DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
FOR CHANGE OF WATER RIGHT

File NR CS4-00648(AA)sb4-c
WR DOC ID 4716827

Adding Points of Diversion

PRIORITY DATE
November 2, 1877

WATER RIGHT NUMBER
Yakima Adjudication Court Claim No. 00648

APPLICANT
J.P. Roan, Member of the First Creek Water User's Association (FCWUA)
13991 Reecer Creek Road, Ellensburg WA 98926-8866

Purpose and Quantity

0.867 cfs, 165.2 ac-ft/yr for the irrigation of 30.05 acres from April 1 through October 15, and continuous stock watering; 0.527 cfs for conveyance loss; 0.281 cfs, 7.9 ac-ft/yr (consumptive) for stock watering from October 16 through March 31.

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Kittitas	First Creek	Swauk Creek	39

SOURCE FACILITY/DEVICE	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
1. FCWUA Ditch diversion	20N	18E	30	NW NE	47.20247	-120.62997
2. middle fork diversion	20N	18E	30	NE	47.19978	-120.63039
3. south fork diversion	20N	18E	30	NE SW	47.19449	-120.63626

Datum: NAD83/WGS84

Place of Use (See map on Attachment 2)

The SE¼ of Section 17; the W½E½ of Section 20 EXCEPT for the S½S½SW¼SE¼ of said section; the NE¼SW¼, N½N½SE¼SW¼, and that portion of the N ½ of Section 21, which is described as follows: A tract of land bounded by a line beginning at a point on the west boundary line of the NE¼ of said Section, 66 feet north of the southwest corner of said quarter section, and running thence east 66 feet; thence north on a line parallel with the west boundary line of said quarter section 1650 feet; thence west 66 feet to the west boundary line of said quarter section; thence north to the north boundary line of said quarter section; thence west to the northwest corner of said section; thence south on the west boundary line of said section to the southwest corner of NW¼ of said section; thence east on the south boundary line of said NW¼ of said section 990 feet; thence north 66 feet; and thence east on a line parallel with the south boundary line of said quarter section 1650 feet to the point of beginning; ALL in T. 19 N., R. 18 E.W.M.

Description of Water System

The FCWUA Ditch diverts water from First Creek and conveys water out of the Swauk Creek Basin and delivers irrigation and stock water into the Reecer Creek Basin for use on the lands described above.
A 539.874 ac-ft/yr, 1.63 cfs portion of this right for non consumptive winter stock watering was changed to instream flow purposes under Application No. CS4-00648(AA)sb4-a. A 43.30 ac-ft/yr, 0.110 cfs portion of the right for irrigation was changed to instream flow purposes under Application No. CS4-00648(AA)sb4-b.

Provisions

Measurements, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting.

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

Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually on January 31st of each year
What volume should be reported?	Maximum weekly volume
What rate should be reported?	Maximum weekly rate of withdrawal (cfs)

Fish Screening Criteria

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

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, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Proof of Appropriation

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

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.

Therefore, I ORDER the requested change under Change Application No. CS4-00648(AA)sb4-c be approved subject to existing rights.

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.

Signed at Yakima, Washington, this 7 day of October 2011.

Melissa Downes

Melissa Downes, Acting Section Manager
Water Resources Program/CRO

INVESTIGATOR'S REPORT

BACKGROUND

The First Creek Water Users Association (FCWUA) operates a ditch fed by a point of diversion on upper First Creek, sometimes referred to as the north fork of First Creek (upper Kittitas County, WA). The FCWUA ditch intercepts two small creeks. FCWUA did not identify these two historic points of diversion on their Court Claim. Two members of the FCWUA, Jack White and J.P. Roan, seek to add points of diversion at these historically intercepted creeks.

This report of examination specifically addresses Change Application No. CS4-00648(AA)sb4-c, submitted by Mr. J.P. Roan on March 9, 2010. This application is one of four applications, each application proposing to add two points of diversion (POD) to both the 1877 and 1881 portion of Court Claim No. 00648 (see Appendix A-1 for a map of the POD's). The applications were submitted by two of the three members of the FCWUA; Mr. J.P. Roan and Mr. White. The remaining portion of the FCWUA Court Claim is held by Suncadia LLC. These applications are part of the *First Creek Restoration Project* described below. See Table 1 for file numbers associated with this project and Figure 1 for an explanation of the application numbering scheme.

Table 1: Attributes of J.P. Roan's portion of Court Claim No. 01467 and Proposed Change

Attributes	Existing	Proposed
Name	J.P. Roan	J.P. Roan.
Dates	**Priority Date** – November 2, 1877	**Application Date** – March 9, 2010
Instantaneous Quantity	0.867 cfs, for irrigation; 0.527 cfs for conveyance loss; 0.281 cfs for winter stock watering	same
Annual Quantity	165.2 ac-ft/yr for irrigation and 7.9 ac-ft/yr (consumptive) for winter stock watering	same
Source	First Creek	First Creek and minor tributaries
Point of Diversion	Beginning of FCWUA Ditch: 800 ft south and 100 ft east from the north quarter corner of Section 30, within Government Lot 1, Section 30, T. 20 N., R. 18 E.W.M.	Add Points: NE¼ NE¼ of Section 30, T. 20 N., R. 18 E.W.M. SW¼ SW¼ of Section 30, T. 20 N., R. 18 E.W.M.
Purpose of Use	Irrigation of 30.05 acres and stock water	same
Period of Use	April 1 through October 15 for irrigation and stock water; October 16 through March 31 for stock water.	same
Place of Use	The SE¼ of Section 17; the W½E½ of Section 20 EXCEPT for the S½S½SW¼SE¼ of said section; the NE¼SW¼, N½N½SE¼SW¼, and 66 foot-wide column of land in the middle of the N½ of Section 21 (see pg 2); ALL in T. 19 N., R. 18 E.W.M.	same

History of Court Claim No. 00648

Yakima Adjudication Court Claim No. 00648 was filed by the FCWUA and confirmed in the Conditional Final Order for the Swauk Creek Subbasin No. 4 issued on January 9, 2003. Court Claim No. 00648 comprises two different water rights with priority dates of November 2, 1877 and June 1, 1881. Both water rights authorize use of the same diversion point on the north fork of First Creek.

In 1998, Trendwest, a predecessor to Suncadia LLC, acquired portions of the FCWUA water rights for irrigation and stock watering. In 2003, Ecology changed the purpose of use for a portion of Suncadia's irrigation rights to instream flow purposes. This instream flow water right has been managed by Suncadia to improve flows in First Creek and Swauk Creek as part of Suncadia Resort's water supply and mitigation program. Ultimately, the instream flow right now held by Suncadia will be transferred to Ecology to be managed as a trust water right. The First Creek General Report from Ecology's 2003 Reports of Examination (ROE's) provides substantial background information and is available upon request.

In 2008, Yakima Superior Court issued an *Order of Partition* that recognized the partition of water rights and substitution of parties under Court Claim No. 00648. The order divides the 1877 and 1881 rights among only three of the FCWUA's shareholders: J.P. Roan, Suncadia, LLC, and Jack White, Jr. (See Appendix B).

In 2008, Suncadia began negotiations with J.P. Roan and Jack White, Jr. to change ditch operations to eliminate diversion at the current north fork First Creek headworks in the winter months and create additional flow benefits in the late summer, which would reduce the costs of screening and fish passage structures. In 2009, Washington Water Trust, on behalf of Dept. of Ecology, entered into an agreement to purchase most of the winter stock water held by Suncadia, Roan, and White. These negotiations led to the development of the *First Creek Restoration Project.*

First Creek Restoration Project Description

The *First Creek Restoration Project* is made up of many moving parts that are in various stages of completion. Applications have been filed to facilitate restoration of First Creek and alter operation of the FCWUA ditch (See Table 2). Objectives of the project and the relevant applications for change of water right are outlined below.

1. Winter (October 16 through March 31) Instream Flow Restoration: Ecology would acquire most of the winter stock water owned by Suncadia, Roan, and White for environmental benefits. In February of 2011, Ecology posted draft Reports of Examination recommending approval of three applications; Suncadia: CS4-00648(AB)sb4-a, Roan: CS4-00648(AA)sb4-a, and White: CS4-00648(AC)sb4-a.

2. Add Points of Diversion (this report): The winter stock water rights for Mr. Roan and Mr. White would be supplied solely by the middle and south forks of First Creek allowing closure of the FCWUA ditch head gate at the original point of diversion. The middle and south forks have historically been intercepted by the ditch. Roan and White have requested to add the two points (see Figure 2) where the FCWUA ditch crosses the middle and south forks [Application Nos. CS4-00648(AA)sb4-c, CS4-00648(BA)sb4-c, CS4-00648(AC)sb4-c, CS4-00648(BC)sb4-c]. The FCWUA would no longer divert water from the north fork diversion from October 16 through March 31.

3. Swauk Creek Water Bank: Suncadia committed its 11.45 ac-ft/yr consumptive use from winter stock water under Application No. CS4-00648(AB)sb4-b; and Roan has committed 22.81 ac-ft/yr consumptive use from summertime irrigation under Application No. CS4-00648(AA)sb4-b).

4. Summer Flow Restoration – "Summer Swap": Suncadia and Roan have agreed to redistribute their summertime portions of Court Claim No. 00648 (relative to Suncadia's 1998 purchase of a portion of Court Claim No. 00648). The agreement would allow Roan to use his own and Suncadia's rights until June 30th. Then, Suncadia would have use of both Roan's and its own rights in the second half of the irrigation season. This arrangement would maximize the late irrigation season instream flow benefits, simplify management of the headworks, and maximize the benefits to water banking and continuing irrigation and stock watering. This swap of water rights does not affect the above mentioned agreements that have already pledged or changed portions of Court Claim No. 00648 for other purposes.

5. Replace Headworks: Negociations are underway to construct a new headgate, fish screen(s), and fish bypass at the north fork and middle, and south fork diversions.

Table 2: Summary of Applications for Change on Court Claim No. 00648

First Creek Water User	Change Request	Priority Date	Application No.
Suncadia, LLC	Winter stock water to be transferred to instream flow purposes for stream enhancement	1877	CS4-00648(AB)sb4-a
Suncadia, LLC	Instream flow for mitigation of new uses	1877	CS4-00648(AB)sb4-b
J.P. Roan	Winter stock water transferred to instream flows for stream enhancement	1877	CS4-00648(AA)sb4-a
J.P. Roan	Irrigation season water to instream flows for mitigation	1877	CS4-00648(AA)sb4-b
J.P. Roan **(this report)**	Add 2 Points of Diversion (addressed by this report)	1877	CS4-00648(AA)sb4-c
J.P. Roan	Add 2 Points of Diversion (addressed by this report)	1881	CS4-00648(BA)sb4-c
Jack White, Jr.	Winter stock water transferred to instream flows for stream enhancement	1877	CS4-00648(AC)sb4-a
Jack White, Jr.	Add 2 Points of Diversion (addressed by this report)	1877	CS4-00648(AC)sb4-c
Jack White, Jr.	Add 2 Points of Diversion (addressed by this report)	1881	CS4-00648(BC)sb4-c

Figure 1: An explanation of the naming scheme for First Creek Restoration Project applications.

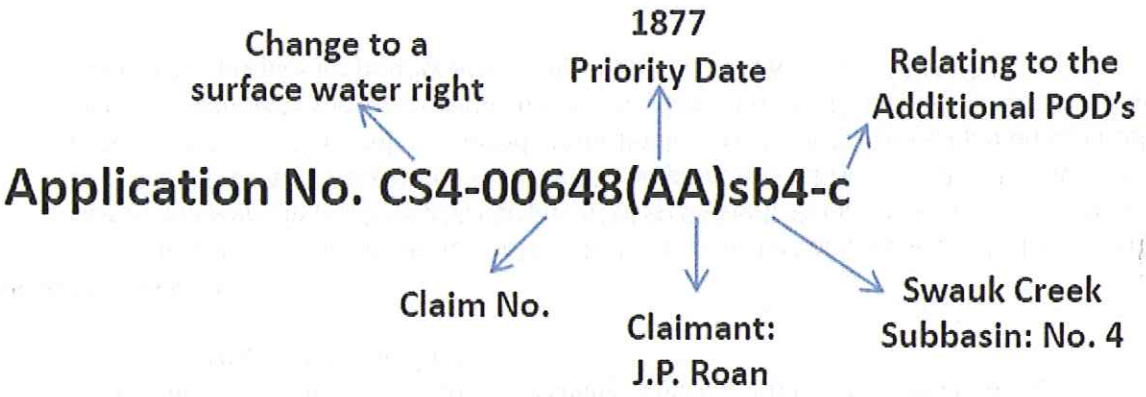
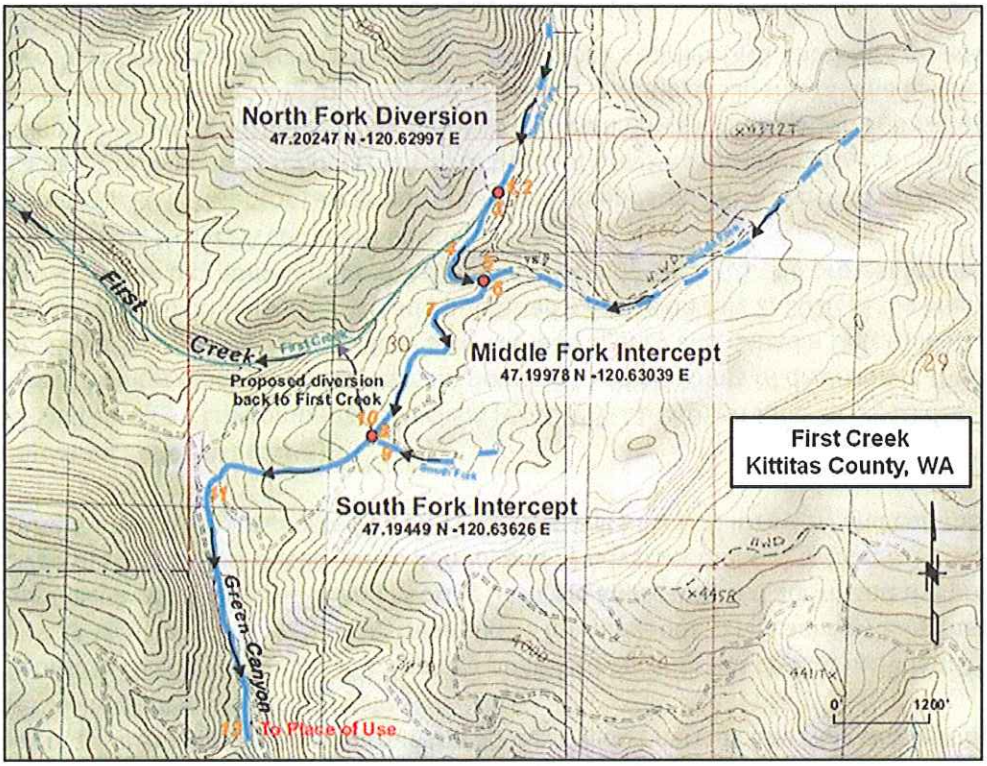


Figure 2: Proposed additional points of diversion for Roan and White



Legal Requirements for Proposed Change
The following is a list of requirements applicable to the proposed changes of Court Claim No. 00648.

Public Notice

- The notice was published in the Ellensburg Record on August 19 and 26, 2010 and described the following application types associated with the *First Creek Restoration Project:* 1) change the purpose of use to instream flows for environmental benefit, 2) change the purpose of use to instream flows for mitigation/water banking, and 3) add points of diversions (this report). One protest letter was received during the 30-day protest period. See the *Consideration of Protests and Comments* section below.
- On February 26 and March 5, 2011, Ecology published another notice that included: 1) Roan's request to transfer 22.81 ac-ft/yr instream flows for mitigation, 2) an acknowledgement that Ecology received an updated SEPA checklist from the applicants and addressed the protest letter received during the first public notice period, and 3) Advertisement of the Draft Trust Water Right Agreement that was posted on an Ecology website for public review and comment.

State Environmental Policy Act (SEPA)

- WWT submitted an Environmental Checklist (WAC 197-11-960) on June 29, 2010 describing the transfer of winter stock water to instream flows and adding points of diversion in the First Creek Basin. Based on this checklist, Ecology acted as lead agency and issued a Determination of Non-Significance (DNS) on June 29, 2010 and published a notice on July 2, 2010 in the Ellensburg Record with a 14 day comment period that ended on July 13, 2010. No protest letters were received during the SEPA comment period.
- On January 5, 2011, Mentor Law Group submitted an updated SEPA checklist on behalf of Suncadia and J.P. Roan to reflect changes to the *First Creek Restoration Project*. The checklist described changing a portion of their rights to instream flows for mitigation and water banking purposes which may be used to offset out of priority water users in the Yakima Basin. These updates had been considered and described in Ecology's earlier DNS, therefore no additional action was taken.

Water Resources Statutes and Case Law

- The change applications to add points of diversion are subject to RCW 90.03.380. Ecology must issue written findings of fact and determine that the proposed change would not *impair existing water* rights.
- The Washington State Supreme Court held that Ecology must make a tentative determination of the extent and validity of the right to be changed (R.D. Merrill v. PCHB and Okanogan Wilderness League v. Town of Twisp)

Expedited Processing

- The initial investigation and drafting of this ROE was done by Robinson & Noble, Inc. through cost reimbursement (RCW 43.21A.690 and RCW 90.03.265). Robinson & Noble worked under Cost-Reimbursement Assignment No. ROB001 (Master Contract No. C1000191). However, the First Creek Restoration Project evolved during Robinson & Noble's contract period and Ecology elected to complete the investigation on its own. As part of the *First Creek Restoration Project*, this project qualifies for priority processing under the Hillis Rule (WAC 173-152).

INVESTIGATION

The FCWUA's authorized point of diversion (POD, shown in Appendix A-1) is roughly 15 miles north of Ellensburg, WA on the north fork of First Creek approximately 800 ft south and 1000 ft east of the north quarter corner of Section 30, T. 20 N., R. 18 E.W.M. Water from First Creek that enters the FCWUA ditch continues from the POD in a south, southwest trend intercepting the middle and south forks of First Creek before entering Green Canyon. The middle fork intercept is located approximately 0.5 mile south of the POD within the S½NE¼ of Section 30, and the south fork intercept is located approximately 1.5 miles southwest of the POD within the NE¼SW¼ of Section 30, both within T. 20 N., R. 18 E.W.M.

The FCWUA ditch users have not been metering, measuring, or reporting their diversionary quantities.

Hydrologic Considerations

Swauk and First Creeks do not have a long history of measurement. Extensive data collection and modeling for First and Swauk Creeks was completed as part of Suncadia's 2002 SEPA review and water right transfers. The Reports of Examination issued in 2003 document the hydrologic characteristics of First Creek and Swauk Creek downstream from its confluence with First Creek..

From 2006 to 2010, flow measurements in the First Creek, Swauk Creek, and Green Canyon drainages were taken by Washington Department of Fish and Wildlife and Ecology's Mr. Ryan Murphy (Table 3). Flows in the FCWUA Ditch were measured at the north fork point of diversion recognized by the Court in its Conditional Final Order (Table 3: "FCWUA Ditch at POD"). A corresponding measurement of First Creek immediately below the POD was taken to determine how much water remained in the natural channel (Table 3: "First Creek at POD"). The middle and south fork Intercepts, and several weirs lower in the system were also measured.

The middle and south forks are small streams that flow into the FCWUA ditch, and though they aren't managed, they contribute to the ditch's total flow. Farther down the ditch, Mr. Murphy identified a point in Green Canyon where the ditch's flow is channelized by logs set in the stream bank Table 3: "Log Channel"). Flows measured at this point provide an estimate of the total ditch flow that includes the middle and south forks and any diffuse contribution along the upper portion of the ditch.

Precipitation data from the National Oceanic and Atmospheric Administration's (NOAA) Ellensburg gage (station index 82505), indicates that 2009 and early 2010 rank slightly higher than average, suggesting that the measured flows in First Creek during 2009 and 2010 approximate average conditions.

Table 3: Ecology's Flow Measurements (in CFS) Associated with the FCWUA Ditch.

Date	First Creek at Hwy 97	Middle Fork Intercept	South Fork Intercept	Log Channel	First Creek at POD	FCWUA Ditch at POD	Total First Creek Flow near POD[1]
10/05/2006	-	-	-	-	1.69	1.84	3.53
04/25/2007	-	1.51	-	-	-	-	13.65
05/18/2009	26.71	0.40	2.50	6.00		2.20	>2.20
06/02/2009	50.2	1.40	0.85	5.50	N/A	2.25	>2.25
06/15/2009	15.75	0.90	0.75	7.00	N/A	5.00	>5.00
06/29/2009	5.61	0.45	0.60	4.50	5.89	3.10	8.99
07/13/2009	2.08	0.25	0.40	4.00	2.39	3.25	5.64
07/27/2009	1.20	0.15	0.30	2.80	1.53	2.25	3.78
08/11/2009	0.71	0.10	0.30	2.30	1.28	1.75	3.03
08/24/2009	0.63	0.10	0.25	1.90	1.29	1.30	2.59
09/08/2009	0.85	0.10	0.20	1.80	1.49	1.25	2.74
09/22/2009	0.47	0.08	0.20	1.45	0.64	1.00	1.64
10/06/2009	0.61	0.05	0.20	1.40	0.84	0.85	1.69
10/19/2009	0.61	0.08	0.18	1.45	1.13	0.90	2.03
11/03/2009	1.86	0.12	0.15	0.68	2.01	0.10	2.11
11/18/2009	0.67	0.09	0.14	1.40	0.77	0.90	1.67
12/01/2009	0.98	0.10	0.15	1.45	0.88	0.90	1.78
02/09/2010	2.85	N/A	N/A	1.25	N/A	NA	N/A
03/18/2010	-	0.14	0.05	1.75	N/A	0.85	0.85
04/07/2010	3.11	0.20	0.05	2.00	N/A	1	>1.00
04/22/2010	8.34	~1.50	0.11	~5	5.70	2.5	8.20
10/21/2010	0.77	0.1	0.1	1.6	-	1.1	-

Extent and Validity

Court Claim No. 00648 was confirmed in the Conditional Final Order (CFO) for the Swauk Creek Subbasin No. 4, issued on January 9, 2003. The quantities confirmed are as shown in Appendix B, last row: "FCWUA Rights, affirmed in CFO for Swauk Subbasin #4". The place of use is shown in Appendix A-2. In 2009 and 2010, Mr. Murphy from Ecology witnessed that the ditch was in working condition and continuously diverting water throughout those years. Flows measured at the FCWUA POD (shown in Appendix A-1) were less than the maximum instantaneous flow authorized for Court Claim No. 00648. Mr. Murphy witnessed that attempts had been made periodically to berm up the channel leading to the FCWUA ditch to capture most of the flow in First Creek. Nonuse of the full amount of the water right when the supply is not available is a sufficient cause for nonuse as defined in RCW 90.14.140(1)(a).

Ecology received a declaration from Mr. Roan stating that he sold a portion of his water rights to Trendwest (Suncadia) in 1998, but continued to raise the same number of cattle, "a full herd", and use the same amount of winter stock water on the property (as part of an agreement between the two parties). He maintained a full herd of cattle until he sold all of his cattle in 2009. This declaration was signed by Mr. Roan on March 18, 2011. Ecology requested that a definition of "full herd" be provided. On April 1, 2011, Joe Mentor, Suncadia's representative sent an e-mail to Ecology clarifying that Mr. Roan maintained 200 cow-calf pairs, depending on the availability of forage on the property and market conditions of any given year; the same number as he ran on the property at the time of the CFO, see the Report of Referee (Signed March 26, 1996), Subbasin No. 4 (Swauk), page 79.

[1] The total flow of First Creek near the POD was calculated by adding the ditch flow measured at the POD ("FCWUA Ditch at POD") plus the flow remaining in First Creek measured near the POD ("First Creek at POD").

Review of LandSat images showed that irrigation practices did not change significantly from before and after January 9, 2003 (when the court issued its CFO for the Swauk Subbasin No. 4 confirming Claim No. 00648). Images from July or August of 1986, 1995, and 2002 through 2010 showed roughly the same amount of irrigation as what was taking place before the CFO; some years showing more and some less, but no extended periods of non-use.

Consideration of Protests and Comments

On September 24, 2010 Ecology received a protest letter from Mr. Pat Deneen, who is the manager of the Ranch on Swauk Creek, LLC. Mr. Deneen holds water rights authorizing diversions from Swauk Creek. Mr. Deneen responded to a public notice describing all the applications associated with the *First Creek Restoration Project*. Mr. Deneen's letter included many concerns, questions, and statements related to the proposed use of First Creek water rights for mitigation of future uses within the Swauk Creek Subbasin. These concerns are addressed in the ROE's for application no.'s CS4-00648(AA)sb4-b and CS4-00648(AB)sb4-b (signed on June 17, 2011); these are available upon request.

Mr. Deneen's comments specifically related to adding points of diversion are summarized below, followed by a response:

1. **There is no reference to the north and south forks of First Creek in the Acquavella testimony and they cannot be found on maps of general circulation** Ecology has informally used these names for convenience to describe and distinguish the three streams. We refer to the main stem of First Creek as the north fork and the next two small tributaries downstream from the FCWUA's diversion as the middle fork and the south fork, respectively.

2. **How do the applications requesting to add points of diversion to Mr. Roan and Mr. White's rights meet the Hillis Rule for priority processing?** The additional points of diversion are an integral part of the proposal. It enables Roan and White to cease their north fork diversion in the winter and would free up conveyance water that can instead be left in First Creek for flow enhancement. Eliminating the use of the north fork diversion in the winter will also make fish screening and fish passage simpler and more effective.

Impairment Considerations

Yakima County Superior Court held that non-diversionary stock and wildlife rights up to 0.25 cfs take first priority in natural water ways. Since construction of the FCWUA ditch in the 1800's, the middle and south forks of First Creek have been intercepted by the ditch. No third party objections were filed prior to the Conditional Final Order's issuance. One of the objectives of the *First Creek Restoration Project* is to improve this condition. No other water rights to the middle and south forks of First Creek were confirmed by the Court.

Water from the middle and south forks of First Creek has been diverted for more than 100 years and there is no evidence of a natural stream channel below the ditch in either drainage. The proposal to divert only the middle and south fork in the wintertime would not increase the quantities authorized by the Court or alter historic ditch operations.

CONCLUSIONS

Adding two points of diversion to Court Claim No. 00648 at the middle and south forks would not impair existing rights to First Creek, downstream on Swauk Creek, or on the Yakima River.

RECOMMENDATIONS

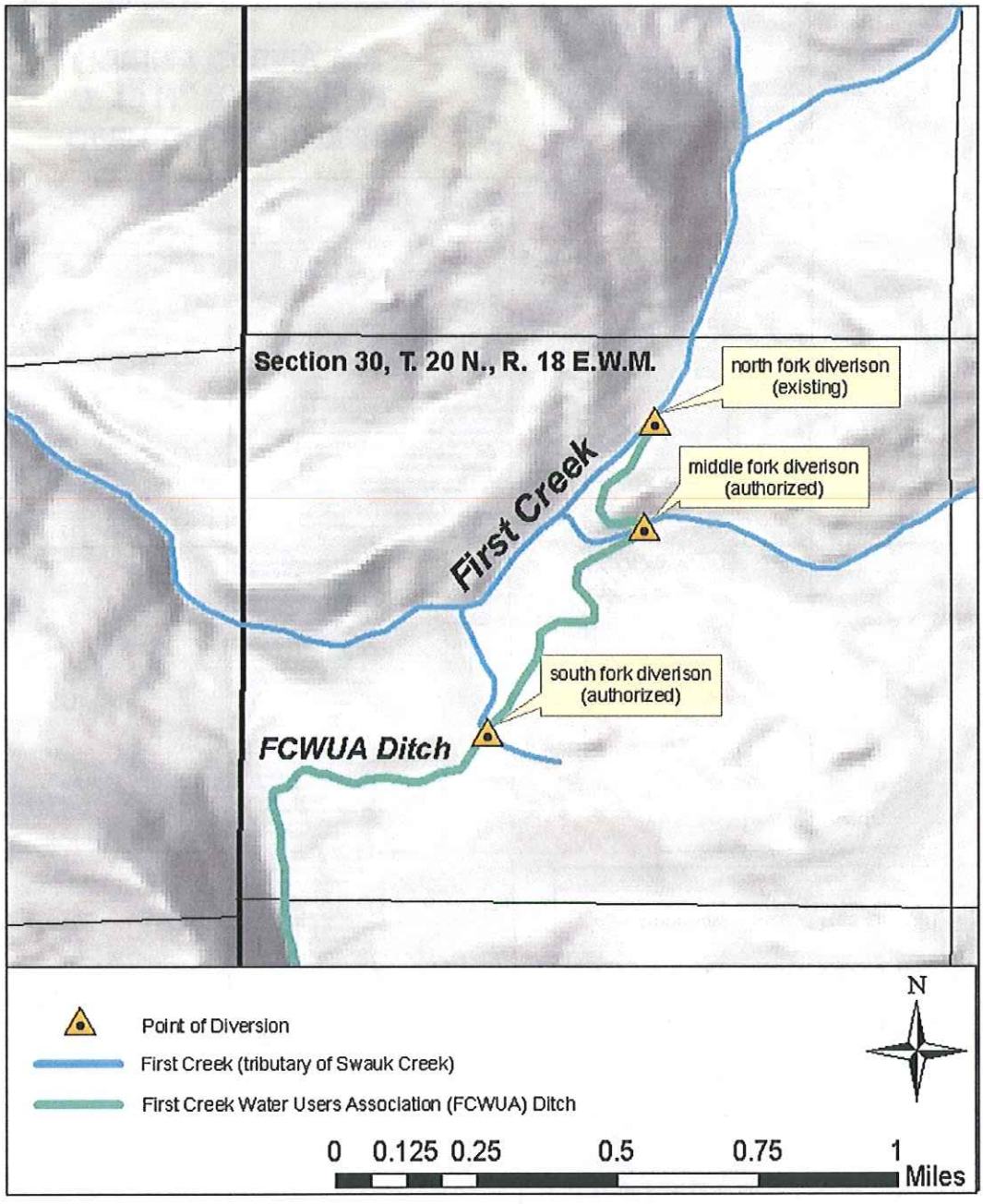
Based on the information presented above, the author recommends that:

> Mr. Roan's request to add two points of diversion to Court Claim No. 00648 be approved in the amounts, and subject to the provisions, described on pages 1-3 of this Order for Report of Examination for *CS4-00648(AA)sb4-c.*
>
> The two points to be added to Court Claim No. 00648 are (1) on the middle fork of First Creek within the S½NE¼ of Section 30, and (2) on the south fork of First Creek within the NE¼SW¼ of Section 30, both within T. 20 N., R. 18 E.W.M.

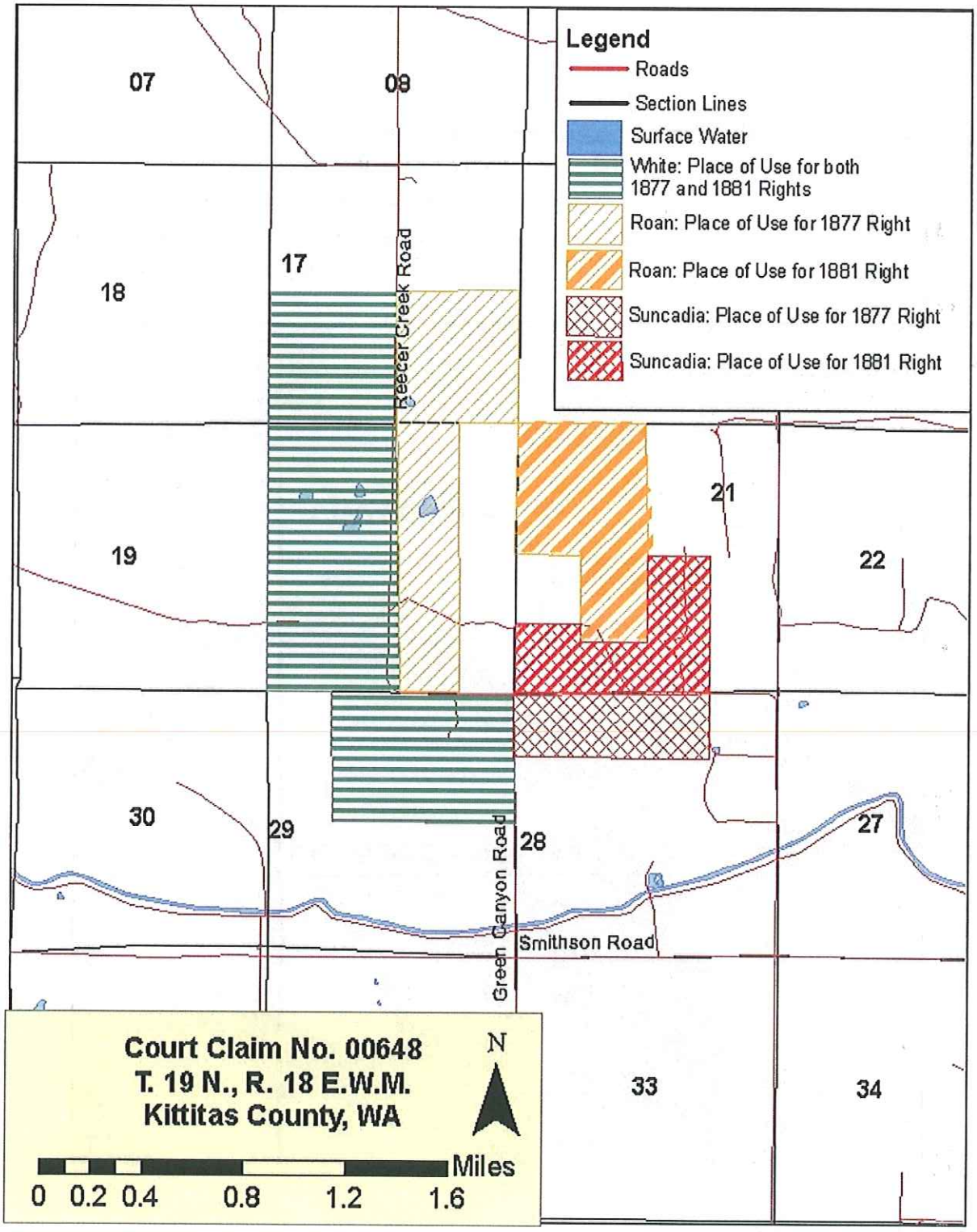
Report by: Kelsey D Collins 10/7/11

Kelsey Collins, Water Resources Program — Date

APPENDIX A-1


Section 30, T. 20 N., R. 18 E.W.M.
north fork diverison (existing)
middle fork diverison (authorized)
south fork diverison (authorized)
First Creek
FCWUA Ditch
Point of Diversion
First Creek (tributary of Swauk Creek)
First Creek Water Users Association (FCWUA) Ditch
N
0 0.125 0.25 0.5 0.75 1 Miles

APPENDIX A-2


Legend
Roads
Section Lines
Surface Water
White: Place of Use for both 1877 and 1881 Rights
Roan: Place of Use for 1877 Right
Roan: Place of Use for 1881 Right
Suncadia: Place of Use for 1877 Right
Suncadia: Place of Use for 1881 Right
07
08
17
18
19
21
22
27
28
29
30
33
34
Reecer Creek Road
Green Canyon Road
Smithson Road
Court Claim No. 00648
T. 19 N., R. 18 E.W.M.
Kittitas County, WA
N
Miles
0 0.2 0.4 0.8 1.2 1.6

APPENDIX B: Summary of Court Claim No. 00648 as modified by the November 13, 2008 *Order for Partition of Water Right and Substitution of Parties* which specified the following partitions:

J.P. Roan	**1877 Priority Date**	**1881 Priority Date**
Purpose of Use	Irrigation of 37.92 acres and stock water	Irrigation of 5.08 acres and stock water
Period of Use	April 1 through October 15 for irrigation, continuous for stock water	April 1 through October 15 for irrigation, continuous for stock water
Quantity	0.977 cfs; 208.5 acre-feet per year for irrigation and stock watering during the irrigation season; 0.527 cfs for conveyance loss; 1.911 cfs, 7.9 acre-feet per year (consumptive) for stock watering from October 16 through March 31.	0.131 cfs and 27.94 ac-ft/yr for irrigation and stock water during the irrigation season; 0.071 cfs for conveyance loss.
Point of Diversion on First Creek	Beginning of FCWUA Ditch: 800 ft south and 100 ft east from the north quarter corner of Section 30, within Government Lot 1, Section 30, T. 20 N., R. 18 E.W.M.	Beginning of FCWUA Ditch: 800 ft south and 100 ft east from the north quarter corner of Section 30, within Government Lot 1, Section 30, T. 20 N., R. 18 E.W.M.
*Place of Use	The SE¼ of Section 17, the W½E½ of Section 20; the NE¼SW¼, N½N½SE¼SW¼, and portions of the N ½ of Section 21; ALL in T. 19 N., R. 18 E.W.M.	The NE¼SW¼, N½N½SE¼SW¼, and portions of the N ½ of Section 21; ALL in T. 19 N., R. 18 E.W.M.
Suncadia, LLC	**1877 Priority Date**	**1881 Priority Date**
Purpose of Use	Irrigation of 89.83 acres and stock water	Irrigation of 95.17 acres and stock water
Period of Use	April 1 through October 15 for irrigation, continuous for stock watering	April 1 through October 15 for irrigation, continuous for stock watering
Quantity	2.315 cfs; 493.9 acre-feet per year for irrigation and stock watering during the irrigation season; 1.247 cfs for conveyance loss; 2.761 cfs, 11.45 acre-feet per year (consumptive) for stock watering from October 16 through March 31.	2.453 cfs and 523.44 ac-ft/yr for irrigation and stock water during the irrigation season; 1.321 cfs for conveyance loss.
Pt of Diversion	Beginning of FCWUA Ditch, same as above	Beginning of FCWUA Ditch, same as above
*Place of Use	The S½SE¼SW¼, SW¼SW¼, W½SE¼, and the S½N½SE¼SW¼ of Section 21, and the N½NW¼, and NW¼NE¼ of Section 28, ALL in T. 19 N., R. 18 E.W.M.	The S½N½SE¼SW¼, SW¼SW¼, W½SE¼, and the S½SE¼SW¼, of Section 21, ALL in T. 19 N., R. 18 E.W.M.
Jack White, Jr	**1877 Priority Date**	**1881 Priority Date**
Purpose of Use	Irrigation of 36.75 acres and stock water	Irrigation of 85.75 acres and stock water
Period of Use	April 1 through October 15 for irrigation, continuous for stock watering	April 1 through October 15 for irrigation, continuous for stock watering
Quantity	0.947 cfs; 202.06 acre-feet per year for irrigation and stock watering during the irrigation season; 0.509 cfs for conveyance loss; 1.851 cfs, 7.65 acre-feet per year (consumptive) for stock watering from October 16 through March 31.	2.211 cfs and 471.63 ac-ft/yr for irrigation and stock water during the irrigation season; 1.190 cfs for conveyance loss.
Pt of Diversion	Beginning of FCWUA Ditch, same as above	Beginning of FCWUA Ditch, same as above
*Place of Use	SW¼ Section 17; W½ of Section 20; and the NE¼ and E½NW¼ of Section 29; ALL T. 19 N. R. 18 E.W.M.	SW¼ Section 17; W½ of Section 20; and the NE¼ and E½NW¼ of Section 29; ALL T. 19 N. R. 18 E.W.M.
****Confirmed Rights in CFO**	**4.24 cfs and 904.45 ac-ft/yr for irrigation and stock water during the irrigation season; 2.283 cfs for conveyance loss; 6.523 cfs and 27 ac-ft/yr (consumptive) for stock water from Oct 16 to Mar 31.**	**4.795 cfs and 1023 ac-ft/yr for irrigation and stock water during the irrigation season with 2.582 cfs for conveyance loss.**

* Legal descriptions were abbreviated. A complete description is available upon request.

** The CFO confirmed the quantities set forth in the *Memorandum Opinion and Order RE: Subbasin 4 Exceptions*, on page 23.