DEPARTMENT OF ECOLOGY
State of Washington

File No.: S4-35429
WR Doc ID: 4701774

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE
October 27, 2010

WATER RIGHT NUMBER
S4-35429

MAILING ADDRESS
Joseph and Shirley Gardner
13626 N.E. 102nd St.
Kirkland, WA 98033-5229

SITE ADDRESS (IF DIFFERENT)
See Location Below

REMARKS: **This water right will be mitigated by a water right held in trust with a pre-1905 priority date through an agreement with the Williams Family Trust.**

Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AC-FT/YR)
0.01	CFS	0.20 0.06 (consumptive)

Purpose

PURPOSE	DIVERSION RATE ADDITIVE	DIVERSION RATE NON-ADDITIVE	UNITS	ANNUAL QUANTITY (AC-FT/YR) ADDITIVE	ANNUAL QUANTITY (AC-FT/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Single Domestic (Indoor Use only)	0.01		CFS	0.20		Continuously

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Kittitas	Cle Elum River	Yakima River	39-Kittitas

SOURCE FACILITY/DEVICE	PARCEL	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Lot No. 19 Diversion	622736	22N	14E	9	SESW	47°24'19.05"N	121° 5'51.02"W

Datum: WGS84

Place of Use (See Map: Attachment 1)

PARCEL
622736

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Lot No. 19 of that certain Survey as recorded April 27, 1992, in Book 18 of Surveys, pages 164 and 165, under Auditor's File No. 548370, records of Kittitas County, Washington; being a portion of the Southwest Quarter of Section 9, Township 22 North, Range 14 East of the Willamette Meridian (E.W.M.), in the County of Kittitas, State of Washington; together with an easement for ingress and egress, over and across the private existing roads as delineated on the face of said survey.

Proposed Works

The diversion consists of a small electric pump placed in the river at a point directly adjacent to the cabin. Water is diverted, conveyed a short distance to a small elevated storage tank, then gravity fed to the cabin for general domestic indoor use. Water which is not consumptively used is discharged to an individual on-site septic or drain field.

The small generator-powered pump is typically placed in the river in spring, then immediately removed after the 250-gallon storage tank is filled. Any remaining water in the tank is drained prior to winter.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Complete	Complete	January 1, 2020

Measurement of Water Use

How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (cfs)

Provisions

General

You will record with the Kittitas County Auditor an appropriate conveyance instrument under which the applicant obtains an interest in Trust Water Certificate No. CS4-01746CTCLsb10 to offset consumptive use as described in this document.

Mitigation

Water use under this authorization is mitigated by instream flow rights held by Ecology as part of the Washington State Trust Water Right Program (TWRP) through an agreement with the Williams Family Trust and Ecology. Ecology may assign a portion of its trust water to the United States Bureau of Reclamation (USBR)-Ecology Water Storage and Exchange Contract No. 09XX101700 to mitigate for operational impacts to the Yakima Irrigation Project. You shall pay Ecology $25.41 for storage and delivery of mitigation water under paragraph 15(a) of the exchange contract.

During periods of water shortages, priority calls against the source trust water right that is providing mitigation for this project may be made. If that priority call for water is found to be valid, water use under this authorization may be temporarily curtailed until the priority call for water ends.

Measurements, Monitoring, Metering, and Reporting

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

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

Easement and Right-of-Way

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

Water Use Efficiency

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

Proof of Appropriation

The water right holder shall file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the permit. 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.

Schedule and Inspections

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.

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 concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S4-35429, 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 Union Gap, Washington, this 2ND day of FEBRUARY, 2016.

Thomas Perkow, Acting Section Manager
Water Resources Program
Central Regional Office

To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program at 360-407-6872. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

BACKGROUND

Project Description

On October 27, 2010, Joseph and Shirley Gardner filed Application No. S4-35429 with the Washington State Department of Ecology (Ecology) requesting an appropriation of public surface water. The applicant requested to divert an unspecified instantaneous rate (Qi) and a cumulative annual diversion volume (Qa) of 0.414 acre-feet per year (ac-ft/yr). The application was later amended to include 0.01 cubic-feet per second (cfs) and 0.20 acre-ft/yr. The purpose of use is for single domestic (indoor only) supply year round, as needed.

The subject application qualifies for Ecology's Cabin Owner Mitigation Program. As directed by Senate Bill 6861, Ecology is providing water banking opportunities for Yakima Basin Cabin Owners with junior claims (post-1905) to purchase senior mitigation credits to offset the consumptive use of water during years of rationing by the USBR. The program is also available to some unauthorized water users when specific suitability criteria are met. In these cases, the program allows Ecology to issue new mitigated permits and water budget neutral determinations.

Consumptive use will be mitigated through purchase of mitigation credits from the Williams Family Trust Water Bank (Operated by Jerry Williams, Trust Water Right No. CS4-01746CTCLsb10), subject to an agreement between The Williams Family Trust Water and Ecology, signed on December 8, 2011. The application is therefore water budget neutral with respect to Total Water Supply Available (TWSA), which is a calculation of the volume of water available to supply water users in the Yakima Basin. Out-of-season and/or carry over impacts to instream flows will be managed with use of Water Storage and Exchange Contract No. 09XX101700 between Ecology and USBR.

Table 1. Summary of Application No. S4-35429

Attributes	*Proposed*
Applicant	Shirley Gardner
Application Received	October 27, 2010
Instantaneous Quantity	0.01 cubic-feet per second
Source	Cle Elum River
Points of Diversion	SE¼SW¼, Section 9, T. 22 N., R. 14 E.W.M.
Purpose of Use	Single Domestic (indoor only)
Period of Use	Year round
Place of Use	Kittitas Parcel No. 622736

Legal Requirements for Application Processing

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

- **Public Notice**

  Notice of the proposed appropriation was published in The Daily Record of Ellensburg, Washington, on May 7 and 14, 2014 under Application No. S4-35429. No comments were received during the 30-day comment period.

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

  The subject application is categorically exempt under SEPA (WAC 197-11-305 and WAC 197-11-800(4)) because the instantaneous quantity is less than the 1.0 cfs threshold.

- **Water Resources Statutes and Case Law**

  RCW 90.42.100(1) states that Ecology is authorized to use the Trust Water Rights Program (TWRP) in the Yakima River basin for water banking purposes. RCW 90.42.100(2)(a) states that water banking may be used to mitigate for any beneficial use under chapter 90.03, 90.44 or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users. RCW 90.42.100(2)(b) states that water banking may be used to document water right transfers to and from the TWRP.

- **Expedited Processing**

  This application qualifies for expedited processing under WAC 173-152-050(2)(d) which would result in providing for public water supplies. 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. ASP018 (Master Contract No. C1000185).

INVESTIGATION

In consideration of this application, Aspect Consulting reviewed available documents pertaining to the historic use of water, site conditions, and the potential effect on existing water rights. This included information submitted by the applicant and pertinent Ecology records including adjudication and water rights records and water resource policy and guidance documents.

A site visit was completed on August 7, 2013. Tyson Carlson (Aspect Consulting) visited with the applicant to inspect the point of diversion, place of use, and answer questions regarding estimates of total or consumptive use.

This project was presented at the Water Transfer Working Group on April 7, 2014. This group represents private, federal, state and tribal groups interested in water right changes in the Yakima Basin. The application proposes mitigation with a senior water right held within Ecology's TWRP. A portion of water rights held in trust by Ecology equal to the proposed consumptive use of the cabins will be assigned to the USBR-Ecology Storage Contract. Since the proposed water use is upstream of all the water rights Ecology holds in the TWRP, the WTWG reminded Ecology that the mitigation for this project only offsets impacts to TWSA. If flows drop to a point where fish and other aquatic life are affected, then the proposed water use could be curtailed. There were no objections to the project going forward as long as these concerns were considered.

In light of the USBR's withdrawal of all remaining unappropriated waters of the Yakima River – including all tributaries and groundwater in continuity (chapter 90.40 RCW), Ecology consulted with the USBR about new appropriations for cabin owners. The USBR granted a release for these types of projects that are mitigated and water budget neutral with respect to TWSA in a letter dated May 25, 2012.

Site Description

The proposed point of diversion is located along the west bank of the Cle Elum River in the southeast quarter of the southwest quarter of Section 9, in Township 22 N., Range 14 E.W.M., in the Kittitas Water Resource Inventory Area (WRIA 39).

The applicant maintains a temporary surface water diversion located directly adjacent to their cabin. Water is diverted, conveyed a short distance to a small elevated storage tank, then gravity fed to the cabin for general domestic use. Water which is not consumptively used is discharged to an individual on-site septic or drain field.

The small electric-powered pumps are typically placed in the river, then immediately removed after the 250 gallon storage tank is filled. Any remaining water in the tank is drained prior to winter.

Domestic Water Use

Senate Bill 6861 directed Ecology to facilitate the purchase of senior mitigation credits to offset the consumptive use of out-of-priority or unpermitted water use. In response, Ecology (2006) completed a survey to identify the number of water users that rely on surface water, how they use water (in-house and/or outside irrigation), and how much water they use. Ecology received 285 completed surveys from water users with and without water rights. Ecology estimated the group's annual water use by multiplying the gallon-per-day identified on the survey by the number of days the cabin was occupied. In cases where a water duty was not provided, Ecology used criteria developed for mitigation during the 2005 drought and/or procedures outlined in the Washington State Department of Health (2009) Water System Design Manual.

Based on the available data, Ecology determined that a full-time recreational cabin with no irrigation uses no more than 200 gallons-per-day (gpd) or about 0.20 ac-ft/yr for year round occupancy. Per WAC 173-529A-050(3), consumptive use is defined as 30 percent of Qa, equaling about 0.06 ac-ft/yr (rounding down). Because most cabins are rustic and use very little water, and few are occupied year-round, the numbers are considered to be a liberal estimate of actual use. Based on this rationale, estimated total and consumptive use quantities by month are summarized in Table 2.

Table 2 – Schedule of Estimated Total and Consumptive Use.

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Total Use (acre-feet)	0.017	0.015	0.017	0.016	0.017	0.016	0.017	0.017	0.016	0.017	0.016	0.017	**0.20**
Consumptive Use (acre-feet)	0.005	0.005	0.005	0.005	0.005	0.005	0.005	0.005	0.005	0.005	0.005	0.005	**0.06**

Four Statutory Tests

This Report of Examination (ROE) evaluates the application based on the information presented above and in referenced documents. To approve the application, Ecology must issue written findings of fact and determine that each of the following four requirements of RCW 90.03.290 has been satisfied:

1. The proposed appropriation is a beneficial use;
2. Water is available for appropriation;
3. The proposed appropriation would not impair existing water rights; and
4. The proposed appropriation would not be detrimental to the public welfare.

Beneficial Use

In accordance with RCW 90.54.020(1), the proposed appropriation for indoor domestic use is a beneficial use of water. As detailed on the Application for Permit and observed during the site visit, the point of diversion are supported by the necessary infrastructure to deliver the full appropriation of water to the recreational cabin.

Availability

The appropriation proposed under the subject application will be water budget neutral by dedicating 0.06 ac-ft/yr of consumptive use available from the Williams Family Trust Water Bank. Month-by-month mitigation is offered to account for the project's indoor only use during the irrigation season (April 1 – October 15). Out-of-season (October 16 – March 31) use and/or potential carry over impacts to instream flows will be mitigated through the USBR-Ecology Water Storage and Exchange Contract.

Potential for Impairment

Ecology's mitigation water will be managed to offset any impacts to TWSA and to the Cle Elum and Yakima River fish incubation target flows upstream of the Teanaway River confluence.

The Cle Elum River provides spawning and rearing habitat for Endangered Species Act (ESA)-listed species, including Bull Trout and Chinook Salmon. However, the proposed diversion from the Cle Elum River – plus all known diversions from up-river– are less than one percent of the respective critical low flow. Therefore, the requirements associated with the USBR-Ecology Storage Contract are met and assignment of the 0.06 ac-ft/yr consumptive use is below the consultation threshold in paragraph 18(b) of the contract.

There are no large diverters in the upper watershed, but the Yakama Nation holds a time immemorial water right in its usual and accustomed hunting and fishing areas. While this time immemorial water right was not quantified by the Acquavella Adjudication for the Cle Elum River, if flows drop to a point where fish and other aquatic life are affected, the Yakama Nation could make a call for their time immemorial water right. Local impairment concerns are not addressed with the assignment of Ecology's mitigation and water use under the subject application could be regulated if a valid priority call is made.

Public Welfare

The proposed appropriation will provide authorization for domestic supply to the rural recreational cabin community, and is not detrimental to the public welfare as provisioned.

CITATIONS

Ecology 2006. 2006 Report to the Legislature, Potential Water Solution for Domestic Surface Water Users, Yakima Basin Camps & Cabin Owners. Publication No. 06-11-044. December 2006.

USBR, 2005. Phase I Assessment Report, Storage Dam Fish Passage Study, Yakima Project, Washington. Revised April 2005.

WDFW. SalmonScape. http://wdfw.wa.gov/mapping/salmonscape/index.html

CONCLUSIONS

The conclusions based on the above investigation are as follow:

1. The proposed appropriation for group domestic use (indoor only) is a beneficial use of water;
2. The quantity of water requested is made available by purchase of mitigation credits;
3. The proposed appropriation will not impair senior water rights or local habitat; and
4. The proposed appropriation will not be detrimental to the public welfare.

RECOMMENDATION

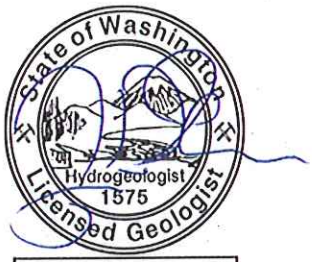
Based on the information presented above, the author recommends that a temporary permit be authorized (until the completion of the Yakima Adjudication at which time a permanent permit will issue) to appropriate surface water in the amounts described, limited, and provisioned on page 1 through 3 of this

report. Ecology can only issue temporary permits for new uses in the Yakima Basin while the Yakima Superior Court Adjudication is still ongoing.

Purpose of Use and Authorized Quantities
0.01 cfs, 0.20 ac-ft/yr for continuous domestic use.

Points of Diversion
SE¼SW¼ Section 9, T. 22 N., R. 14 E.W.M.

Place of Use
Lot No. 19 within the SE¼SW¼ Section 9, T. 22 N., R. 14 E.W.M.

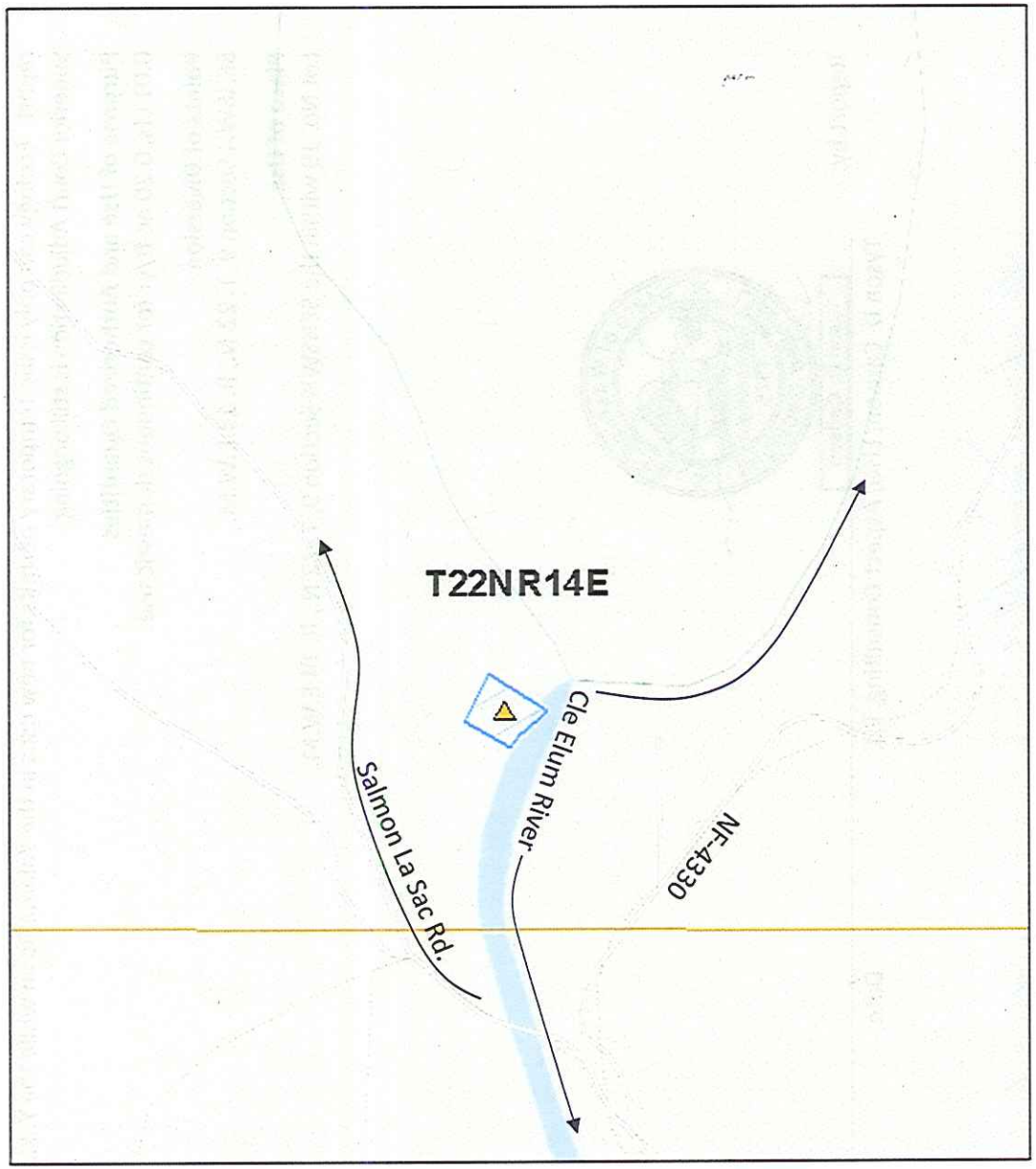


Report by: _____
Tyson D. Carlson, LHG, Aspect Consulting, LLC Date

Reviewed by: _____ 1/27/16
Kelsey S. Collins, Water Resources Program Date

To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program at 360-407-6872. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

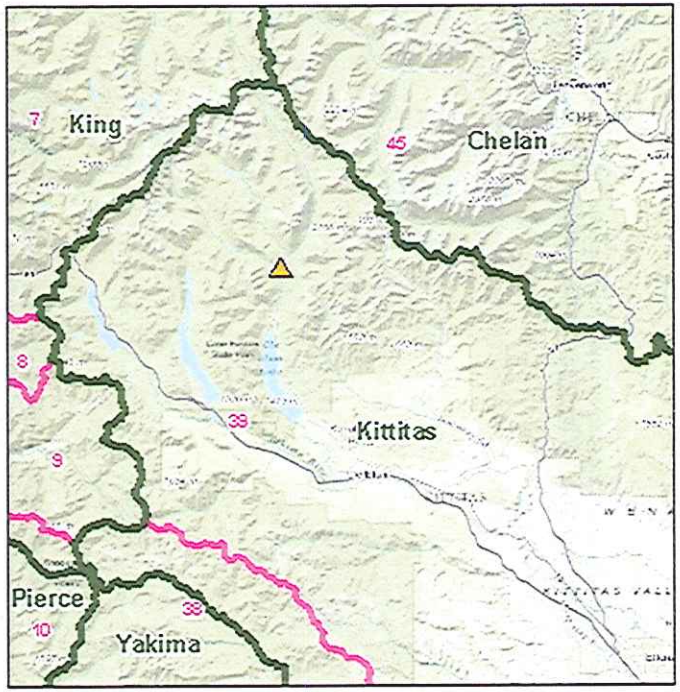
Shirley Gardner
S4-35429
T22N/R14E
WRIA 39 - Kittitas County



Basemap ESRI US Topographic Maps

0 205 410 820 1,230 1,640 Feet

Map Date: 12/9/2014



Basemap ESRI US Topographic Maps

Legend

- Authorized Place of Use
- Authorized Point of Diversion
- Townships
- Sections
- WRIA
- Counties

Comment:
Place of use and source locations are as defined within the Report of Examination cover sheet for the document identified in the header above.