File NR CG4-26840P
WR Doc ID 6045139

State of Washington
Department of Ecology
Office Of Columbia River
Report of Examination for
Trust Water Change Application
CG4-26840P

Changed Place of Use AND Added Purpose of Use
NOTE: The subject application was initially filed prior to certification of permit G4-26840P. This change authorization was processed after certification under RCWs 90.03.330 and 90.03.665.

PRIORITY DATE	CHANGE AUTHORIZATION NUMBER	TRUST TERM
7/1/1980	CG4-26840P	Permanent

WATER RIGHT OWNER
The Highland Partnership
PO Box 1706
Wenatchee, WA 98807-1706

Purpose, Rate, and Quantity

This authorization represents a portion of the right to convey to the State's Trust Water Rights Program (Trust) for the purpose of mitigation for out-of-stream uses and with maximum instantaneous flow rate and annual quantity values allocated in the following manner:

Month	Month	Secondary Reach	
		Flow (gpm)	Acre-feet
Mar 01 – Mar 31	Nov 1 – Nov 30	1,796	18.1

The Primary Reach is that portion of a water body that benefits from both the former consumptive use and former return flow waters of a water right. Due to the location of the proposed commensurate out-of-stream uses to be mitigated under the project (across and within the same pool – Rufus Woods Lake – on the Columbia River), there is no Primary Reach for this Trust conveyance. Attributes of these proposed out-of-stream uses are captured in applications S4-33104 and G4-33109. The Secondary Reach, which benefits only from the former consumptive use, is limited in rate and quantity by the values given in the table above.

The consumptive quantity conveyed to Trust is further limited by monthly values given in Table 1 below:
Table 1: Monthly Trust Water Quantities in acre-feet (ac-ft)

Purpose	Unit	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Total
Mitigation	ac-ft	X*	0	0	0	0	0	0	0	18.1-X*	18.1

* X = some value equal to or less than 18.1

Trust Water Right Place of Use

WATERBODY	TRIBUTARY TO	COUNTY	WATER RESOURCE INVENTORY AREA
Columbia River	Pacific Ocean	Okanogan	50-Foster

REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Rufus Woods Lake	Columbia River	553.5	30N.	26E.W.M.	26, 35	N/A	N/A	N/A

Proposed Works

None – the Trust water portion would no longer be diverted under G4-26840C.

Provisions

General

The water to convey to Trust under CG4-26840P is intended to mitigate new appropriations as captured within applications S4-33104 and G4-33109. If applications S4-33104 and G4-33109 are approved and within 30 days after any and all related appeals resolved such that reliance on this Trust water is maintained:

1) The irrigation component of Surface Water Claim S4-130027Cl shall be voluntarily relinquished. Any authorizations that issue under applications S4-33104 and G4-33109 shall be provisioned such.
2) A Quit Claim Deed shall be filed with the Washington Department of Ecology conveying the authorized Trust water quantity and rate(s) under this Report of Examination to the Washington Department of Ecology.
3) Any authorizations that issue under applications S4-33104 and G4-33109 shall be provisioned such that they are subject to any cessation or modification resulting from a finding of impairment pursuant to RCW 90.42.040(4)(b).

If the three steps listed above are complied with, a Trust Water Certificate shall issue in the name of the Washington Department of Ecology for the amounts conveyed to Trust under this authorization.

Instream Flow Limitations

This Trust water authorization is subject to the following minimum flows as specified in WAC 173-563-040 and WAC 173-563-050 and the following table. Any right relying on this Trust water would be subject to regulation by the Department of Ecology for protection of instream resources whenever the March 1 forecast of April-September runoff at The Dalles is 60 MAF or less, and when gaged flows are predicted by the BPA 30-Day Power Operation Plan to violate the following minimum flow provisions at:

Primary Control Station: Chief Joseph
River Mile: 545.1
Minimum Average Weekly Flows
Columbia River Projects
(1,000 cubic feet/second)

PRIMARY CONTROL STATION:	Chief Joseph*	Wells/ Rocky Reach*	Rock Island & Wanapum *	Priest Rapids	McNary	John Day	The Dalles
RIVER MILE:	(545.1)	(515.6) (473.7)	(453.4) (415.8)	(397.1)	(292.0)	(215.6)	(191.5)
Jan	30	30	30	70	60	60	60
Feb	30	30	30	70	60	60	60
Mar	30	30	30	70	60	60	60
Apr 1-15	50	50	60	70	100	100	120
Apr 16-25	60	60	60	70	150	150	160
Apr 26-30	90	100	110	110	200	200	200
May	100	115	130	130	220	220	220

Jun 1-15	80	110	110	110	200	200	200
Jun 16-30	60	80	80	80	120	120	120
Jul 1-15	60	80	80	80	120	120	120
Jul 16-31	90	100	110	110	140	140	140
Aug	85	90	95	95	120	120	120
Sep	40	40	40	40	60	85	90
Oct 1-15	30	35	40	40	60	85	90
Oct 16-31	30	35	40	70	60	85	90
Nov	30	30	30	70	60	60	60
Dec	30	30	30	70	60	60	60

*For the reach from Grand Coulee through Wanapum, minimum average weekly flows shall be as shown above, or as necessary to maintain minimum flows (subject to low runoff and adjustment) at Priest Rapids, whichever is higher. As provided in WAC 173-563-050(1), the minimum average weekly flows set forth in this subsection are subject to a reduction of up to 25 percent during low flow years, except that in no case shall the outflow from Priest Rapids Dam be less than 36,000 cfs.

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

Use of Trust water as mitigation under this authorization can be expected to be curtailed at least once in every 20 years.

Trust water as mitigation available under this authorization will not provide a firm supply throughout each irrigation season.

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

PORTION OF RIGHT NOT CONVEYED INTO TRUST

PRIORITY DATE	WATER RIGHT NUMBER
7/1/1980	G4-26840C

MAILING ADDRESS	SITE ADDRESS
The Highland Partnership PO Box 1706 Wenatchee, WA 98807-1706	See POU description below.

Total Quantity Authorized for Withdrawal

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
4,543	gpm	138

Total withdrawals from all sources must not exceed the total quantity authorized for withdrawal listed above.

Purpose

PURPOSE	WITHDRAWAL RATE ADDITIVE	WITHDRAWAL RATE NON-ADDITIVE	WITHDRAWAL RATE UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Irrigation of 550 acres (non-additive)	4,543		gpm	45.5		03/01 - 3/31 11/1 – 11/30
Frost Protection of 550 acres (non-additive)		4,543	gpm	92.5		03/01 - 3/31 11/1 – 11/30

IRRIGATED ACRES ADDITIVE	IRRIGATED ACRES NON-ADDITIVE	PUBLIC WATER SYSTEM INFORMATION WATER SYSTEM ID	PUBLIC WATER SYSTEM INFORMATION CONNECTIONS
	550	N/A	

Source Location

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Well #3	3026350001		30N.	26E.W.M.	35	NE NW	48.06278	-119.52874
Well #4	3026260002		30N.	26E.W.M.	26	SE SW	48.06336	-119.52816
Well #6	3026350001		30N.	26E.W.M.	35	NE NW	48.06229	-119.52937
Well #7	3026350001		30N.	26E.W.M.	35	NE NW	48.06273	-119.52879

Datum: WGS84

Place of Use

PARCELS

3026280004, 3026270003, 3026271001, 3026271002, 3026271006, 3026271016, 3026271014, 3026271015, 3026222002, 3026233002, 3026260001, 3026260002, 3026350001, 3026350002, 3026340030, 3026340031, 3026340023, 3026340018, and 3026330006.

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

550 acres (non-additive) within the following legal description:

All within T. 30 N., R. 26 E.W.M., Okanogan County, Washington:

The S½SE¼ of Section 22;

That portion of the NE¼ of Section 28 described as follows: Beginning at the E quarter corner of said Section 28, thence N 01°06'16" W, following the E boundary of said Section 28, 2645.16 feet to the Northeast corner thereof, thence S 89°23'13" W, following the N boundary of said Section 28, 1320.05 feet, thence S 01°06'16" E, parallel to the E boundary, 2022.41 feet, thence S 58°33'03" E 502.65 feet, thence S 69°01'27" E 967.26 feet to the point of beginning;

The S½SW¼ of Section 23;

The W½ of Section 26;

Section 27, except that portion contained with the deed to Perkins Orchard Company recorded under Auditor's File No. 572841.

That portion of the SE¼ of Section 28 and that portion of the NE¼ of Section 33 described as follows:

Beginning at the Section corner common to the Southeast corner of said Section 28 and the Northeast corner of said Section 33, thence S 00°59'56" E, following the E boundary of said Section 33, 680.31 feet to an intersection with the Northwesterly boundary of a tract of land described under Auditor's File No. 572841, thence S 46°28'38" W, following said Northwesterly boundary, 1812.92 feet, thence N 43°31'22" W 875.00 feet, thence N 46°28'38" E 2617.61 feet to an intersection with the E boundary of said Section 28, thence S 00°48'49" E, following said E boundary 508.46 feet to the point of beginning.

Government Lots 1 and 2, and that portion of Government Lot 3 lying East of the E boundary of that property contained within the deed to Perkins Orchard Company recorded under Auditor's File No. 572841, the NE¼SW¼, the NE¼, the E½NW¼, the W½NW¼, except the E½E½W½NW¼NW¼ thereof, all in Section 34; EXCEPT from said Section 34 that portion contained within the deed to Perkins Orchard Company recorded under Auditor's File No. 572841;

The N½NW¼ and Government Lots 2 and 3 of Section 35;

EXCEPTING therefrom any and all of the above described properties lying within County Roads No. 3020 and 3081.

ALSO EXCEPTING any portion of the above described property lying within the Columbia River.

Proposed Works

None – this portion of the project is complete.

Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Upon Request by Ecology
What volume should be reported?	Total Annual Volume in acre-feet
What rate should be reported?	Annual Peak Rate of Diversion in gpm

Provisions

General

This authorization to make use of public waters of the state is subject to existing rights, including any existing rights held by the United States for the benefit of Indians of the Colville Confederated Tribes.

The total withdrawal for irrigation under this authorization and Certificate G4-27775(B)C shall not exceed 45.5 ac-ft/yr.

Wells, Well Logs and Well Construction Standards

All wells constructed in the state must meet the construction requirements of Chapter 173-160 WAC titled "Minimum Standards for the Construction and Maintenance of Wells" and Chapter 18.104 RCW titled "Water Well Construction". Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard must be decommissioned.

All wells must be tagged with a Department of Ecology unique well identification number. If you have an existing well and it does not have a tag, please contact the well-drilling coordinator at the regional

Department of Ecology office issuing this decision. This tag must remain attached to the well. If you are required to submit water measuring reports, reference this tag number.

Installation and maintenance of an access port as described in WAC 173-160- 291(3) is required.

Instream Flow Limitations

This authorization is subject to the following minimum flows as specified in WAC 173-563-040 and WAC 173-563-050 and the following table. It is subject to regulation by the Department of Ecology for protection of instream resources whenever the March 1 forecast of April-September runoff at The Dalles is 60 MAF or less, and when gaged flows are predicted by the BPA 30-Day Power Operation Plan to violate the following minimum flow provisions at:

Primary Control Station: Chief Joseph
River Mile: 545.1
Minimum Average Weekly Flows
Columbia River Projects
(1,000 cubic feet/second)

PRIMARY CONTROL STATION:	Chief Joseph*	Wells/ Rocky Reach*	Rock Island & Wanapum *	Priest Rapids	McNary	John Day	The Dalles
RIVER MILE:	(545.1)	(515.6) (473.7)	(453.4) (415.8)	(397.1)	(292.0)	(215.6)	(191.5)
Jan	30	30	30	70	60	60	60
Feb	30	30	30	70	60	60	60
Mar	30	30	30	70	60	60	60
Apr 1-15	50	50	60	70	100	100	120
Apr 16-25	60	60	60	70	150	150	160
Apr 26-30	90	100	110	110	200	200	200
May	100	115	130	130	220	220	220
Jun 1-15	80	110	110	110	200	200	200
Jun 16-30	60	80	80	80	120	120	120
Jul 1-15	60	80	80	80	120	120	120
Jul 16-31	90	100	110	110	140	140	140
Aug	85	90	95	95	120	120	120
Sep	40	40	40	40	60	85	90
Oct 1-15	30	35	40	40	60	85	90
Oct 16-31	30	35	40	70	60	85	90
Nov	30	30	30	70	60	60	60
Dec	30	30	30	70	60	60	60

*For the reach from Grand Coulee through Wanapum, minimum average weekly flows shall be as shown above, or as necessary to maintain minimum flows (subject to low runoff and adjustment) at Priest Rapids, whichever is higher. As provided in WAC 173-563-050(1), the minimum average weekly flows set forth in this subsection are subject to a reduction of up to 25 percent during low flow years, except that in no case shall the outflow from Priest Rapids Dam be less than 36,000 cfs.

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

Use of water under this authorization can be expected to be curtailed at least once in every 20 years.

Water available under this authorization will not provide a firm supply throughout each irrigation season.

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", Chapter 173-173 WAC, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Family Farm Permit
This authorization to use public waters of the state is classified as Family Farm Permit in accordance with Chapter 90.66 RCW. This means the land being irrigated under this authorization shall comply with the following definition: Family Farm - a geographic area including not more than 2,000 acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than 2,000 acres of irrigated agricultural lands in the state of Washington which are irrigated under water rights acquired after December 8, 1977. Furthermore, the land being irrigated under this authorization must continue to conform to the definition of a family farm.

Water Use Efficiency
Use of water under this authorization will 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.

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.

Findings of Fact

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that there will be no impairment of existing rights and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. CG4-26840P, subject to existing rights and the provisions specified above.

Your Right To Appeal

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

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

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

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

Street Addresses	Mailing Addresses
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 RD SW Ste 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Yakima, Washington, this 17th day of July 2015.

Mark C. Schuppe, Operations Manager
Office of Columbia River

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

INVESTIGATOR'S REPORT
Thomas Perkow, Department of Ecology
Water Right Control Number CG4-26840P
The Highland Partnership

BACKGROUND

The general location of this project is several miles upstream from Bridgeport, WA, along the north side of the Columbia River. This report serves as the written findings of fact concerning Change Application Number CG4-26840P. This application was filed prior to certification of Permit G4-26840P. Certification took place during mid-2014, and this application was processed after certification. The original change application number (with the "P" at the end indicating "Permit") was retained through change processes though Certificate G4-26840C has since issued.

EXISTING Water Right Attributes (Certificated)

Water Right Owner:	The Highland Partnership
Priority Date:	7/1/1980
Place of Use	As described at the end of this report.

County	Waterbody	Tributary To	WRIA
Okanogan	Columbia River	Pacific Ocean	50-Foster

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Irrigation of 800 acres*	6,584	gpm	66	3/01	3/31
				11/1	11/30
Frost Protection	6,584**	gpm	134	3/01	3/31
				11/1	11/30

** Non-Additive to S3-21014C*

*** Non-Additive to the irrigation rate*

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Well #3	3026350001		30N.	26E.W.M.	35	NE NW	48.06278	-119.52874
Well #4	3026260002		30N.	26E.W.M.	26	SE SW	48.06336	-119.52816
Well #6	3026350001		30N.	26E.W.M.	35	NE NW	48.06229	-119.52937
Well #7	3026350001		30N.	26E.W.M.	35	NE NW	48.06273	-119.52879

gpm = gallons per minute; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in WGS84.

REQUESTED Water Right Attributes (Trust as mitigation)

Applicant Name:	The Washington Department of Ecology
Date of Application:	12/9/2013
Place of Use	Columbia River

County	Waterbody	Tributary To	WRIA
Okanogan	Columbia River	Pacific Ocean	50-Foster

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Mitigation (250 acres, orchard)	1,715	gpm	52.1	03/01	03/31
				11/01	11/30

REQUESTED Water Right Attributes (Not conveyed into Trust)

(Reductions in Acreage, Qi, and Qa only)

Applicant Name:	The Highland Partnership
Date of Application:	12/9/2013
Place of Use	No change

County	Waterbody	Tributary To	WRIA
Okanogan	Columbia River	Pacific Ocean	50-Foster

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Irrigation of 550* acres	4,869	gpm	147.9	03/01	03/31
				11/01	11/30
Frost Protection	4,869**				

** Non-Additive to S3-21014C*

*** Non-Additive to the irrigation rate*

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Well #3	3026350001		30N.	26E.W.M.	35	NE NW	48.06278	-119.52874
Well #4	3026260002		30N.	26E.W.M.	26	SE SW	48.06336	-119.52816
Well #6	3026350001		30N.	26E.W.M.	35	NE NW	48.06229	-119.52937
Well #7	3026350001		30N.	26E.W.M.	35	NE NW	48.06273	-119.52879

Legal Requirements for Requested Change

The following lists and describes requirements that must be met prior to authorizing the proposed change in place of use and the addition of a purpose of use.

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Omak-Okanogan County Chronicle on June 4 and June 11, 2014.

Notice to the Washington Department of Fish and Wildlife

Pursuant to RCWs 90.42.040(5)(b), 90.42.110(2), 90.03.280, and 77.57.020, Ecology must give notice to the Washington Department of Fish and Wildlife (WDFW) of applications to divert, withdraw or store

water. On June 23, 2014, notice was mailed to WDFW in conjunction with the Trust Water notice discussed next. The project as a whole was described.

Creation of Trust Water Right Notice

Pursuant to RCW 90.42.040(5)(b), *"...the department shall send a notice containing pertinent information to all appropriate state agencies, potentially affected local governments and federally recognized tribal governments, and other interested parties."* Such notice was sent on May 23, 2014, to a wide variety of agencies, tribes, and interested parties. A list of recipients can be obtained by request from Ecology's Office of Columbia River. Additionally, discussion on this project took place between Ecology representatives (including the author of this ROE) and the Water Rights Administrator for the Confederated Tribes of the Colville Reservation (the Colville Tribes), Lois Trevino, and the Colville Tribes' consultant, Fred Rajala, in August, September, and October of 2014.

Electronic Notice of Interbasin Water Transfer Under RCW 90.03.380(10)(a)

Ecology sent notice of the subject change proposal to the Okanogan County Commissioners office on September 3, 2014.

State Environmental Policy Act (SEPA)

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

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

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

Water Resources Statutes and Case Law

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

RCW 90.03.380(1) further states that a purpose of use may be added to a water right if the annual consumptive quantity is not increased. The annual consumptive quantity is the average of the two highest years within the most recent five-year period of ongoing beneficial use of the water right.

RCW 90.66.065(5) states that the place of use of a family farm permit may be changed if it remains within the same water resource inventory area (WRIA). The place of use may also be changed to a location outside the WRIA if it remains within the same or adjacent urban growth areas.

Chapter 90.42 RCW authorizes Ecology to acquire water for Trust and to use this water for water banking purposes.

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

The subject change application was submitted on December 9, 2013, by The Highland Partnership and assigned tracking number CG4-26840P. The intent is to cease irrigating 250 acres under four overlapping rights (S3-21014C, G4-26840C, G4-27774C, and G4-27775(B)C) and convey the formerly used water into the State's Trust Water Rights Program (Trust) as mitigation for new out-of-stream uses captured in new water right applications S4-33104 and G4-33109. The new out-of-stream uses are located in the same general area but on the south side of the Columbia River. Change applications for the four certificates listed above were filed concurrently while they were still in the permit stage. Subsequently, Certified Water Rights Examiner (CWRE) Andrew Dunn, P.E. (CWRE #001) of RH2 Engineering, was retained by the applicant to conduct proof examinations on the four subject permits. The CWRE submitted his final consolidated report on perfection of the permits to Ecology on June 2, 2014. The certification process was followed consistent with RCW 90.03.665 and Chapter 173-165 WAC. No appeals to Ecology's Administrative Order recommending certificate values were filed, statutory filing fees were paid by the applicant, and the four certificates issued on October 17, 2014. Changes proposed to Certificate G4-26840C are germane to this report.

History of Water Use

The four subject rights were originally issued permits in the early-to-mid 1980s for the irrigation of 800 acres, frost protection, heat protection, domestic use, shop use, and orchard spraying. The place of use is the same on all four permits. A 1983 Report of Examination to G4-26840C documents that 800 acres had been planted at that time. Aerial photography from years 1991, 2005, 2006, 2009, 2011, and 2013 indicates that approximately 750 acres were irrigated in 1991, and then considerably more than 800 acres in 2005 to 2013. Proof of Appropriation forms were filed in 1992 accounting for the 800 acres, indicating that the first 800-acre portion of the project had been fully built out and water applied to full beneficial use under the four permits. More recently, certification of the permits took place as mentioned above. Part of the certification process involved the quantification of water applied under the terms of the permits. As less than one irrigation season has elapsed since certification of permit G4-26840P, and no conflicting information has surfaced, Ecology's tentative determination on the validity and extent of water available for change under CG4-26840P is the same as that certificated under G4-26840C (the "C" represents "Certificate"). This simplified tentative validity and extent determination is consistent with Ecology's Policy 1120, titled "Water Resources Program Policy for Conducting Tentative Determinations of Water Rights". This Policy indicates that the entire history of a water right need not be conducted if the subject right has had recent departmental action within the last five years. Here, the issuance of a certificate concurrent with change application processing qualifies as recent departmental action.

Proposed Use

G4-26840C authorizes the irrigation of 800 acres that are non-additive to another right (S3-21014C). G4-26840C extends the season of use to the same 800 acres to include the months of March and November

and authorizes 134 ac-ft for frost protection. The instantaneous rate is limited to 6,584 gpm. G4-26840C, in combination with G4-27775(B)C, allows up to 66 ac-ft to be used for irrigation. Under the change proposal, 250 acres would no longer be irrigated under G4-26840C (same with related rights S3-21014C, G4-27774C, and G4-27775(B)C). This no-longer-used water would transfer into Trust as mitigation for 250 acres of new irrigation captured in new water right applications S4-33104 and G4-33109. The remaining 550 acres would continue to be irrigated under a commensurately reduced G4-26840C (together with commensurately reducing G4-21014C, G4-27774C, and G4-27775(B)C). Two authorizations would result from application CG4-26840P, if approved: one for the Trust-as-mitigation conveyance, and the second, a superseding certificate, for the 550 acres of irrigation remaining at the original site.

Fallowing of the 250 acres at the Okanogan County site is not proposed. Instead, three other permits (G4-27776P, G4-27777P, and G4-26841P) that have not yet been fully developed would cover the 250 acres. These three other permits cover the same place of use as the subject four permits and authorize an additional 700 acres of irrigation, for a total of 1,500 acres between all seven authorizations. It appears that only about 200 of the 700 acres have been developed to date.

Other Rights Appurtenant to the Place of Use

As mentioned, three other rights are appurtenant to the same place of use and relate directly to G4-26840C. These are S3-21014C, G4-27774C, and G4-27775(B)C. S3-21014C authorizes the irrigation of 800 acres from April 1 to October 31; the 800 acres authorized under the remaining three rights are all non-additive. G4-27774C boosts the instantaneous rate of withdrawal during April through October an additional 2,556 gpm. G4-27775(B)C boosts the instantaneous rate of withdrawal during March and November an additional 1,067 gpm, and authorizes 30 ac-ft per year for continuous domestic, shop, and orchard spraying uses. Separate Investigator Reports address these other, related, change applications.

Also mentioned, three other permits overlap in place of use but do not directly relate to G4-26840C. These permits are G4-27776P, G4-27777P, and G4-26841P. In late 2013, these three permits received extension request approvals where the deadline for completing construction was revised to October 1, 2017.

In 1974 a claim form was submitted by a Jack Wells for the irrigation of 740 acres covering the south and east portion of the place of use described in the seven permits discussed above (S4-130027Cl). The claim form left the "Date of First Putting the Water to Use" entry blank and indicated that "none" of the water is presently used and "none" of the acres are presently irrigated. This claim would be voluntarily relinquished should the new applications be approved.

The original Report of Examination for this permit (issued in April, 1979) describes a permit issued by the Colville Tribe such:

> Associated with a portion of the land described by this document is a tribal permit which purports to authorize the use of waters of the Columbia River. That permit is No. 78-03-01-01S and was granted March 13, 1978, by the Colville Water Administrator and Colville Water Committee as set forth in Chapter 6 of the Colville Water Code. Presumably a Mr. Glen Corning is authorized to divert 12.48 cubic feet per second from the Columbia River for irrigation of 800 acres of orchard within the S½ of Sec. 26, S½ Sec. 27 and portions of Sec. 34. The authorization is for a term of 50 years.

Hydrogeologic Evaluation

The original permit for S3-21014C authorized a diversion located on the Columbia River (Rufus Woods Lake). A subsequent change to this permit in 1983 changed the original point of diversion on the Columbia River to a well field consisting of up to six wells. The recently-issued certificate authorizes the use of four wells. These same four wells are shared by the four inter-related rights, including G4-26840C. The 1983 change Report of Examination evaluated: 1) the wells' proximity to Rufus Woods Lake, 2) well construction parameters including well depths, 3) static water levels with respect to Rufus Woods Lake levels, 4) well productions with respect to drawdown, and 5) the geologic materials encountered during drilling. The author concluded that the wells intercepted water in hydraulic connection with Rufus Woods Lake.

Impairment Considerations and ACQ

No longer irrigating 250 acres under G4-26840C and conveying this water into Trust would reduce a commensurate amount of water being withdrawn by the four wells. Water formerly withdrawn would remain un-intercepted in the aquifer and, consequently, in Rufus Woods Lake. The 1983 change Report of Examination indicates that *"There are no other wells proximate to the applicant's proposed well field"* and a check of Ecology's records for this change indicated that this is still the case. As such, no impairment is expected. However, should this expectation fail, Ecology is bound by RCW 90.42.040(4)(b), which states that *"If impairment becomes apparent during the time a trust water right is being exercised, the department shall cease or modify the use of the trust water right to eliminate the impairment."* If approved, any authorization relying on this Trust water conveyance as mitigation would be provisioned to be subject to cessation or modification.

Under this proposal the 250 acres at the original site would continue to be irrigated under other permits (G4-27776P, G4-27777P, and G4-26841P). These three permits have inchoate portions that can accommodate 250 acres of irrigation. Without this proposed transfer, 250 acres of native habitat would instead be turned to orchard at the original site. Notably, the 250 acres proposed for development across Rufus Woods Lake in Douglas County were formerly tilled and irrigated in the not-so-distant past (the water right was approved for transfer to another location in 2003), and, as such, pose a relatively diminished native habitat impact.

As stated above, RCW 90.03.380(1) directs that a purpose of use may be added to a water right if the annual consumptive quantity (ACQ) is not increased. ACQ takes the average of the two highest years within the most recent five-year period of ongoing beneficial use of the water right. Here consistent irrigation over the 800 acres has been demonstrated and the most recent five year period is 2010 to 2014. Metering data obtained by the applicant were found to be erroneous (meters have since been either replaced or refurbished to address the erroneous readings). Power readings were similarly found to be unreliable due to other connections hooked to the pumps' power meters. As such, data from Washington Irrigation Guide (WIG), Washington State University's AgWeatherNet, and Ecology's Guidance Document GUID 1210 were evaluated to determine the ACQ.

The top two years of water usage during the previous five years of continuous use under AgWeatherNet data were found to be 2012 and 2014. Water use between these two peak years is 3,245 ac-ft, the total annual water usage at this site for irrigation. The calculations are presented below in Table 1:

Table 1: Water Use Calculations

CIR=Crop Irrigation Requirement, Ea=Application Efficiency, TIR=Total Irrigation Requirement

Source	Climate Station	Top 2 Years	Crop	CIR	Ea	TIR (in)	TIR (ft)	Acres	Acre-feet
Ag Weather Net	Arrowhead and Chief Joe Average	2012 & 2014	Apples w/cover	39.65	81	48.95	4.08	643	2623
Ag Weather Net	Chief Joe	2012 & 2014	Cherries w/cover	41.38	87	47.56	3.96	157	622
								Total:	**3245**

This annual quantity can be further broken down to that portion used by the orchard consumptively, and that portion used non-consumptively. The consumptive portion takes the CIR values over their respective number of acres and adds in a consumptive component that is lost to evaporation. Ecology's GUID 1210 provides estimates of the amount of water lost to evaporation based on the type of irrigation delivery system. The apples are irrigated with micro-spray, drip, and overtree sprinklers for an estimated 10% evaporative loss, while the cherries with micro-spray and drip have an estimated 7% evaporative loss. As such, an estimated 2,916 (approximately 90%) of the 3,245 ac-ft applied was consumed by either the crop or lost to evaporation. RCW 90.03.380(1) indicates that the addition of new uses may be permitted if such change results in no increase in the ACQ. If approved, this change as a whole – between all four applications – would be limited in consumptive irrigation use to **2,916 ac-ft**.

If approved, one of the two resulting authorizations from Application CG4-26840P would cover the portion conveyed to Trust while the other, a superseding certificate, would cover the portion remaining at the original place of use. G4-26840C authorizes 6,584 gpm and 66 ac-ft (irrigation) and 134 ac-ft (frost protection) for the irrigation of 800 acres during the months of March and November. Mitigation is sought for 1,175 ac-ft to cover a proposed 250 acres of irrigation with frost protection. The complexities involved in how the four certificates inter-relate with season of use and additive/non-additive relationships are partially overcome by transferring a proportionate amount from each certificate while maintaining their season of use and additive/non-additive relationships. Percentages used to determine these proportions are:

1) 250 acres are approximately 31% of 800 acres, leaving 550 acres or 69% of 800 acres at the original place of use.
2) G4-26840C was authorized to be used during the periods March 1 – March 31 and November 1 – November 30 only, and given 66 ac-ft of a total of 3,466 ac-ft for irrigation of said 800 acres, or 2%.
3) 31% of the 66 ac-ft authorized under G4-26840C is approximately 20.5 ac-ft. These account for both consumptive and non-consumptive portions, and the reader will see below that the reduced consumptive value of 18.1 ac-ft represents 88% of 20.5 ac-ft (20.5 * 88% = 18.1).
4) 69% of 2,916 ac-ft is 2,012 ac-ft, which would remain with the 550 acres not conveyed to Trust under all four change proposals.
5) 69% of 134 ac-ft is 92.5 ac-ft, which would remain with the 550 acres not conveyed to Trust for frost protection under CS3-26840P.

As such, the following steps describe how the values for the Trust authorization were calculated:

1) Total annual quantity (irrigation, consumptive) between all four certificates: 31% of 2,916 ac-ft = 904 ac-ft.

2) Portion of annual quantity (irrigation, consumptive) dedicated to Trust portion of G4-26840C: 2% of 904 ac-ft = **18.1 ac-ft.** (18.1 ac-ft / 20.5 ac-ft = 88%)
3) Total instantaneous rate of withdrawal (irrigation, consumptive + non-consumptive) of certificate G4-26840C: 31% of 6,584 gpm = 2,041 gpm
4) Portion of instantaneous rate (irrigation, consumptive) dedicated to Trust portion of G4-26840C: 88% of 2,041 gpm = **1,796 gpm.**

The remainder, **4,543 gpm and 45.5 ac-ft for irrigation (40 ac-ft consumptive) plus 92.5 ac-ft for frost protection**, would remain with the 550 acres at the original place of use during the same March and November periods under the superseding certificate. [6,584 gpm – 2,041 gpm = 4,543 gpm; 66 ac-ft (irrigation) – 20.5 ac-ft (irrigation) = 45.5 ac-ft (irrigation); 134 ac-ft (frost protection) – 41.5 ac-ft (frost protection) = 92.5 ac-ft (frost protection); 2,916 ac-ft – 904 ac-ft = 2,012 ac-ft and then 2% of 2,012 ac-ft = 40 ac-ft]

S3-21014C has an annual quantity of 3,400 ac-ft to add to the total used for irrigation. The remaining two related certificates proposed for change have non-additive ac-ft values associated with their irrigation uses.

Public Interest Considerations

Under RCW 90.42.040(4)(a), exercise of a Trust water right may not impair the public interest. The intent of this Trust conveyance is to provide mitigation water for a separate irrigation project at a one-to-one ratio. As such, the project as a whole would be considered water budget neutral. Detriment to the public interest is not expected under this proposal.

Consideration of Protests and Comments

No protests were filed against this application.

Concerns the Colville Tribes have with this proposal are encapsulated in an email dated October 23, 2014, from the Tribe's consultant and are paraphrased below.

A) The Colville Tribes object to any state authority to establish state based water rights within the boundaries of the reservation and on trust lands.
B) The subject permits proposed for change are subject to the Family Farm Act and, as such, are required to remain within WRIA 50.
C) Frost protection proposed for transfer is impractical since using the sprinkler system as frost protection also irrigates, and is variable and crop dependent.
D) Additive/non-additive relationships between the subject permits limit their total authorized withdrawal to 3,600 ac-ft.
E) G4-26840P, together with G4-27775P, is limited to 200 ac-ft.
F) Water beyond that necessary to satisfy developed beneficial use is not to be withdrawn under S3-21014C. Best management practices are to be implemented without waste as defined by the Supreme Court.

Ecology's responses to the Colville Tribes' concerns follow:

A) The original 1979 ROE for the subject right identifies that the Colville Tribes submitted a formal protest to Ecology in 1973. The nature of the protest was that the state lacked jurisdiction over the waters of the reservation. The Colville Tribes further indicated that they viewed state activity which affects the waters of the reservation as trespass upon the rights and property of the Colville Tribes. The ROE later went to some length addressing the Colville Tribes' protest,

concluding that this state authorization pertains to non-Indian owned land within the exterior boundaries of the Colville Reservation and relies on the availability of water in excess of that reserved for the Colville Tribes. The original 1979 Permit contained a provision that this authorization is subject to existing rights, including those reserved for the Colville Tribes.

A subsequent change ROE (1983) went un-protested. Without revisiting the Colville Tribes' concerns, the ROE mentions that the subject land, while located within the exterior boundaries of the Colville Reservation, is not held in trust status by the Colville Tribes. The resulting permit (1983) contained the same "existing rights" provision as the 1979 permit. These permitting actions in 1979 and 1983 were not appealed.

The subject state-issued water rights are now proposed for transfer to instream flow to be used as mitigation for water use outside the Colville Reservation. The mitigation water would remain subject to existing rights, including those reserved for the Colville Tribes. Any subsequent authorization that relies on this mitigation water would be subject to the availability of this mitigation water, and, ergo, subject to those rights reserved for the Colville Tribes. As such, conflict with the Colville Tribes' reserved water rights is not expected.

B) Ecology generally agrees with the Colville Tribes' comment; however, in a departure from other WRIAs located within the Central Region, WRIA 50 encompasses both sides of the Columbia River. The subject mitigation water and the new proposed uses are all located within WRIA 50.

C) Frost protection is expected to be very similar on both sides of the Columbia River in this area; any new authorization that may result from the new applications would rely on mitigation water at a one-to-one ratio.

D) Ecology generally agrees with the Colville Tribes' comment; however, Ecology would like to point out that, as captured in the four recently-issued certificates, the irrigation and frost water quantities add up to 3,600 ac-ft. Certificate G4-27775(B)C has an additional 30 ac-ft authorized for domestic multiple and commercial and industrial uses.

E) Ecology agrees with the Colville Tribes' comment.

F) Ecology agrees with the Colville Tribes' comment.

The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) initially indicated their opposition to this proposal in a letter dated June 17, 2014. Ecology responded to the Yakama Nation by a more detailed letter dated July 15, 2014 explaining the project as a whole. No further correspondence on this proposal was received from the Yakama Nation.

The United States Bureau of Reclamation (USBR) responded on June 9, 2014, by email, to the Trust water notice letters sent out under RCW 90.42.040(5)(b). The USBR indicated that they have no comment regarding this transfer as the result is water budget neutral. Should a water deficit result, then additional notice was requested.

After additional information was requested and provided, the Washington Department of Fish and Wildlife (WDFW) responded by email (dated September 19, 2014) with an attached letter. The letter

indicated that WDFW would not oppose this transfer should the transfer involve only water applied to beneficial use. WDFW's letter indicated too that compliance with the state Hydraulic Code (Chapter 77.55 RCW) and fish screening statutes (RCWs 77.57.010, .040, and .070) may be required.

Conclusions

- The public notice complies with RCWs 90.42.040(5a), 90.42.110, and 90.03.280.
- Additional notice provided to other relevant agencies and entities complies with RCW 90.42.040(5b).
- The Washington Department of Fish and Wildlife received notice under RCWs 90.42.040(5)(b), 90.42.110(2), 90.03.280, and 77.57.020.
- Electronic notice to the Okanogan County Commissioners was provided pursuant to RCW 90.03.380(10)(a).
- A tentative determination on the validity and extent of the subject right was made.
- A calculation of the ACQ of the subject right was made.
- No impairment to other water users is expected.
- The public interest would not be impaired.

RECOMMENDATIONS

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

Purpose of Use and Authorized Quantities

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

For the Portion Conveyed to Trust:

1,796 gpm

18.1 ac-ft consumptive for the purpose of instream flow as mitigation.

No Point of Diversion or Withdrawal is applicable for this Trust water change.

The Place of Use is as described in the above Report of Examination.

For the Portion NOT Conveyed to Trust:

4,543 gpm

45.5 ac-ft for irrigation (40 ac-ft consumptive), for the irrigation of 550 acres seasonally during the two months of March and November only, and 92.5 ac-ft for frost protection. The 550 acres are non-additive to CS3-21014P.

Points of Diversion are the four wells identified in the above Report of Examination (Wells #3, #4, #6, and #7) (no change).

The Place of Use is as described in the above Report of Examination (no change).

Report Writer *Date* 7/17/15

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