be operated at optimum efficiency reducing the annual quantity to a maximum of 141.57 acre-feet and instantaneous quantity to 0.668 cfs, a savings of 29.94 acre-feet annually and 0.421 cfs over the period of May 1 to September 15 on the 54.45 acres. Of that, 85% will be placed into trust as required by contract. The 15% of water savings that is not placed into trust is not protected from relinquishment during the period of this temporary trust. This water should be donated within five years if it is not used on the 54.45 acres authorized in order to protect it from relinquishment.

Table 2
Quantities available for trust, placed in trust and remaining for use in this IEGP project

Available for trust	In Trust	Remaining for Use*
1.089 cfs	0.358 cfs	0.731 cfs
171.51 acre-feet	25.45 acre-feet	146.06 acre-feet
May 1 to September 15	May 1 to September 15	May 1 to September 15

*Does not authorize use of water appurtenant to the acres reduced through the Emergency Rule.

Trust Water Place of Use

Trust Water use for instream flow are generally split into primary and secondary reaches in order to distinguish the contribution of return flows from a water use and the benefits of any reduction in consumptive water use. The annual quantity placed into Trust is calculated differently for the primary reach and secondary reach due to the effects of return flows.

The primary reach of a stream is the portion that benefits from both the reintroduction of return flows and any reduced consumptive water use. It is considered to be the reach starting at the point of diversion for the subject right/claim, and extending downstream to a point on the stream where return flows from the irrigated lands have rejoined the stream. Because this project includes moving the POD downstream, there are two primary reaches: one that extends from the existing POD to the new POD and a second from the new POD to the next diversion downstream. Instantaneous quantities can easily be described in reaches, however the annual quantity cannot be defined by points. Annual quantity savings is over the area where water is no longer taken from. In this case, the annual quantity savings of 25.45 acre-feet will be described as saved throughout Primary Reaches 1 and 2.

The secondary reach is that portion of the stream that benefits by the reintroduction of water that would otherwise be lost to consumptive use and extends from the end of the primary reach to such point downstream as it is practical and feasible to regulate for the subject right. Because this irrigation efficiency project did not reduce consumptive use for this water right claim, there is no benefited secondary reach of the stream.

Primary Reach 1

The trust water right for the primary reach begins from the point water has been historically diverted on Beaver Creek, River Mile 2.0, and ends at the new POD, River Mile 1.6. This reach is benefitted by the entire water right of 1.089 cfs.

Primary Reach 2

The second part of the primary reach begins at the new POD, River Mile 1.6, and ends at the next diversion point approximately 200 feet downstream. This reach benefits from the quantity of water placed into trust, 0.358 cfs.

Secondary Reach

There is no secondary reach in this trust water right.

Trust Water Management

Consistent with 90.42.080(1)(a), this Trust Water Right shall be managed by Ecology as an instream flow right for Beaver Creek, as described in this Trust Water Report.

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) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flows levels established by rule (POL-1200), and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

The proposed trust water has been evaluated as to the potential for impairment to existing water rights in the area. The water retained instream from this Trust Water Right will be available to other water rights in accordance with seniority and no impairment of any water right will occur. The primary reach only extends to the next senior water right diversion and has been designated in part to avoid potential impairment to existing water rights.

No Enhancement of the Original Water Right Claim

No diversion of water over and above what has been historically put to beneficial use would be authorized through approval of this change. Total water between trust and that portion remaining with the water right claim holder will not exceed the greatest use within the last five years of water use nor will the total exceed the historical extent of the water right certificate.

Consideration of Protests and Comments

There was one protest received on September 16, 2010 from Bernard and Dianne Thurlow. They had two concerns (paraphrased below).

1. *They (Thurlows) estimate to that approximately one cfs of water from springs contribute to the creek between Tice's existing diversion and their (Thurlow) diversion. They suggest that Ecology measure the spring flow prior to the approval or denial of the subject application.*

Response: The proposed change of the Class 3 water right to change 25.45 ac-ft from irrigation to instream flow from approximate creek mile 2.0 down to creek mile 1.55 in combination with the downstream point of diversion change does not require Ecology to measure gaining or losing reaches of Beaver Creek. Ecology is required under 90.03.380 to address detriment or injury to existing rights, commonly referred to as impairment. Impairment considerations are addressed earlier in this report.

2. *Beaver Creek water is adjudicated. In dry years there is a lag time between the time watermaster can get our (Thurlow) adjudicated water to our diversion since we have the last diversion on the creek. If Tice takes all the water in Beaver Creek to meet his adjudicated amount, we will still get approximately one cfs (due to spring flow contributing to creek). With Tice's proposed diversion location we will not get any water until the watermaster can make the necessary curtailments upstream. This process takes significant time, therefore the proposed diversion location is adverse to us.*

Response: Beaver Creek is an adjudicated stream. The subject of this change application is adjudicated Certificate No. 248, which is class 3 priority. This Class 3 right is junior to the class 1 and 2 rights. The Class 1 right(s) divert downstream approximately 200 feet from the proposed new point of diversion. There is a watermaster for Water Resource Inventory Area (WRIA) 48, the Methow Basin, and in most years a streampatroler is appointed by Ecology (RCW 90.08.040) at the request of the Beaver Creek Water Users for Beaver Creek and its tributaries. These two persons job duties include assisting in regulating diversions on Beaver Creek when streamflow becomes limiting. During low flow periods, Class 3 water right(s) will be curtailed to meet the needs of the more senior rights, Classes 1 and 2.

CONCLUSIONS

It is the conclusion of this examiner that, in accordance with 90.42 RCW, the applications for trust water through an irrigation efficiencies project under Adjudicated Surface Water Certificate No. 248 together with Certificate of Change No. 1110 (CS4-CV3P1110) will not impair existing rights provided the terms and conditions below are followed.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend the request for change in purpose of use and place of use for transfer of water to the TWRP under Adjudicated Surface Water Certificate No. 248 together with Certificate of Change No. 1110 be approved, within the limitations listed below and subject to the Provisions Section of this report.

PORTION OF WATER RIGHT CLAIM PLACED INTO TRUST

For instream flow in Beaver Creek in the amount of 25.45 acre-feet during the irrigation season May 1 through September 15 in the primary reaches from May 1, 2011 to September 15, 2030

Primary Reach 1

1.089 cubic feet per second from River Mile 2.0 to River Mile 1.6.

Primary Reach 2

0.358 cubic feet per second River Mile 1.6 to approximately River Mile 1.55.

There is no secondary reach in this project for this water right.

PORTION OF WATER RIGHT CLAIM NOT PLACED INTO TRUST

This is the remaining quantity listed under Adjudicated Surface Water Certificate No. 248 together with Certificate of Change No. 1110 after subtracting out this Irrigation Efficiencies Project trust water savings from application CS4-CV3P1110.

The portion of water available for Tice Ranch on the 54.45 acres for irrigation in this irrigation efficiencies project is 0.731 cfs, 146.06 ac-ft/yr May 1 through September 15.

Point of Diversion

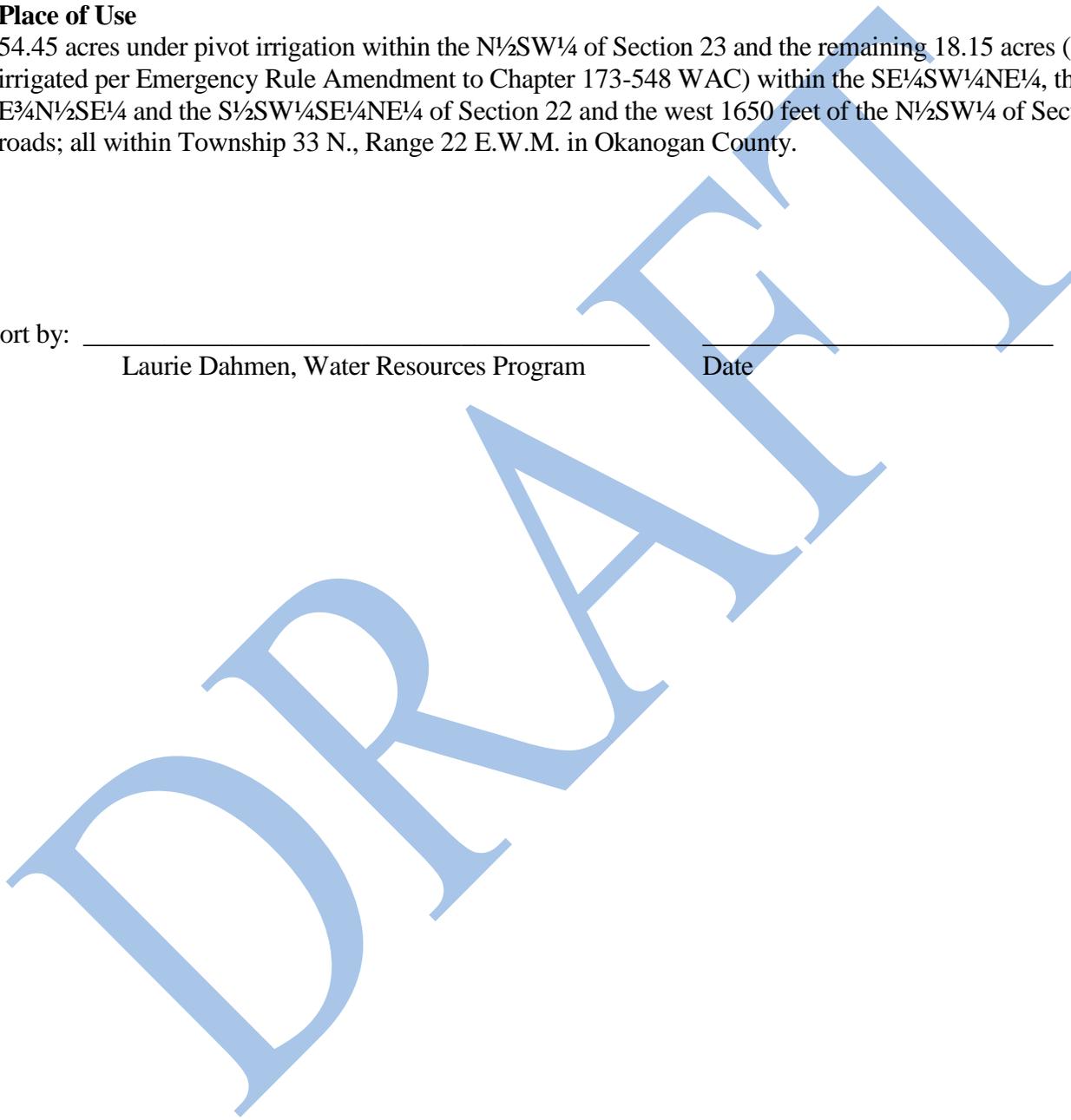
Approximately 570 feet south and 450 feet west from the center of Section 23, within the NE¹/₄SW¹/₄ of Section 23, T. 33 N., R. 22 E.W.M. at River Mile 1.6.

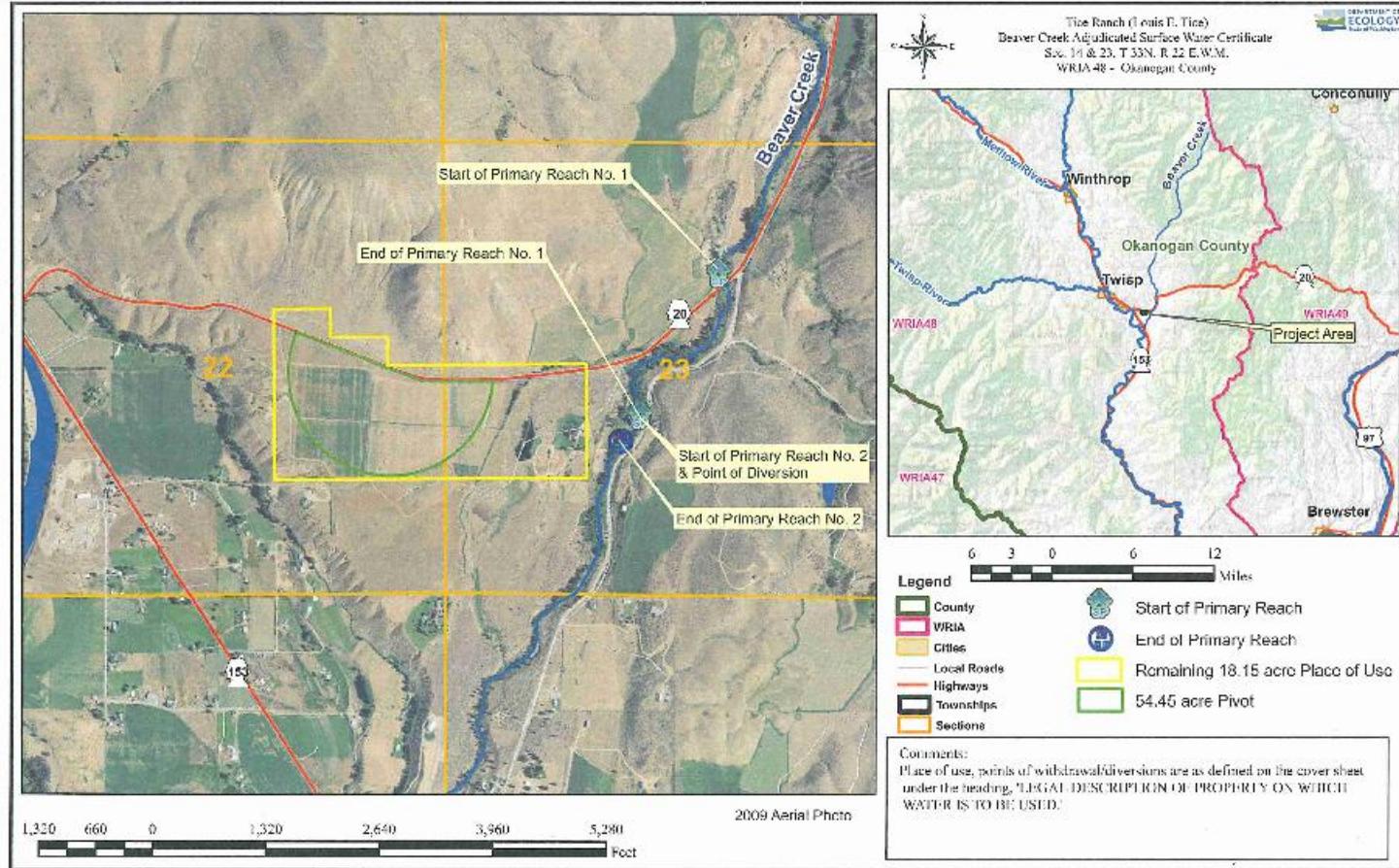
GPS location in Decimal Degree: Latitude 48.3432, Longitude -120.04833 (Datum WGS84)

Place of Use

54.45 acres under pivot irrigation within the N¹/₂SW¹/₄ of Section 23 and the remaining 18.15 acres (not being irrigated per Emergency Rule Amendment to Chapter 173-548 WAC) within the SE¹/₄SW¹/₄NE¹/₄, the E³/₄N¹/₂SE¹/₄ and the S¹/₂SW¹/₄SE¹/₄NE¹/₄ of Section 22 and the west 1650 feet of the N¹/₂SW¹/₄ of Section 23 less roads; all within Township 33 N., Range 22 E.W.M. in Okanogan County.

Report by: _____ Date _____
Laurie Dahmen, Water Resources Program





Attachment 1