CS4-00195CTCL(C)sb6
WR Doc ID: 4652466

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington

Trust Water Right Report of Examination

Add or Change Purpose of Use ☒ Change Place of Use ☒ Add or Change Point of Diversion/Withdrawal ☐
Change Season of Use ☐ Add Irrigation Acres ☐ Well Consolidation ☐

PRIORITY DATE	WATER RIGHT NUMBER
June 30, 1873	Yakima Adjudication Court Claim No. 00195, Subbasin No. 6 CS4-00195CTCL(C)sb6

APPLICANT	MAILING ADDRESS
Washington Water Trust	Attn: Jason McCormick, Project Manager 222 E 4th Ave Ste 109 Ellensburg WA 98926-3163

Purpose and Quantity

The purpose of use is for instream flow and mitigation from April 1 through October 31.

	Primary Reach		Secondary Reach	
	Flow (cfs)	Acre-feet	Flow (cfs)	Acre-feet
April	0.0745	4.43	0.0	0.0
May	0.0745	4.58	0.019	1.16
June	0.0745	4.43	0.043	2.58
July	0.0745	4.58	0.058	3.54
Aug	0.0745	4.58	0.046	2.82
Sep	0.0745	4.43	0.027	1.61
Oct	0.0745	4.58	0.004	0.23
Total		**31.59**		**11.93**

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Kittitas	Taneum Creek	Yakima River	39

Place of Use (See Attached Map)

Primary Reach – Begins at a point approximately 650 feet north and 1,000 feet west of the east quarter corner of Section 5, T. 18 N., R. 17 E.W.M. and ends at a point approximately 380 feet north and 390 feet west of the southeast corner of Section 33, T. 19 N., R. 17 E.W.M.

Secondary Reach – Begins at a point approximately 380 feet north and 390 feet west of the southeast corner of Section 33, T. 19 N., R. 17 E.W.M. and continues down Taneum Creek to the confluence with the Yakima River, and continues down the Yakima River to the Parker Gage in Section 28, T. 12 N., R. 19 E.W.M.

When this instream flow right is not being used for mitigation, quantities will be added to target flows at Parker Dam and continue to the confluence with the Columbia River and downstream to the Pacific Ocean. If the water is used to offset consumptive use contingent on this mitigation, this instream flow right will be considered instream at least to Parker Dam in order to offset impacts to the total water supply available.

Provisions Related to the Trust Water Right

When flows in Taneum Creek are less than 98.00 cubic feet per second (cfs), quantities available in trust for instream flow are limited to 0.220 percent of the creek flow as measured at the Brain Ranch gage (Ecology ID 39P080).

Use of this trust water right as mitigation for consumptive out-of-stream uses will be limited to the actual availability of supply.

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/. E-mail: REETSP@DOR.WA.GOV.

PORTION OF WATER RIGHT
NOT PLACED INTO TRUST
WRTS File No: CS4-00195CTCL(C)sb6

PRIORITY DATE	WATER RIGHT NUMBER
June 30, 1873	Yakima Adjudication No. 00195, Subbasin No. 6

WATER RIGHT HOLDER	MAILING ADDRESS
MICHAEL J. FISCHER	3370 E Taneum Rd Thorp WA 98946-9522

Purpose and Quantity

Stock watering year-round up to 0.0110 cfs, 0.540 acre-feet per year (ac-ft/yr), or 0.011 percent of Taneum Creek flow when below 98.00 cfs as measured at the Brain Ranch gage (Ecology ID 39P080).

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Kittitas	Taneum Creek	Yakima River	39

SOURCE FACILITY/DEVICE	PARCEL	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Bruton Ditch Diversion	639133	18 N	17 EWM	5	SE¼NE¼	47º04'55.48" N	120º44'02.54" W

650 feet north and 1,000 feet west of the east quarter corner of Section 5, T. 18 N., R. 17 E.W.M.

Place of Use (See map on Attachment 2)

Parcel A of that certain survey recorded June 12, 1996 in Book 22 of Surveys at page 29 under Auditor's File No. 199606120024, Records of Kittitas County, Washington; being a portion of the SE¼NE¼ of Section 5, and of the SW¼NW¼ of Section 4, T. 18 N., R. 17 E.W.M., in the County of Kittitas, State of Washington.

Description of Water System

The historic Bruton Dam was recently removed and replaced by an engineered roughened stream channel and the old diversion weir was replaced with a buried screen located under the channel. From the point of diversion, water is conveyed 500 to 1,100 feet down the earthen Bruton Ditch across the subject property. Stock water is pumped by a small electrical pump from the ditch to a nearby trough.

Provisions Related to the Portion of the Water Right Not Placed in Trust

Mr. Fischer's portion of Court Claim No. 00195 shall be reduced to a maximum of 0.011 cfs and 0.540 ac-ft/yr for stock water, year round. When Taneum Creek flow is less than 98.00 cfs, quantities available for stock water are limited to 0.011 percent of total creek flow as measured at the Brain Ranch gage (Ecology ID 39P080).

The remainder of Court Claim No. 00195 shall comply with the *Order Requiring Metering, Measuring, and Reporting Requirements, All Subbasins (1-31) in Benton, Kittitas, and Yakima Counties* entered September 15, 2005, in the Yakima Adjudication. A copy of the order is enclosed. The order may also be viewed at the following web site:
http://www.ecy.wa.gov/programs/wr/measuring/images/pdf/order772014845.pdf

Measurement of Water Use	
How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Annually, by January 31st of each calendar year.
What volume should be reported?	Total Annual Volume
What rate should be reported?	Monthly Peak Rate of Diversion in cfs. When flows in Taneum Creek are below 98.00 cfs, peak rate may not exceed 0.011 percent of total flow as measured at the Brain Ranch gage (Ecology ID 39P080).

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.

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.
Phone (360) 902-2534 if you have questions about screening criteria.
http://www.wdfw.wa.gov/reg/regions.htm

Findings of Facts
Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not be detrimental to existing rights or detrimental to the public interest.

Therefore, I ORDER the requested change of place and purpose of use under Trust Water Right Application No. CS4-00195CTCL(C)sb6 be approved subject to existing rights and the provisions specified above.

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 1st day of December 2010.

Mark C. Schuppe

Mark C. Schuppe, Section Manager
Water Resources Program
Central Region Office

BACKGROUND

On October 26, 2009, Washington Water Trust (WWT) of Ellensburg, Washington, filed three applications with the Washington State Department of Ecology (Ecology) to place a portion of water used under Yakima Adjudication Court Claim No. 00195, Subbasin No. 6, into the State of Washington's Trust Water Right Program (TWRP). WWT requests a permanent transfer to the TWRP for instream flows in Taneum Creek and to mitigate for out of priority water use in the Yakima Basin. The applications were accepted and assigned Application Nos. CS4-00195CTCL(A)sb6, CS4-00195CTCL(B)sb6, and CS4-00195CTCL(C)sb6. This report specifically addresses Application No. CS4-00195CTCL(C)sb6 filed on behalf of Mr. Fischer. A trust water right agreement was signed between Mr. Fischer, WWT and Ecology in July of 2009.

Court Claim No. 00195 (originally issued to Michael A. Emerick) was partitioned between four individuals in the Revised Order to Divide Water Right Claim No. 00195 (dated May 14, 2009). The Bruton Users (William Stovall, Sherry Koreis, and Mike and Wendy Fischer) represent three of the four partitions, while the remaining water right holders (Tony and Cindy Gordon) chose not to participate in the transfer. In total, the Bruton Users are entitled to a maximum instantaneous diversion rate (Qi) of 1.9803 cubic feet per second (cfs) and a cumulative annual quantity (Qa) of 363.715 acre-feet per year (ac-ft/yr) for irrigation of 47 acres, April 1 through October 31; and 0.0943 cfs and 4.715 ac-ft/yr for stock water, year round. All confirmed Taneum Creek water rights, including the 97.47 cfs of irrigation water rights and the 0.53 cfs of stock water rights (totaling 98.00 cfs) authorized during the April 1 through October 31 irrigation season, share the same June 30, 1873 priority date and are curtailed proportionate to their share of total creek flow.

Therefore, when the natural flow of Taneum Creek falls below 98.0 cfs, the Bruton Users are entitled to 1.924 percent and 0.096[1] percent of the total creek flow for irrigation and stock water purposes, respectively. The Brain Ranch gage (Ecology ID 39P080), which is upstream of all diversions and most representative of natural creek flow, is used to establish Taneum Creek flow. The Gordon partition of Court Claim No. 00195 is for 0.1140 cfs, or 0.116 percent of creek flow when below 98.00 cfs, up to 21.70 ac-ft/yr for irrigation, and 0.0057 cfs, or 0.006 percent of creek flow when below 98.00 cfs, up to 0.285 ac-ft/yr for stock water.

Table 1: Water right entitlements for each of the users on Bruton Ditch (%'s based on total issued right).

	Qi - Irrigation All Taneum Creek irrigation rights = 97.470 cfs		**Qi - Stock** All Taneum Creek stock rights = 0.530 cfs		**Total** All Taneum Creek rights = 98.00 cfs	
	cfs	%	cfs	%	cfs	%
Gordon	0.1140	0.116%	0.0057	0.006%	0.1197	0.12%
Bruton Users	*1.8860*	*1.924%*	*0.0943*	*0.096%*	*1.9803*	*2.02%*
Stovall	1.4470	**1.477%**	0.0720	**0.073%**	1.5190	**1.55%**
Fischer	0.2160	**0.220%**	0.0110	**0.011%**	0.2270	**0.23%**
Koreis	0.2230	**0.228%**	0.0113	**0.012%**	0.2343	**0.24%**
Total	2.0		0.1000		2.1	

[1] The percent entitlements when flows are below 98.00 cfs presented here are different than the Court's *Order to Divide*. This correction was verified by US Bureau of Reclamation staff responsible for measuring water use in the area.

The applications are in support of the Bruton-Kittitas Reclamation District (KRD) Water Exchange Project. The primary goal of the project is to provide the Bruton Users with an alternative source of water from KRD and to enable fish passage improvements in Taneum Creek. Fish passage improvements include both the physical removal of Bruton Dam and a net increase in instream flows. Because all Taneum Creek water rights are curtailed based on creek flows, the project will also provide the Bruton Users a more reliable water source throughout the irrigation season. The project's concept was originally proposed by the Bureau of Reclamation as part of the Yakima River Basin Water Enhancement Project (Reclamation 2009a).

Description and Purpose of Proposed Change

This report is specific to Application No. 00195CTCL(C)sb6, pertaining to Michael Fischer's portion of Court Claim No. 00195. Mr. Fischer's portion totals 0.2270 cfs, 41.69 ac-ft/yr for irrigation of 5.08 acres and stock when Taneum Creek flow is 98.00 cfs. When Taneum Creek flow is less than 98.00 cfs, Mr. Fischer's instantaneous quantity is reduced to .0.23 percent of total creek flow.

The Bruton Dam was removed in October 2009. The dam was replaced with an engineered roughened channel and the diversion weir was replaced with an intake screen located beneath the streambed. A control vault is located adjacent to the creek containing valves and an instantaneous and totalizing flow meter. The roughened channel was designed to maintain optimal grade of the creek allowing passage of fish at all life cycles, while still providing protection to critical infrastructure, such as Interstate 90 and the Taneum Road bridges.

In order to facilitate removal of the Bruton Dam and to increase instream flows in Taneum Creek, the Water Exchange Project proposed a new source for irrigation supply for the Bruton Users. The Bruton Users will no longer receive irrigation water from the Bruton Ditch, but will be serviced by the Kittitas Reclamation District (KRD). The acreage proposed to be fallowed is on the Heart K Ranch, acquired by the United States Department of Reclamation (Reclamation). Heart K Ranch is located upstream of the Bruton Ditch Diversion, adjacent to Taneum Creek. The KRD water historically used on the Heart K Ranch property is eligible to be transferred to the Bruton Users' places of use. Reclamation and KRD have formally agreed to transfer enough of this KRD water to the Bruton Users' places of use to satisfy their full irrigation demand on 38.2 acres. Water will be delivered to the Bruton Users via a newly constructed pipeline from KRD's South Branch Canal. The Bruton Users will retain their full stock water right from the Bruton Ditch. The arrangement between Reclamation, KRD, and the Bruton Users is outlined in the project's governing Memorandum of Agreement (Reclamation 2009b).

Expedited Processing

This application qualifies for expedited processing under WAC 173-152-050(3)(a) whereby 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. Based on the provisions of RCW 43.21A.690 and RCW 90.03.265, this application has been processed by Aspect Consulting, LLC (Aspect Consulting) under Ecology Cost-Reimbursement Assignment No. ASP006 (Master Contract No. C1000185).

Processing of this application is the final step in the Bruton-KRD Water Exchange Project. The project was designed to remove barriers to fish migration on Taneum Creek and to increase instream flows. These improvements will enable fish to access high quality habitat in the upper Taneum Creek basin. The project will also provide water for mitigation of out-of-priority water use (Post-1905 water rights) in the Yakima Basin.

Attributes of Claim No. 00195 and Proposed Change

Attributes	Existing	Proposed
Name	Michael Fischer	Washington Water Trust
Priority Date | Date of Application for Change	**Priority Date** - June 30, 1873	**Application Date** – October 26, 2009
Instantaneous Quantity	0.216 cfs when Taneum Creek flow is 98.00 cfs or more and 0.220% of Taneum Creek flow when flow is less than 98.00 cfs for irrigation; 0.0110 cfs when Taneum Creek flow is 98.00 cfs or more; and 0.011% of Taneum Creek flow when flow is less than 98.00 cfs for stock water	**Trust Water Portion**: See Table 2 **Remaining Portion**: 0.011 cfs when Taneum Creek flow is 98.00 cfs or more and 0.011% of Taneum Creek flow when flow is less than 98.00 cfs for stock water
Annual Quantity	41.15 ac-ft/yr for irrigation; 0.540 ac-ft/yr for stock water	**Trust Water Portion**: See Table 2 **Remaining Portion**: 0.540 ac-ft/yr for stock water
Source	Taneum Creek	Taneum Creek
Point of Diversion /Withdrawal	SE1/4 NE1/4 of Section 5, T. 18 N., R. 17 E.W.M.	**Trust Water Portion**: N/A **Remaining Portion**: 650 feet north and 1,000 feet west of the east quarter corner of Section 5, T. 18 N., R. 17 E.W.M.
Purpose of Use	Irrigation and stock water	**Trust Water Portion**: Instream Flow & mitigation; **Remaining Portion**: Stock water
Period of Use	April 1 through October 31 for irrigation; year round for stock water	**Trust Water Portion**: April 1 through October 31 **Remaining Portion**: Year round for stock water
Place of Use	Parcels A, B, E, and F of that certain survey recorded February 22, 1996 in Book 21 of Surveys at pages 220-221 under Auditor's File No. 199602220001, Records of Kittitas County, Washington; being a portion of the NW¼ of Section 4, T. 18N., R. 17E., W.M., Kittitas County, WA	**Trust Water Portion**: See Primary and Secondary Reach descriptions on page 1; illustrated on Attachment 1 **Remaining Portion**: See Attachment 1

Legal Requirements for Proposed Change
The following is a list of requirements that must be met prior to authorizing the proposed change in Water Right Change Application No. CS4-00195CTCL(C)sb6.

- **Public Notice**
  Notice of the proposed appropriation was published in the *Ellensburg Daily Record* of Ellensburg, Washington, on January 9 and 16, 2010. No protests were received by Ecology.

- **State Environmental Policy Act (SEPA)**
  This project required a SEPA review under WAC 197-11-800(4). Ecology, acting as the SEPA lead agency for this project, determined that it will not have a probable significant adverse impact on the environment and issued a Determination of Nonsignificance (DNS) on June 29, 2010.

- **Water Resources Statutes and Case Law**
  RCW 90.38.040(1) states that all trust water rights acquired by the Department of Ecology (Ecology) shall be placed in the Yakima River Basin Trust Water Right Program to be managed by Ecology. Ecology shall issue a Certificate of Trust Water Right in the name of the state of Washington for each trust water right it acquires.

INVESTIGATION
In consideration of this application, Aspect Consulting reviewed available documents pertaining to the application's site conditions, WWT's extent and validity analysis, and the potential effect on existing water rights. This included information submitted by the applicant and pertinent Ecology records including stream gage data, water rights records, and water resource policy and guidance documents.

On March 25, 2010, Tyson Carlson of Aspect Consulting met with Jason McCormick of WWT to tour the point of diversion, the place(s) of use which included a brief interview with each water user, and observed the land proposed to be fallowed.

History of Water Use
A water right with attributes described in the table above was confirmed under Court Claim No. 00195 to Mike Emerick in the Yakima River Basin Water Rights Adjudication for Subbasin No. 6, the Taneum Creek drainage basin, with a Conditional Final Order (CFO) signed on October 8, 1998. Mike Emerick and the successive owners of the former Emerick property diverted water from the described point of diversion until such time as the subject water right was formally partitioned to Bill Stovall, Mike and Wendy Fischer, Sherry L. Koreis, and Tony and Cindy Gordon on May 14, 2009.

Prior to modification of the point of diversion, Mr. Fischer's water right was diverted from Taneum Creek, conveyed 500 to 1,100 feet down the earthen Bruton Ditch across his property. Conveyance systems and irrigation on the subject property consisted of a gated pipe lateral, pressurized impact sprinklers, and drip irrigation.

Portions of the irrigation system were removed between Fall 2009 and Spring 2010. A smaller gated pipe was installed on the pasture while the remaining system was left alone. The entire property will be supplied irrigation water via KRD's South Branch Canal.

Review of aerial photos from the years 2000, 2003, 2006, and 2009, indicate that since issuance of the CFO, approximately 3.9 acres have been routinely irrigated under Court Claim No. 00195. The area irrigated include two fields of pasture (3.1 acres), two areas of garden and landscaping (0.4 acres), and grass surrounding Mr. Fischer's residence (0.4 acres). Irrigation of this acreage was also supported by the review of Landsat imagery over a similar time span.

Mr. Fischer entered into an agreement with WWT to sell his water right and place it into trust on June 19, 2009. The water right was leased and temporarily placed into the TWRP by Ecology during the 2010 irrigation season for instream flow purposes. This temporary transfer to instream flow was approved by Yakima Superior Court in an *Order Pendente Lite* dated April 8, 2010. This project was also presented at the Water Transfer Working Group (WTWG), a group of private, federal, state and tribal groups interested in water right changes in the Yakima Basin. No objections were received from the WTWG or through Superior Court.

Heart K Ranch

The proposed lands to be fallowed are located at the Heart K Ranch property within the southern half of Section 31, T. 19 N, R. 17 E.W.M., and north of West Taneum Road in the northern half of Section 6, T. 18 N., R. 17 E.W.M., which was purchased by the Bureau of Reclamation in 2000. The 51 acres of irrigable land were historically served by KRD. The Bruton Users are also located in the KRD service area. The KRD water historically used on the Bureau of Reclamation's former Heart K Ranch property is eligible to be transferred to the Bruton Users' places of use. Reclamation and KRD have formally agreed to transfer enough of this KRD water to the Bruton Users' places of use to satisfy their full irrigation demand on 38.2 acres.

KRD water will be delivered to the Bruton Users via a newly constructed pipeline from the South Branch Canal. Details of the water exchange are detailed in the Memorandum of Agreement between Reclamation, KRD, and the Bruton Users (Reclamation 2009).

Proposed Use

The applicant proposed to transfer a portion of Court Claim No. 00195 to trust for the purposes of instream flow use and to be used to mitigate for out of priority water uses (Post-1905 water rights) in the Yakima Basin.

Other Rights Appurtenant to the Place of Use

Following a review of Ecology's records and the water rights tracking system (WRTS), no other water rights are appurtenant to Mr. Fisher's property. Bruton Ditch has historically been the only source of water for irrigation and stock water.

Trust Water Right Calculations
This section describes how the total and consumptive water use values were calculated. Water right transfers to the TWRP in the Yakima River watershed are guided by RCW 90.38.

Ecology maintains a gage on Taneum Creek at the Brain Ranch. Reclamation records flows diverted at the old Bruton Dam into Bruton Ditch. No measurements are available documenting actual use by individual users from the ditch. Therefore, Mr. Fischer's individual water use data was not available. Water use is indicated in the Court's *Revised Order to Divide* issued on May14, 2009. According to this order, Mr. Fischer's portion of Court Claim No. 00195 from Taneum Creek is 41.15 ac-ft/yr for the irrigation of 5.08 acres from April 1 through October 31. The 8.1 feet/acre water duty reflects the very permeable sediments in the area, confirmed during Aspect's field visit. During the field visit, it was also determined that Mr. Fischer actually irrigated a maximum of 3.9 acres.

Primary Reach
Mr. Fischer's total water use (what is available for trust in the Primary Reach) was determined by the per acre water duty awarded by the court and the number of acres Mr. Fischer actually irrigated: 8.1 ft/ac x 3.9 acres equals 31.59 ac-ft/yr. Even though diversions of water under Court Claim No. 00195 are typically curtailed (when creek flows are less than 98.00 cfs, see Background Section), an extraordinary water year would provide a full water duty to diverters. Nonuse of the full amount of the water right when the supply is <u>not</u> available is a sufficient cause for nonuse as defined in RCW 90.14.140(1)(a). Therefore, the maximum quantity available in the Primary Reach is 31.59 ac-ft/yr.

The monthly values attributed to the Primary reach were calculated by dividing 31.59 ac-ft/yr by the 214 days in the irrigation season which equals 0.148 ac-ft/day. The monthly quantities were calculated by multiplying 0.148 ac-ft/day by the number of days in each month (see Table 2 below). A continuous instantaneous rate was calculated by dividing 0.148 ac-ft/day by 1.98 which equals 0.0745 cfs (1 cfs=1.98 ac-ft/day).

Table 2
Primary Reach Quantification

	April	May	June	July	August	September	October	Total
Qi (cfs)	0.0745	0.0745	0.0745	0.0745	0.0745	0.0745	0.0745	
Acre-feet	4.43	4.58	4.43	4.58	4.58	4.43	4.58	31.59

Secondary Reach
Quantities in the Secondary Reach are based on consumptive use. In the absence of water use records, Ecology uses aerial photography and data from the Washington Irrigation Guide (WIG) to estimate the amount of water consumed. The WIG data provides an estimate of the average amount of water a crop needs in excess of rainfall (above what is supplied by antecedent moisture in the root zone under average climatic conditions to maximize plant growth). The monthly WIG data indicate that the Crop Irrigation Requirement (CIR) for pasture/turf near Ellensburg is 31.44 inches/acre or 2.62 feet/acre needed during May 13 to October 14.

The CIR from the WIG (2.62 feet/acre divided by 8.1 feet/acre) equates to an application efficiency (Ea) of 32 percent for flood irrigation. Using Ecology's *Guidance Document, GUID-1210, Determining Irrigation Efficiency and Consumptive Use*, 5 percent was added to the Ea to account for evaporative losses, totaling 37 percent consumptive use (%CU). For other methods of irrigation (i.e. impact sprinklers), the appropriate Ea and corresponding %CU was selected directly from Table 1 of GUID-1210. The Total Irrigation Requirement (TIR) is calculated based on the monthly CIR for pasture/turf in the Ellensburg area (TIR = CIR/Ea). Monthly consumptive use was calculated by multiplying the TIR by the method specific %CU and the irrigated area. Total consumptive use is the sum of the monthly consumptive use for each irrigation method used, as presented in Table 3 below. Consumptive use associated with the irrigation of Mr. Stovall's portion of Court Claim No. 00195 is 11.93 ac-ft/yr.

Table 3
Secondary Reach Quantification

	April	May	June	July	August	September	October	Total
Avg. Qi (cfs)	0.00	0.02	0.04	0.06	0.05	0.03	0.00	-
Acre-feet	1.16	2.58	3.54	2.82	1.61	0.23	1.16	**11.93**

Note: When flows in Taneum Creek are less than 98.00 cfs, quantities available in trust are limited to 0.220 percent of the creek flow as measured at the Brain Ranch gage (Ecology ID 39P080).

Trust Water Management

Use of this trust water right as mitigation for consumptive out-of-stream uses will be limited to the actual availability of supply. Diversions of water under Court Claim No. 00195 are curtailed in proportion to the total share of creek flow when flows are less than 98.00 cfs. Inspection of the last five years' data from the Brain Ranch gage indicates flows in Taneum Creek typically drop below the curtailment threshold by July 1, and remain below it through the remainder of the irrigation season. An example of water availability during a severe drought year, 2005, is depicted below in Table 4. Roughly 6.14 ac-ft/yr was available to be consumptively used during the 2005 irrigation season.

Table 4
Quantities Available in 2005

	April	May	June	July	August	September	October	Total
Avg. Qi (cfs)	0.00	0.02	0.04	0.02	0.01	0.01	0.004	-
Qa (acre-feet)	0.00	1.16	2.52	1.19	0.51	0.52	0.23	6.14

*Flow data for May was limited to the second half of the month.

Ecology anticipates the consumptive portion of this proposed trust water right will be made available to mitigate for out of priority water use associated with as many as 132 post-1905 domestic and group domestic surface water rights periodically curtailed under Superior Court Order No. 77-2-01484-5 in the Yakima Basin.

Trust Water Place of Use

Ecology typically manages its trust water rights by defining a primary and a secondary reach. The primary reach is the length of stream between the historic point of diversion and where any of the water diverted, but not consumed, returns to the stream. The secondary reach begins at the downstream end of the primary reach and is defined as that length of stream which benefits from a reduction in consumptive use.

The primary reach under this application begins from the historic authorized point of diversion on Taneum Creek being approximately 650 feet north and 1,000 feet west of the east quarter corner of Section 5, T. 18 N., R. 17 E.W.M. The irrigation portion of Mr. Fischer's partition of Court Claim No. 00195 is being placed into trust in the amount of 31.59 ac-ft/yr and will benefit the primary reach for the times to which they were prescribed.

The secondary reach begins on Taneum Creek at a point just down gradient from the eastern extent of historic irrigation where Bruton Ditch crosses into the adjacent property and heads north toward Taneum Creek. This point is approximately 380 feet north and 390 feet west of the southeast corner of Section 33, T. 19 N., R. 17 E.W.M. and continues down Taneum Creek to the confluence with the Yakima River, and continues down the Yakima River to the Parker Gage in Section 28, T. 12 N., R. 19 E.W.M. The secondary reach extends downstream on Taneum Creek to the Yakima River, and downstream on the Yakima River to Reclamation's Parker Gage. The consumptive use associated with this right proposed for protection as a trust water right in the secondary reach is described above in Table 3.

When this instream flow right is not being used for mitigation, quantities will be added to target flows at Parker Dam and continue to the confluence with the Columbia River and downstream to the Pacific Ocean. If the water is used to offset consumptive use contingent on this mitigation, this instream flow right will be considered instream at least to Parker Dam in order to offset impacts to the total water supply available.

Portion of Right Not Placed in Trust

The remaining portion of Court Claim No. 00195, which has not been sold and is not placed in trust, will be retained by Mr. Fischer. Therefore, Mr. Fischer's stock water portion of Court Claim No. 00195 will continue to be diverted from the newly established Bruton Ditch headworks on Taneum Creek.

Impairment Considerations

Under RCW 90.38.040(5)(a), a trust water right may be exercised only if Ecology first determines that the authorization will not impair or injure any other water right. The Bruton Users represent three of the four partitions of Court Claim No. 00195. The remaining water right holder (Tony and Cindy Gordon) chose not to participate in the transfer, but will still receive their full Court confirmed irrigation water right from the newly established headworks via Bruton Ditch. The entire stock water portion of Court Claim No. 00195 will still be diverted into Bruton Ditch. The only other confirmed water right to Bruton Ditch is Court Claim No. 01811 (Donald C. Enochs). Mr. Enochs has applied to change his point of diversion from Bruton Ditch to a nearby groundwater well and will not be affected by the subject application. In addition, no water right on Taneum Creek will be negatively affected by increased instream flows during the irrigation season. Therefore, based on these considerations, transferring a portion of Court Claim No. 00195 to trust will not impair other water rights.

Public Interest Considerations

When investigating a change application, Ecology is required to consider whether the change is detrimental to the public interest. Ecology must consider how the change will affect an array of factors such as wildlife habitat, recreation, water quality, and human health. The environmental amenities and values associated with the area were taken into account during the consideration of this change application. Based on these considerations, transferring a portion of Court Claim No. 00195 to trust will not be a detriment to the public interest.

Consideration of Protests and Comments
No protest or comments were received for consideration.

CONCLUSIONS
A portion of Court Claim No. 00195 is appurtenant to the subject property. Review of the evidence provided within this report and proceedings within the Yakima River Basin Adjudication Court indicate a total of 3.9 acres have been historically and beneficially used under Mr. Fischer's portion of Court Claim No. 00195. In accordance with chapter 90.38 RCW, the author makes a tentative determination that Mr. Fischer's portion of Court Claim No. 00195 represents a valid right to divert water from the Taneum Creek in quantities up to 0.133 cfs and 31.59 acre-feet for the irrigation of 3.9 acres, from April 1 through October 31, and 0.011 cfs and 0.540 acre-feet for stock water, year round when flows in Taneum Creek are at or above 98.00 cfs. When flows in Taneum Creek are less than 98.00 cfs, quantities are limited to 0.227 percent of total creek flow for irrigation and stock water, as measured at the Brain Ranch gage (Ecology ID 39P080).

Approval of this water right change request as provisioned will not enlarge the water right or impair existing water rights.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to CS4-00195CTCL(C)sb6 be approved in the amounts described below and subject to the provisions beginning on page 2 of this Report of Examination.

	Primary Reach		Secondary Reach	
Period	**Flow (cfs)**	**Acre-feet**	**Flow (cfs)**	**Acre-feet**
April	0.0745	4.43	0.0	0.0
May	0.0745	4.58	0.019	1.16
June	0.0745	4.43	0.043	2.58
July	0.0745	4.58	0.058	3.54
Aug	0.0745	4.58	0.046	2.82
Sep	0.0745	4.43	0.027	1.61
Oct	0.0745	4.58	0.004	0.23
Total		**31.59**		**11.93**

Attributes of the Portion Not Placed in Trust

Purpose and Associated Quantities

Up to 0.011 cfs, or 0.011 percent of Taneum Creek flow when below 98.00 cfs as measured at the Brain Ranch gage (Ecology ID 39P080), and 0.540 ac-ft/yr for stock water, year round.

Point of Diversion

650 feet north and 1,000 feet west of the east quarter corner of Section 5, T. 18 N., R. 17 E.W.M.

Place of Use

Parcel A of that certain survey recorded June 12, 1996 in Book 22 of Surveys at page 29 under Auditor's File No. 199606120024, Records of Kittitas County, Washington; being a portion of the SE¼NE¼ of Section 5, and of the SW¼NW¼ of Section 4, T. 18 N., R. 17 E.W.M., in the County of Kittitas, State of Washington.

Report by:	Tyson D. Carlson, LHG, Aspect Consulting, LLC	December 1, 2010 Date
Reviewed by:	Kelsey Collins, Water Resources Program	December 1, 2010 Date

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CITATIONS

State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Report of Referee*, Subbasin No. 6 (Taneum). Signed May 9, 1994.

State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Supplemental Report of Referee*, Subbasin No. 6 (Taneum). Signed March 18, 1996.

State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Conditional Final Order*, Subbasin No. 6 (Taneum). Signed October 8, 1998.

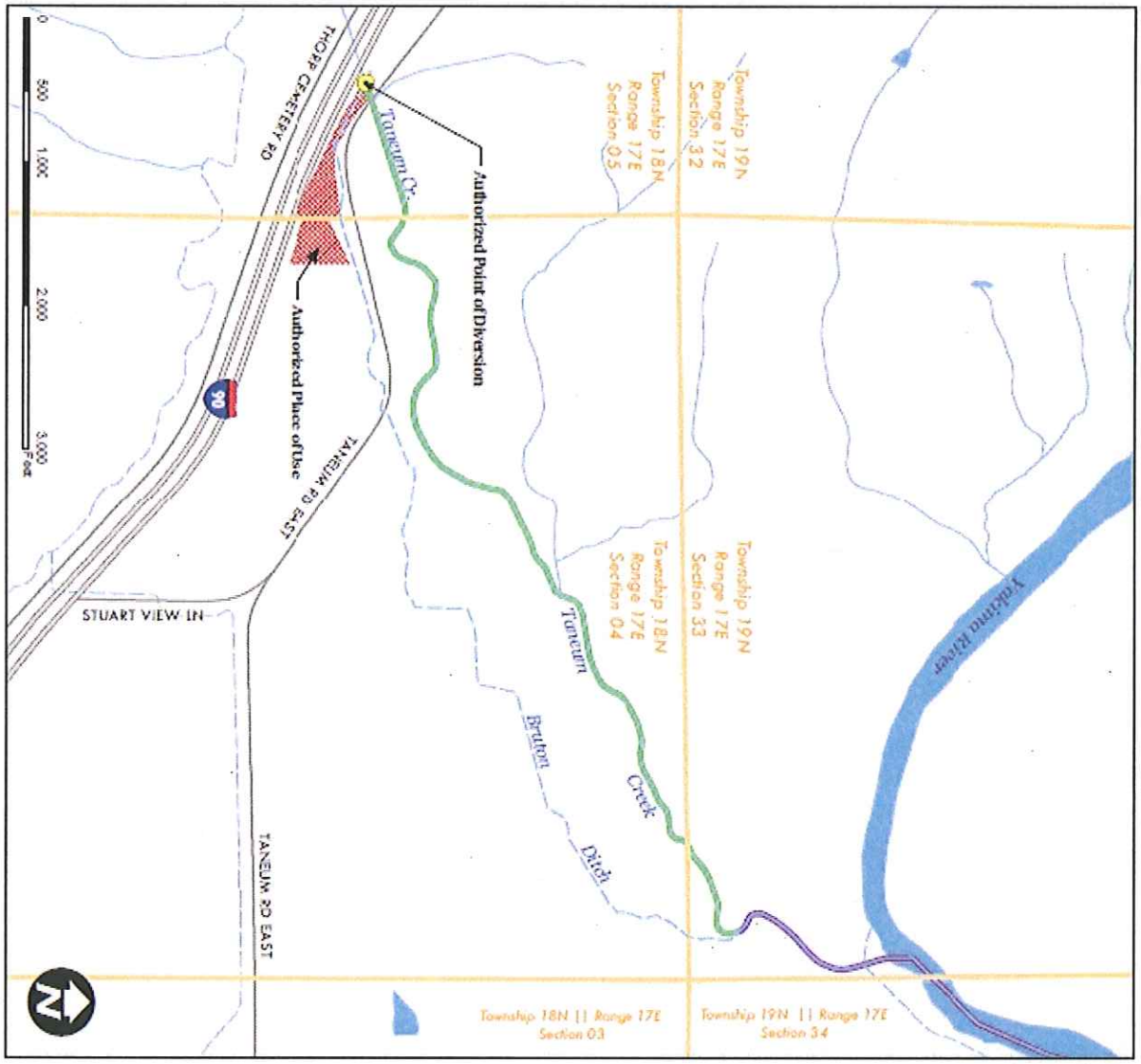
State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Revised Order to Divide Water Right Claim #00195*, Subbasin No. 6. Signed May 14, 2009.

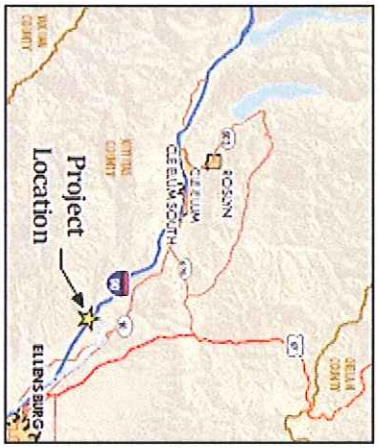
State of Washington, Department of Ecology v. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Order Pendente Lite Re: Change of Stovall Water Right to Instream Flow Re: Court Claim No. 00195*, Subbasin No. 6. Signed April 8, 2010.

Reclamation 2009a. *Taneum Creek Study: The Bruton-KRD Water Exchange Project*. Prepared by the U.S. Department of the Interior Bureau of Reclamation. Final Report. June 2009.

Reclamation 2009b. Reclamation Agreement No.: 1425-09MA1U7173. Memorandum of Agreement Between United States of America, Department of the Interior, Bureau of Reclamation; and Kittitas Reclamation District; and Bruton Users. June 2009.

Attachment 1





Comments: Place of use and point of diversion are defined on the cover sheet under the heading "LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED."

- Authorized Point of Diversion
- Authorized Place of Use
- Primary Reach
- Secondary Reach (extends to Wapato Diversion Dam at RM 106.7)
- Rivers and Streams
- Ditches and Canals
- Water Bodies
- Roads
- Interstate
- Section Lines

CS4-00195CTCL(C)sb6

(Michael Fischer)
T18N R17E Sec 04 and Sec 05
WRIA 39, Kittitas County, Washington

Aspect CONSULTING

DATE: JAN 2010	PROJECT NO: 090180
DRAWN BY: TDC	
CHECKED BY: PRN	ATTACHMENT NO: 1