DEPARTMENT OF ECOLOGY
State of Washington

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
To Appropriate Public Waters of the State of Washington

APPLICATION DATE	APPLICATION NO.
October 11, 2006	S4-35118

NAME

C. James & Darlene F. Lust, Michael J. Lust, Julie R. Kelley, and Nancy Jean Lust

ADDRESS/STREET	CITY/STATE	ZIP CODE
2904 Canterbury Ln	Yakima, WA	98902

PUBLIC WATERS TO BE APPROPRIATED

SOURCE

Tieton River

TRIBUTARY OF (IF SURFACE WATERS)

Naches River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
1.00		200

QUANTITY, TYPE OF USE, PERIOD OF USE

1.00 cubic feet per second, 200 acre-feet per year for the irrigation of 50 acres from April 1 to October 31.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION

1200 feet east and 1600 feet north from the southwest corner of Section 30.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
NW¼SW¼	30	14 N.	15 E.W.M.	38	Yakima

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED
[Attachment 1 shows location of the authorized place of use and point(s) of diversion or withdrawal.]

N½NW¼ of Section 11, T. 13 N., R. 17 E.W.M. lying north of Weikel Road

DESCRIPTION OF PROPOSED WORKS

Yakima-Tieton Irrigation District will use its exiting main canal and distribution system to divert water from the Tieton River and deliver it to the Cowiche Creek Water Users Association (CCWUA). The Tieton River will replace Cowiche Creek as the CCWUA's water supply. CCWUA members will place their combined South Fork Cowiche Creek and Cowiche Creek water rights in the State Trust Water Rights Program (TWRP) for permanent augmentation of stream flow in South Fork Cowiche and Cowiche Creeks. A combined maximum flow of 7.83 cfs will be protected in the primary and secondary reaches of Cowiche Creek to the confluence with the Naches River. Once the water enters the Naches River, it then will replace the water diverted from the Tieton River.

DEVELOPMENT SCHEDULE

BEGIN PROJECT	COMPLETE PROJECT	WATER PUT TO FULL USE
October 31, 2016	October 31, 2019	October 31, 2020

PROVISIONS

GENERAL CONDITION(S)

1. Quantities under this permit shall not exceed the authorized quantities. As well, quantities under this permit shall not exceed the amount of water that is actually available under Court Claim 00430 with priority date of June 30, 1873.
2. This permit shall be subject to curtailment when valid priority calls on Trust Water right No. CS4-00430CTCL@2 calls on South Fork Cowiche Creek are imposed by the water master, stream patrolman, or the Court. This may result in temporary curtailment of the use of water under this permit until the priority call ends.
3. A permit will issue to appropriate surface water based on the quantities described on Page 1 of this report following the appeal period for this decision, and will remain in permit status through the pendency of the Yakima County Superior Court Adjudication Proceedings *State of Washington v. Acquavella*. A final certificate will issue only after the Court's Final Decree is entered and all matters (i.e. appeals) in the Adjudication Proceedings are settled.

FAMILY FARM PERMITS AND AGRICULTURAL IRRIGATION

4. **Family Farm Irrigation**

   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 6,000 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 6,000 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.

MEASUREMENTS, MONITORING, METERING AND REPORTING

5. **Meter Installation**

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

6. **Record Weekly, Report Annual Totals**

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

7. **Electronic 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.

8. **Metering Rule Description And Petition Info**

   WAC 173-173 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. Installation, operation and maintenance requirements are enclosed as a document titled "Water Measurement Device Installation and Operation Requirements". http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html.

DEPARTMENT OF FISH AND WILDLIFE

9. **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, Phone: (360) 902-2534 if you have questions about screening criteria.

10. **HPA**

    The applicant must obtain Hydraulic Project Approval from the Washington Department of Fish and Wildlife for all construction activities occurring within the high water mark of the Columbia River and its tributaries. Please contact the Department of Fish and Wildlife, 3860 Chelan Hwy N., Wenatchee, WA 98801-9625 or by telephoning Bob Steele at (509) 662-0503.

SCHEDULE AND INSPECTIONS

11. **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.

12. **Project Completion**

    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 FACT AND ORDER

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I find the appropriation of water as recommended is a beneficial use, available for appropriation, will not be detrimental to existing rights or to the public interest.

Therefore, I ORDER the approval of Application No. S4-35118 subject to existing rights and the provisions specified above.

YOUR RIGHT TO APPEAL

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

To appeal you must do the following within 30 days of the date of receipt of this decision:

- File your appeal and a copy of this decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

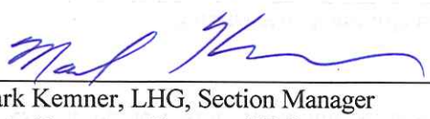
You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

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

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

Signed at Yakima, Washington, this 27 day of December 2012.



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

If you need this publication in an alternate format, please call Water Resources Program at 509 575 2490. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

BACKGROUND

Project Description

On October 11, 2006, the Cowiche Creek Water Users Association (CCWUA) of Cowiche, Washington, filed 15 new water right applications for a total of up to 7.915 cfs, 1583.42 acre-ft/yr, of water from the Tieton River to be delivered to the places of use, historically irrigated from adjudicated Cowiche Creek water rights, through existing Yakima-Tieton Irrigation District (YTID) infrastructure. The CCWUA also filed 15 applications to change place and purpose of use under Court Claim Nos. 00208 , 00212, 00216, 00425, 00430, 00458, 00693 and 07180 in *The State of Washington, Department of Ecology v. James J. Acquavella, et. al. (Acquavella)*. The applications propose to permanently place a total of up to 7.915 cfs and 1583.42 acre-ft/yr of water into the Washington State Trust Water Rights Program (TWRP) for enhancement of fish habitat via increased stream flows in South Fork Cowiche and Cowiche Creeks, there by mitigating the new use in the Yakima Basin proposed in the 15 new applications.

This Report of Examination (ROE) addresses the Department of Ecology's (Ecology) conclusions and recommendations related to this **New Application No. S4-35118**.

The Cowiche Creek flow restoration project is intended to provide each of the CCWUA water users listed in Table 1 with a new appropriation from the Tieton River via the Yakima Tieton Irrigation District's infrastructure. In exchange for the new permit to use Tieton river water, the CCWUA members will convey their existing Cowiche Creek water right to Ecology's Trust Water Right Program. Table 1, Summary of Applications filed with Ecology by the CCWUA, lists the corresponding new water right number associated with each application to change the CCWUA court Claim.

Table 1

Summary of Applications filed with Ecology by the CCWUA – subject application in bold

Applicant Names	Trust Water Application No.	Court Claim No.	New Water Right Application No.
Stevenson	CS4-00208CTCL	00208/00214	S4-35112
Arreguin	CS4-00212CTCL@1	00212	S4-35124
Waymire Rowan	CS4-00212CTCL@2	00212	S4-35123
Stevenson	CS4-00212CTCL@3	00212	S4-35113
Stevenson	CS4-00216CTCL	00216	S4-35111
Lust	CS4-00425CTCL	00425	S4-35110
Lust	CS4-00425CTCL@1	00425	S4-35115
Lust	CS4-00430CTCL	00430	S4-35116
Lust	CS4-00430CTCL@1	00430	S4-35117
Lust	**CS4-00430CTCL@2**	**00430**	**S4-35118**
Lust	CS4-00430CTCL@3	00430	S4-35119
Tollefson	CS4-00458CTCL	00458	S4-35114
Lust	CS4-00693CTCL	00693	S4-35120
Feusner	CS4-07108CTCL	07108	S4-35121
Emmans	CS4-07108CTCL@1	07108	S4-35122

The project will create an unobstructed eight-mile instream flow trust water right in the lower reaches of the South Fork Cowiche and Cowiche Creeks. The Upper Lust diversion structure will be removed and the Lower Lust and Old Thornton diversion structures will be retired. The Upper Lust is located southwest of the intersection of Summitview and Cowiche Mill Roads. The Lower Lust and Old Thornton diversions are located near the intersection of North Pioneer Way and Mahoney Road. The removal and retirement of these diversionary structures will open the Cowiche Creek system by providing fish passage to approximately 20 miles of habitat.

Expedited Processing

This application qualifies for expedited processing under WAC 173-152-050(2)(g) whereby the water right applications may be processed prior to applications submitted at an earlier date when the proposed water use is from a water budget neutral project as defined under WAC 173-152-020(18). The requested water right permits are an integral part of a larger irrigation water source substitution project and habitat restoration project with great potential for having a positive impact on the local fisheries. The project is supported by the CCWUA, Washington Water Project of Trout Unlimited (WWP-TU), the North Yakima Conservation District (NYCD), YTID, the United States Bureau of Reclamation (USBR), the Yakama Nation, the National Marine Fisheries Service (NMFS), the United States Fish and Wildlife Service (USFWS), the Washington Department of Fish and Wildlife (WDFW), and others.

The System Operations Advisory Committee (SOAC) recommended that the USBR do all it can to help effect completion of the Cowiche Creek Project.

Based on low flows and the presence of fish passage barriers during the irrigation season, Lower Cowiche Creek is a high priority for stream flow restoration, as reported in Washington Water Acquisition Program, Finding Water to Restore Streams, (Adelsman 2003). "Cowiche Creek and its tributaries have significant production potential for salmonids and extensive habitat which are currently inaccessible due to low flows" (Adelsman 2003, pg. 102).

The Federal Clean Water Act Section 303(d) requires Washington State to list all surface waters with pollutant-impaired status. Cowiche Creek is consistently cited on Ecology's 303(d) list for high temperature, fecal coliform and low stream flow. The proposed trust water right in Cowiche Creek is expected to ease the pollution problem through decreasing the temperature and increase the dilution of suspended pollutants. To further help the elevated temperatures and limit fecal material in the creek, a separate but related project implemented by the NYCD will install root wads and log vanes to deal with severely sloughing creek banks, reduce sedimentation, to stabilize creek banks, form pools, and increase habitat diversity by adding instream structure. Native vegetation will be planted along both stream banks to improve riparian structure, minimize solar heating, increase root matrices, and provide a future source of course woody debris recruitment. Livestock management improvements include fencing to reduce fecal material introduced in the stream and protect the riparian area from further damage.

Attributes of Proposed New Water Right

Table 1

Summary of Application No. S4-35118

Attributes	*Proposed*
Applicant	C. James Lust & Darlene F. Lust Michael J. Lust Julies R. Kelly Nancy Jean Lust
Date of Application	October 11, 2006
Instantaneous Quantity	1.00 cfs
Annual Quantity	200 ac-ft/yr
Source	Tieton River
Point of Diversion/Withdrawal	1200 feet east and 1600 feet north from the southwest corner of Section 30, within the NW¼SW¼ of Section 30, T. 14 N., R. 15 E.W.M..
Purpose of Use	Irrigation of 50 acres
Period of Use	April 1 through October 31
Place of Use	N½NW¼ of Section 11, T. 13 N., R. 17 E.W.M. lying north of Weikel Road.

Legal Requirements for Application Processing

The following requirements must be met prior to processing a water right application:

- **Public Notice**
  Notice of the applications and SEPA determination was published in the *Yakima Herald-Republic* on January 24, and January 31, 2007. The public notice was amended and published again in the Yakima Herald-Republic on February 6, and February 13, 2007. No letters of protest were received during the 30-day protest period.
- **United States Bureau of Reclamation Release Letter**
  The Department of Ecology granted a withdrawal of the remaining unappropriated waters of the Yakima River Basin to the United States Bureau of Reclamation beginning February 17, 1981, pursuant to RCW 90.40.030, to allow continuing examinations, surveys, and investigations for the utilization of such waters for multiple purposes under the Yakima River Basin Water Enhancement Project. This withdrawal remains in effect. The USBR has granted a release of withdrawn waters, by its email correspondence dated May 4, 2012, to allow for the processing of these CCWUA new permits.

- **State Environmental Policy Act (SEPA)**
  This project required SEPA review under WAC 197-11-800(4). Ecology, acting as SEPA lead agency for this project, determined it will not have a probable significant adverse impact on the environment and issued a DETERMINATION OF NONSIGNIFICANCE (DNS) on January 23, 2007. The DNS included the adoption of a DNS issued by Washington State Department of Fish and Wildlife (WDFW) on October 9, 2006 for a portion of the project.

- **Water Resource Statutes**
  Chapter 90.03 RCW authorizes the appropriation of public surface water for beneficial use and describes the process for obtaining water rights. Laws governing the water right permitting process are contained in RCW 90.03.250 through 90.03.340.

INVESTIGATION

The application review included three on-site visits by personnel from the Department of Ecology, Washington Rivers Conservancy and the NYCD. The site visits occurred on April 25, 2006, March 22, 2007 and April 22, 2008. Aerial photographs from the years 2005, 2006 and 2009 were reviewed. Additional information and supporting documentation was obtained through the following:

- Documentation submitted with the applications.
- Conversations with:
  - WWP-TU director, Lisa Pelly
  - NYCD representatives, Mike Tobin and Ernie Gasseling
  - USBR representatives Stan Isley (Ecology's USBR liaison) and Stephen Fanciullo and William Ferry
  - Ecology staff, Bob Barwin, Darrell Monroe, Dan Haller and Melissa Downes
  - WDFW staff, Jonathan Kohr, Ryan Murphy and Paul LaRiviere
- Washington State Water Code and administrative rules and policies
- Unpublished WDFW Cowiche Creek streamflow data
- Digitized topographic maps and aerial photographs
- Yakima County Superior Court Reports of Referee on the Yakima River Basin Water Rights Adjudication for Subbasin No. 18 (Cowiche Creek)
- Publication No. 03-11-005, *Washington Water Acquisition Program, Finding Water to Restore Streams*
- The daily and monthly flows from the USBR's Yakima Hydromet Archive Data Access web site. (http://www.usbr.gov/pn/hydromet/yakima/yakwebarcread.html)

In accordance with state law, the following considerations must be met before a permit can be issued:

- Water must be available
- There must be no impairment of existing rights
- The water use must be beneficial
- The water use must not be detrimental to the public interest

Water Availability

The use proposed will mirror the validity and extent calculated in Change Application No. CS4-00430CTLC@2 (mitigation Trust Water Right for the appropriation under S4-35118). The acreage and quantities authorized for change under that authorization are as follows:

- The irrigation of 50 acres of pasture
- Yakima County Superior Court authorized a water duty of 1.00 cfs and 200 acre-feet per acre under Court Claim 00430. The new permitted water duty will be equal to the amount authorized under CS4-00430CTCL@2, being 1.00 cfs and 200 acre-feet for 50 acres of irrigation.

The YTID diversion would require up to 7.915 cfs (the combined maximum instantaneous flow rate of the former CCWUA Cowiche Creek water rights) into the YTID canal, over and above YTID's historic diversion amount from the Tieton River. The proposed CCWUA water right diversion quantities from the Tieton River reflect the amount of water needed to irrigate the current CCWUA crops with their current irrigation systems.

The Tieton River conveys both natural flow and water stored in Rimrock Lake. In order to determine if water is physically available from the Tieton River for a new appropriation we must assess the flows in the river in conjunction with the quantities of water required to fulfill existing water rights on the same system, as well as any instream flow set under state of federal law. Ecology identified and considered the following information:

- The Tieton River does not have an adopted minimum instream flow under RCW 90.22 or RCW 90.54
- Analysis of the three worst drought years within the last fifteen years, 1994, 2001 and 2005

The System Operations Advisory Committee (SOAC), for the Yakima Project, report for the Cowiche Creek project reflects wide benefit to fishery resources in the Yakima basin -- the key consideration is whether sufficient flow exists in the Tieton River to support the two downstream senior rights on the Tieton, existing USBR operations, and the proposed use under this application. The two WDFW rights, downstream of the YTID diversion, have a combined instantaneous quantity of 0.125 cubic feet per second (cfs). Table 3 shows the average monthly flows for the Tieton River during the irrigation season taken at the Tieton Canal Headworks (Station YICW) downstream of the YTID diversion.

Table 3

Average Monthly flows on the Tieton River at the YICW Station

Monthly Averages in cfs for three worst drought years within the last fifteen years							
Month	April	May	June	July	August	September	October
1994	43	68	40	93	310	1091	484
2001	107	113	92	259	304	1326	563
2005	149	219	145	226	394	1492	539

June 1994 represents the lowest monthly average from the three drought years (40 cfs). Under this scenario, all of the existing rights (the two WDFW and all proposed CCWUA new permits) diverting just under 8 cfs, remain satisfied with approximately 32 cfs remaining in the river. In other words, when looking at the worst case scenario, there will still be enough water to satisfy all existing and proposed rights, including fisheries resources.

Impairment to Existing Water Rights

Surface Water Right holders in the Yakima Basin essentially come in three categories, senior pre-Yakima Project water users, proratable Yakima Project water users with May 10, 1905 priority dates, and junior water users with post-May 10, 1905 priority dates. Senior water users, or their predecessors, developed permanent water uses as early as the 1850's through the early 1900's. Proratable water users are made up of individuals, municipalities, irrigation companies, and irrigation districts who agreed to participate in the federal government's Yakima Reclamation Project initiated on May 10, 1905. During drought years, the water supplies of the proratable water users can be rationed (or 'prorationed') based on the USBR's estimate of the Total Water Supply Available (TWSA) in the Yakima Basin. The last group of water right holders is the junior water users. Junior water users hold water rights with a priority date of later than May 10, 1905. Based on a standing 2005 Yakima County Superior Court Order (as well as many subsequent temporary Court Orders), the junior water users must cease use of their water when the proratable water users go on rationed supply. The 2005 Order further provides exceptions to curtailment during prorationing periods for post-1905 junior water rights where sufficient mitigation water rights eliminate fully any impairment of a senior water right and where the diversions of water by junior water right holders will not limit or diminish the water available for diversion by a more senior water right.

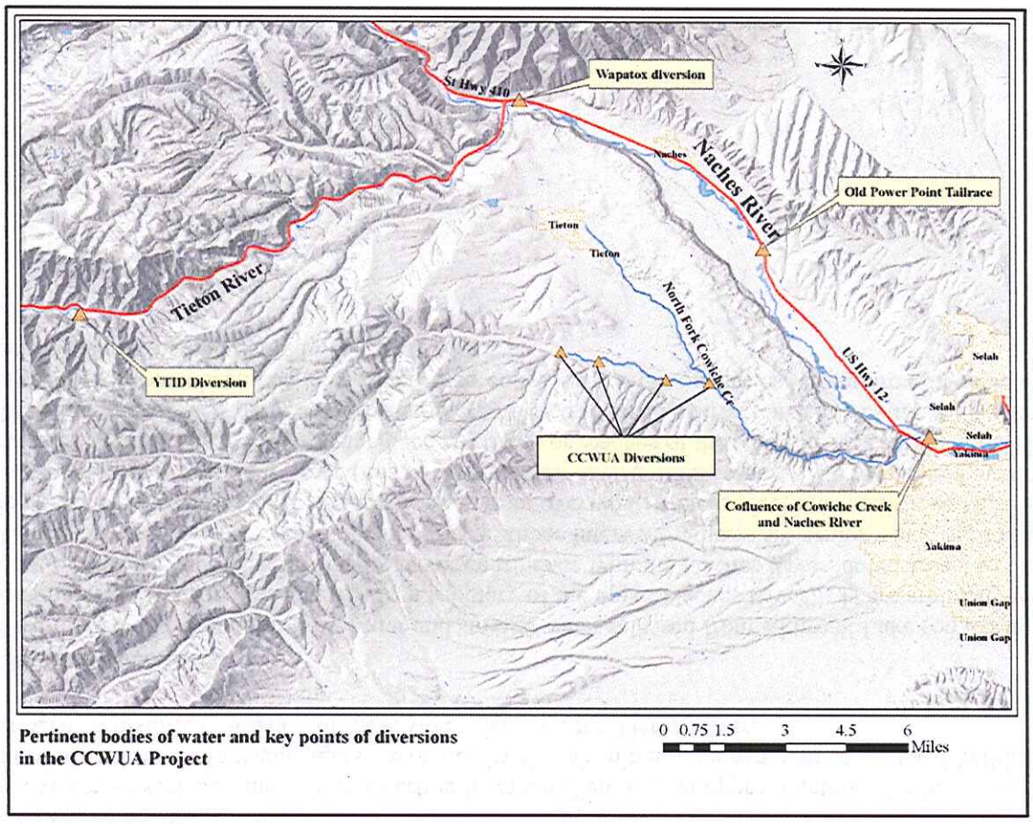
Water Rights on the Tieton River

There are only two senior surface water rights diverting from the Tieton River approximately 12 miles downstream of the proposed point of diversion. Both water rights are owned by the Washington Department of Fish and Wildlife (WDFW). And, there has been no historic regulation of these water rights on the Tieton River.

Water Rights to the Naches River

The Naches River conveys both natural flow water and storage water released from Rimrock Lake (on the upper Tieton River) and Bumping Lake (on the Bumping River, a tributary of the upper Naches River). There are many water rights downstream on the Naches River from the Tieton River confluence with the Naches River, downstream to Cowiche Creek's confluence with the Naches River. The majority of those intervening users are senior water right users, but there are some junior water right users as well. Figure 1 below is an overview of the project area and shows the Tieton and Naches Rivers, Cowiche creek, and the key points of diversion discussed in this report. We researched available flow and water right diversion records to see if there have been any areas or reaches of the affected streams (i.e., the Tieton River and Naches Rivers from the YTID diversion downstream to the confluence of Cowiche Creek with the Naches River) where water right holders have been unable to divert their entire water right quantities during drought years or low flow periods in order to identify any potential impairment issues.

Figure 1. Illustration of pertinent bodies of water and key points of diversion in the CCWUA Project



Approving new permits for the CCWUA water users will increase the diversion of water into the YTID canal over historic diversion levels. That increase will not exceed the 7.915 cfs combined total of the CCWUA Cowiche Creek water rights. Tieton River flows will be reduced by this quantity during the irrigation season. The USBR historically has measured occasional flow minima in the Tieton River of as low as 35 cfs. The USBR will not release any Yakima Project storage water to attempt to maintain a minimum flow in the Tieton River; such an action would potentially have a negative effect on Yakima Project water right holders or TWSA. As a result, Tieton River flows in the affected reach could be further reduced by approval of these CCWUA new permits by up to an additional 7.915 cfs.

At the Wapatox Ditch point of diversion there was a potential of up to 525 cfs to be diverted from the river. As confirmed in the December 14, 1995, Conditional Final Order, Pacific Power & Light Company owned and operated a power generation right for 300 to 450 cfs from the Wapatox point of diversion. In 2003, the USBR and Ecology purchased that power generation right and changed it to instream flow by two Orders Pendente Lite dated 11/14/2002 and 4/11/2006. Before this action, the USBR maintain a historic minimum flow (approximately 125 cfs) in order to supply other water users within the reach of the Naches River bypassed by the Wapatox power diversion (the Wapatox Reach) with water sufficient to satisfy their diversionary water rights. The permanent transfer of the former power generation water right to the State Trust Water Right Program is the subject of a pending application on file with Ecology.

Current Yakima Project operations by The USBR generally maintain higher flows in the Tieton and Naches Rivers than were historically maintained. Flow augmentation in the Wapatox Reach of the Naches River by The USBR and Ecology's purchase of the former Wapatox power water right and court Order Pendente Lite assignment of the water right to instream flow use, totals an average of 330 cfs to 360 cfs of flow augmentation in the Naches River's Wapatox Reach, year-round. The USBR and Ecology agree to accept any flow reduction in this senior instream flow water right (voluntary impairment) that may occur at any time during the irrigation season as a result of the issuance of these new CCWUA Tieton River permits in order to effect the full implementation of the Cowiche Creek flow and habitat enhancement project. Table 4 shows the average monthly flows for the Naches River during the irrigation season taken at the Naches River near Yakima (Station NRYW).

Table 4

Average Monthly flows on the Naches River at the NRYW Station

Monthly Averages in cfs for the three worst drought years within the last fifteen years							
Month	April	May	June	July	August	September	October
1994	1782	1959	753	244	250	1075	749
2001	No Data	No Data	No Data	No Data	395*	1619	836
2005	833	1500	433	314	380	1353	812

*Data consist of only 14 days of measurements.

Exercising the Trust Water Rights in Cowiche Creek for instream flow purposes would increase flows in the creek from the historic point of diversion downstream to the confluence of Cowiche Creek and the Naches River. From the confluence of Cowiche Creek and the Naches River downstream, the new appropriations will be fully mitigated and water budget neutral relative to TWSA.

Ecology has found no history of impairment claims or insufficient supply for the water rights that divert from the affected reach of the Tieton and Naches Rivers. Ecology does not foresee any future impairment or insufficient supply problems resulting from approval of these CCWUA new diversionary permits from the Tieton River. Ecology would investigate any such future impairment claims by third party existing water right holders and Ecology and the CCWUA new diversionary permit holders would take any actions needed to mitigate for or eliminate any impairment that would occur as a result of approving these CCWUA new diversionary permits from the Tieton River.

Public Interest - Yakima Project Operations

SOAC is a committee of fish biologists representing the Yakima Basin stakeholders, including the Yakama Nation, the Washington State Dept of Fish and Wildlife, the U.S. Fish and Wildlife Service, and the Yakima Basin irrigators, that advises The USBR on changes that can be made to Yakima Project operations that provide a benefit the fishery resources of the Yakima River Basin. SOAC members considered the flow reduction in the Tieton River and the attendant flow augmentation that would result in Cowiche Creek. March 15, 2006, SOAC unanimously urged The USBR to "do everything within its ability to cooperate with the Cowiche Project…" The SOAC recommendation letter recognizes that the Cowiche Project must be TWSA neutral, not create a demand on TWSA, and not call on reservoir storage water.

TWSA is measured below the Sunnyside Valley Irrigation Dam at the Parker gaging station. Any new water right issued that is not subject to curtailment under the court's post-1905 water rights curtailment order must fully mitigate for their water use, thus causing no reduction of TWSA as measured at Parker. The proposed new CCWUA water rights will be fully mitigated at the confluence of Cowiche Creek with the Naches River by the return of an equivalent amount of the former CCWUA Cowiche Creek water rights. Thus, approval of these proposed CCWUA new diversionary permits would not reduce TWSA.

FINDINGS

Water Availability

Water is available in the Tieton River, subject to USBR's release of its February 17, 1981withdrawal under RCW 90.40.030 (granted on May 4, 2012), to fulfill the new appropriation.

Impairment to Existing Water Rights

There has been no historic regulation between water right holders on the Tieton River. Exercising this new water right will not impair any other water rights.

Beneficial Use

RCW 90.54.020(1) declares that irrigation is a beneficial use of water in the state of Washington.

Public Interest Considerations

The proposed appropriation is not detrimental to the public interest.

RECOMMENDATION

Based on the information presented above, the author recommends granting a new surface water permit with the following attributes:

Purpose and Quantities

1.00 cfs and 200 ac-ft/yr for irrigation for 50 acres from April 1 through October 31

Point of diversion

The current Yakima Tieton Irrigation District Tieton River point of diversion located approximately 1200 feet east and 1600 feet north from the southwest corner of Section 30, within the NW¼SW¼ of Section 30, T. 14 N., R. 15 E.W.M.

Place of use

N½NW¼ of Section 11, T. 13 N., R. 17 E.W.M. lying north of Weikel Road

Report by: _____ 12-20-12

Scott Turner, Water Resources Program — Date

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