



State of Washington  
**REPORT OF EXAMINATION  
 FOR CHANGE OF WATER RIGHT**

File NR CG4-GWC7601-A@5  
 WR DOC ID 4237888

| Add Purpose of Use                                                   | Change Place of Use | Add Point of Diversion                                                                                                    | Change Season of Use |
|----------------------------------------------------------------------|---------------------|---------------------------------------------------------------------------------------------------------------------------|----------------------|
| <b>PRIORITY DATE</b><br>January 2, 1958                              |                     | <b>WATER RIGHT NUMBER</b><br>Certificate No. 7601-A                                                                       |                      |
| <b>APPLICANT</b><br>John Goroch<br>PO Box 1157<br>Omak WA 98841-1157 |                     | <b>APPLICANT</b><br>Riverview at Crescent Bar, LLC<br>Westin Building Ste 3400<br>2001 Sixth Ave<br>Seattle WA 98121-2517 |                      |

**Purpose and Quantity**

1.85 cubic feet per second (cfs) and 315 acre-feet per year (ac-ft/yr), 252 ac-ft/yr consumptive use, for year-round diversion for the irrigation of 90 acres from March 15 to October 31. The monthly diversion quantities may not exceed what is listed in the table below.

|              | <b>Total Use<br/>(Acre-feet)</b> | <b>Consumptive Use<br/>(Acre-feet)</b> | <b>Qi<br/>(CFS)</b> |
|--------------|----------------------------------|----------------------------------------|---------------------|
| <b>Jan</b>   | 26.75                            | 21.40                                  | 1.85                |
| <b>Feb</b>   | 24.16                            | 19.33                                  | 1.85                |
| <b>Mar</b>   | 26.75                            | 21.40                                  | 1.85                |
| <b>April</b> | 25.89                            | 20.71                                  | 1.85                |
| <b>May</b>   | 26.75                            | 21.40                                  | 1.85                |
| <b>June</b>  | 25.89                            | 20.71                                  | 1.85                |
| <b>July</b>  | 26.75                            | 21.40                                  | 1.85                |
| <b>Aug</b>   | 26.75                            | 21.40                                  | 1.85                |
| <b>Sep</b>   | 25.89                            | 20.71                                  | 1.85                |
| <b>Oct</b>   | 26.75                            | 21.40                                  | 1.85                |
| <b>Nov</b>   | 25.89                            | 20.71                                  | 1.85                |
| <b>Dec</b>   | 26.75                            | 21.40                                  | 1.85                |
| <b>Total</b> | 315.00                           | 252.00 <sup>1</sup>                    |                     |

<sup>1</sup>Note: This total consumptive quantity equates to a continuous diversion rate of 0.435 cfs, as opposed to the authorized peak diversion rate, which is expected to be used intermittently.

**Source Location**

| COUNTY | WATERBODY      | WATER RESOURCE INVENTORY AREA |
|--------|----------------|-------------------------------|
| Grant  | Columbia River | 41                            |

| SOURCE FACILITY/DEVICE | TOWNSHIP | RANGE  | SECTION |
|------------------------|----------|--------|---------|
| Point of Diversion     | 20 N     | 23 EWM | 18      |

**Place of Use (See Map: Attachment 1)**

The Service Area of Crescent Golf Estates Water System No. AA745A (aka Sunsera Water System), as described in the approved January 11, 2006 Small Water System Plan, within Section 18, T. 20 N., R. 23 E.W.M.

**Description of Water System**

The point of diversion will be connected to 8-inch distribution mainlines and a storage pond, which is also utilized by an irrigation well. The irrigation system services a nine-hole golf course, landscaping, and, residential lawns.

**Development Schedule**

| BEGIN PROJECT BY THIS DATE | COMPLETE PROJECT BY THIS DATE | WATER PUT TO FULL USE BY THIS DATE |
|----------------------------|-------------------------------|------------------------------------|
| October 31, 2012           | October 31, 2013              | October 31, 2016                   |

**Measurement of Water Use**

|                                                       |                                                                  |
|-------------------------------------------------------|------------------------------------------------------------------|
| How often must water use be measured?                 | Weekly                                                           |
| How often must water use data be reported to Ecology? | Annually (Jan 31)                                                |
| What volume should be reported?                       | Total Monthly and Annual Volume                                  |
| What rate should be reported?                         | Annual Peak Rate of Withdrawal<br>(gallons per minute (gpm)/cfs) |



State of Washington  
**TRUST WATER RIGHT**  
**REPORT OF EXAMINATION**

File NR CG4-GWC7601-A@5  
 WR DOC ID 4237888

Add Purpose of Use      Change Place of Use      Change Season of Use

|                                         |                                                     |                                |
|-----------------------------------------|-----------------------------------------------------|--------------------------------|
| <b>PRIORITY DATE</b><br>January 2, 1958 | <b>WATER RIGHT NUMBER</b><br>Certificate No. 7601-A | <b>TRUST TERM</b><br>Permanent |
|-----------------------------------------|-----------------------------------------------------|--------------------------------|

|                                                                                                             |                                                                                                       |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| <b>NAME OF PARTIES CONVEYING WATER RIGHT TO TRUST:</b><br>John Gorocho<br>PO Box 1157<br>Omak WA 98841-1157 | Riverview at Crescent Bar, LLC<br>Westin Building Ste 3400<br>2001 Sixth Ave<br>Seattle WA 98121-2517 |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|

**Purpose and Quantity**

The purpose of use is for year round instream flows and mitigation, with quantities allocated to a secondary reach in the following table. "Secondary Reach" is that portion of the Okanogan and Columbia Rivers that benefits from the former consumptively used portion of a water right.

|              | Secondary Reach   |             |
|--------------|-------------------|-------------|
|              | Qa<br>(Acre-feet) | Qi<br>(CFS) |
| Jan          | 21.40             | 0.348       |
| Feb          | 19.33             | 0.348       |
| Mar          | 21.40             | 0.348       |
| April        | 20.71             | 0.348       |
| May          | 21.40             | 0.348       |
| June         | 20.71             | 0.348       |
| July         | 21.40             | 0.348       |
| Aug          | 21.40             | 0.348       |
| Sep          | 20.71             | 0.348       |
| Oct          | 21.40             | 0.348       |
| Nov          | 20.71             | 0.348       |
| Dec          | 21.40             | 0.348       |
| <b>Total</b> | <b>252.00</b>     |             |

This secondary reach is also the intervening reach between the original source and Mr. Gorocho/Riverview LLC's proposed point of diversion.

**Place of Use (See Map in Attachment 1)**

**Secondary Reach** – Begins at a point approximately located at Okanogan River Mile 24, Section 19, T. 33 N., R. 26 E.W.M (the point where unused groundwater at the original point of withdrawal likely returns to the river), extending down the Okanogan River to the Columbia River, and continuing down the Columbia River to a point approximately located at Columbia River Mile 441 (Section 18, T. 20 N., R. 23 E.W.M, Water Resource Inventory Area (WRIA) 49.

## **Provisions: Riverview At Crescent Bar, LLC's Portion Of The Water Right**

### **Consumptive Use**

Consumptive use under Change Authorization No. CG4-GWC7601-A@5 shall not exceed 252 ac-ft/yr. Riverview at Crescent Bar, LLC is initially limited to a total diversion of 252 acre-feet under this authorization to ensure there is no enlargement of this right, no impairment of existing water rights, and no detriment to the public interest. Diversions up to the full tentative determination of 315 ac-ft/yr will be allowed if the water right holder demonstrates that up to 63 acre-feet of return flows can be relied upon in perpetuity. The Department of Ecology will make this determination through review of a Water Resource Management Plan submitted by Riverview outlining operations of the irrigation and delivery system. The Department of Ecology would approve or deny the diversion of the additional 63 acre-feet through an Administrative Order.

### **Water Impoundment or Other Resource Management Technique**

The applicant has proposed that a water impoundment or other resource management technique consistent with the requirements of RCW 90.03.255 be developed as a means of retiming the availability of water from the year-round trust quantities to the seasonal irrigation project demands. Before implementing such a technique, the applicant shall submit the proposed technique in the Water Resource Management Plan for Ecology approval.

### **Measurements, Monitoring, Metering and Reporting**

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

### **Department of Fish and Wildlife Requirement(s)**

The intake(s) must 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://wdfw.wa.gov/about/regions/>

### **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 change 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 will be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.

### **Proof of Appropriation**

The water right holder must 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 this change authorization. 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, will have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

### **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](mailto:REETSP@DOR.WA.GOV).

### **Provisions: Trust Water Right**

#### **Trust Water Conveyance Requirement**

The intent of the trust water conveyed to Ecology in this decision is for Ecology to permanently manage and protect the quantities described herein for instream flow purposes and mitigation of irrigation use downstream at the Sunsera Resort. Ecology's management of the trust water right will ensure water is conveyed downstream and available for the project. Before beginning construction on the surface water diversion, Riverview at Crescent Bar, LLC shall convey their interest in this water right consistent with the trust authorization. Such conveyance shall be made in the form of a Quit Claim Deed to Ecology. This trust water conveyance is revocable by the applicant provided that the irrigation water use authorized herein is : 1) perfected in accordance with this change authorization and the applicant's determined future development; and 2) subsequently terminated or met by another water right. In that event, the applicant may assign the trust water right as mitigation for another use or transfer the water right to a new use, subject to statutory requirements. In the event that the surface water diversion is not perfected by the applicant, the trust water conveyance shall remain in effect unless otherwise notified by the applicant. In that case, the trust water quantities may still be used as mitigation for irrigation uses associated with the applicant's determined future development, subject to the requirements of state law.

#### **Mitigation of Columbia River Regulation**

Use of water under this right shall not be curtailed in favor of Columbia River instream flows provided that the trust water right has been conveyed and is being managed by Ecology.

**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. CG4-GWC7601-A@5 subject to existing rights and the provisions specified above.

**Your Right To Appeal**

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

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

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

Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

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

| Address and Location Information                                                                         |                                                                                                         |
|----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| Street Addresses                                                                                         | Mailing Addresses                                                                                       |
| <b>Department of Ecology</b><br>Attn: Appeals Processing Desk<br>300 Desmond Drive SE<br>Lacey, WA 98503 | <b>Department of Ecology</b><br>Attn: Appeals Processing Desk<br>PO Box 47608<br>Olympia, WA 98504-7608 |
| <b>Pollution Control Hearings Board</b><br>111 Israel RD SW<br>STE 301<br>Tumwater, WA 98501             | <b>Pollution Control Hearings Board</b><br>PO Box 40903<br>Olympia, WA 98504-0903                       |

Signed at Yakima, Washington, this 2nd day of March 2011.

  
 Mark C. Schuppe, Section Manager  
 Water Resources Program/CRO  
 Department of Ecology

## INVESTIGATOR'S REPORT

### BACKGROUND

Mr. John Goroch of Omak Washington, has entered into several purchase and sale agreements and submitted several applications to change Superseding Ground Water Certificate No. 7601-A. These applications propose to transfer water to different sites along the Columbia River, add points of diversion/withdrawal, and change the purposes of use. This report specifically addresses Water Right Change Application No. CG4-GWC7601-A@5.

Riverview at Crescent Bar, LLC (Riverview) has entered into a purchase and sale agreement to acquire 315 ac-ft/yr of the Goroch water right. Riverview owns the Sunsera Resort located west of Quincy, along the Columbia River (previously known as Crescent Golf Estates and Riverview at Crescent Bar). Change Application No. CG4-GWC7601-A@5 is a request to transfer a portion of the Goroch water right to Sunsera (add a point of diversion, change the place of use) to be used for irrigating up to 90 acres on a 9-hole golf course and irrigating landscaping associated with approximately 250 condominiums and recreational facilities. Riverview proposes to begin irrigating March 15 instead of May 1.

Riverview has also requested to convey the 315 ac-ft/yr as instream flows between the original point of withdrawal and the proposed point of diversion to ensure the water will physically reach the new diversion point downstream (change the purpose of use in the intervening reach). The applicant will convey the water right to Ecology's Trust Water Right Program in the intervening reaches of the Okanogan and Columbia Rivers (see the "Trust Water Conveyance Requirement" provision above).

**Table 1: Attributes of the Existing Water Right and Proposed Change**

| Attributes                                    | Existing                                        | Proposed                                                                                                                                             |
|-----------------------------------------------|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Name</b>                                   | Parm Dickson                                    | John Goroch / Riverview at Crescent Bar, LLC                                                                                                         |
| <b>Priority Date/ Change Application Date</b> | 01/02/1958                                      | 06/30/2005                                                                                                                                           |
| <b>Instantaneous Quantity</b>                 | 1500 gpm                                        | 830 gpm                                                                                                                                              |
| <b>Annual Quantity</b>                        | 564 af/yr                                       | 315 af/yr                                                                                                                                            |
| <b>Purpose of Use</b>                         | Irrigation of 141 acres                         | Instream flows and Irrigation of 90 acres                                                                                                            |
| <b>Period of Use</b>                          | May 1 thru October 31                           | Year-round diversion, water use from March 15 to October 31                                                                                          |
| <b>Place of Use</b>                           | NW ¼ of Section 11, T. 32 N., R. 26 E.W.M.      | Instream from Okanogan River Mile 24 downstream to Columbia River Mile 441, and then to be used for irrigation in Section 18, T. 20 N., R. 23 E.W.M. |
| <b>Point of Diversion</b>                     | NW ¼ NW ¼ of Section 11, T. 32 N., R. 26 E.W.M. | Section 18, T. 20 N., R. 23 E.W.M.                                                                                                                   |

### Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change to add a point of diversion, change the place of use, extend the period of use, and convey the water to trust in the intervening reach.

#### **Public Notice**

Public Notice of Change Application No. CG4-GWC7601-A@5 was given in the Wenatchee World, Quincy Valley Post Register, Okanogan Valley Gazette-Tribune, Douglas County Empire Press, and The Daily Record in Ellensburg on December 24, 2010 and December 31, 2010. No comments or protests were received.

An additional notice is required for creating a trust water right. According to RCW 90.42.040(5), Ecology must send notice to all appropriate state agencies, potentially affected local governments, federally recognized tribal governments, and other interested parties. This notice was sent in the form of a letter dated February 2, 2011. No comments or protests were received.

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

Development of the Sunsera Resort is not exempt from environmental review under SEPA. The lead agency, Grant County Planning, processed two separate phases of development for Sunsera under the project's two previous names. On October 15, 2004 Grant County issued a *Mitigated Determination of Non-Significance (MDNS)* to Crescent Golf Estates based on their Master Planned Resort. The MDNS addressed the "Optional Consolidated Review" process. The applications under this review included Minor Zone Change, Planned Unit Development, and Major Subdivision for approximately 70.89 acres and an additional 26 acres platted as Recreational Development Zoning. Then on May 15, 2006 Grant County issued another *Mitigated Determination of Non-Significance* for an additional 21.45 acres under the same Master Planned Resort. Ecology determined that the existing SEPA documentation adequately describes the project.

#### **Water Resources Statutes and Case Law**

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

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. Based on *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*.

RCW 90.14.140(2)(c) states that a water right not used for more than 5 years is not relinquished if it is claimed for a determined future development to take place within 15 years of the last beneficial use of water under the water right. In order to be valid, a determined future development plan must satisfy a series of tests established in past court cases<sup>1</sup> and summarized here:

- The project must be sufficiently complex as to require more than 5 years to complete;
- The plan must be determined and fixed within five years of the last beneficial use of the water;
- The party exercising the plan must have equity in the water right;

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<sup>1</sup> *R.D. Merrill Company v. Pollution Control Hearings Board*; *City of Union Gap and Ahtanum Ridge Business Park LLC v. Washington State Department of Ecology*; and *Protect Our Water v. Islanders for Responsible Water Management (Intervenors), State of Washington, Department of Ecology, and King County Water District No. 19*.

- The plan must remain fixed, and;
- Affirmative steps must be taken to implement the plan within 15 years.

RCW 90.03.255 requires Ecology to consider the benefits and costs, including environmental effects, of a water impoundment or a resource management technique when proposed as part of an application for a water right change or transfer.

RCW 90.42.080(1)(a) provides that the state may acquire all or portions of existing water rights, by purchase, gift, or other appropriate means other than by condemnation, from any person or entity or combination of persons or entities. Once acquired, such rights are trust water rights.

## INVESTIGATION

### History of Superseding Groundwater Certificate No. 7601-A

Certificate No. 7497-A was issued to Parm Dickson on January 18, 1972 for 412 ac-ft/yr for the irrigation of 103 acres. Ecology found this certificate to be in error and issued Superseding Certificate No. 7601-A to Parm Dickson on February 16, 1972. The annual quantity and number of acres were increased to 564 ac-ft/yr for the irrigation of 141 acres, everything else remained the same. On April 15, 1977, Mr. Goroch purchased the property owned by Parm Dickson.

On August 7, 2001, Mr. Goroch submitted an Emergency Drought Action application requesting to add a point of withdrawal and transfer a portion of his right to another property roughly 14 miles to the southwest of the original property. Emergency Drought Action applications were created by Ecology to allow temporary changes during a drought year. Mr. Goroch's application was received at the end of the irrigation season, accompanied by a letter stating he wanted a permanent change and would be removing trees from his original property and buying trees for a proposed property to the south. Ecology did not process the drought application in 2001, but instead accepted it as an application to permanently change his water right.

Ecology was not processing water right changes in the Okanogan Basin when Mr. Goroch submitted his 2001 change application. Since Mr. Goroch's property is on the Colville Indian Reservation, he was unable to apply to the Okanogan County Conservancy Board to expedite his change application. On June 30, 2005, Mr. Goroch submitted 5 additional change applications and requested Ecology to amend his 2001 application, each application requesting to transfer a portion of the right to downstream locations.

Riverview entered into a purchase and sale agreement (PSA) on June 10, 2005 to purchase 160 ac-ft/yr, 411.72 gpm of the Goroch water right. On October 26, 2006 Riverview entered into another PSA with Mr. Goroch for 315 ac-ft/yr, 930 gpm to replace the first PSA, prior to the five years of non-use. At that time, Riverview requested to amend the transfer application to reflect this increase.

In July of 2007, Ecology posted a draft approval of application No. CG4-GWC7601-A@5 on the internet. At that time, Mr. Goroch and Riverview were requesting to transfer a portion of Certificate 7601-A to three wells at the Sunsera Resort. During the 30-day posting of that draft, Ecology received a protest letter. Since that time, Ecology has been working with the applicants to address the protester's concerns.

On May 19, 2010 Monte McKeehan, Vice President of Riverview, requested to amend the existing application to transfer their equity in the Goroch water right to the Trust Water Right Program. Riverview's consultant, Tim Reiersen, further clarified Riverview's proposal in an October 28, 2010 e-

mail that their equity in the Goroch Right be conveyed in trust down the Okanogan and Columbia Rivers and divert up to 252 ac-ft/yr consumptive use, 315 ac-ft/yr total use, on an averaged year-round basis. Mr. Reiersen recognized that a year-round diversion for irrigation may require further mitigation techniques to make the water usable.

#### **Site Visit**

Ecology permit writer, Phil Kerr, visited Mr. Goroch's property on November 7, 2005 for a preliminary site visit of the original place of use. Mr. Goroch and Phil Kerr walked the property and identified 122 acres of irrigated land. A second site investigation was conducted on March 17, 2006 by Ecology employees Melissa Downs, Anna Hoselton, and Phil Kerr, accompanied by Ed Kemp, the applicant's consultant. The group visited the original place of use as well as the proposed place of use for Change Application No. CG4-GWC7601-A@5. At the Sunsera Resort, investigators noted construction of a condominium complex, swimming pool, and fire protection tanks connected to a Class A water system on the property of the proposed place of use.

Following the site visit, information was compiled from department records and conversations with the applicant and consultant. Air photos were used to identify irrigated acres. The county parcel layer was used to verify land ownership.

#### **Extent and Validity**

Superseding Certificate No. 7601-A is appurtenant to property that lies within the Confederated Tribes of the Colville Reservation. Ecology is required to identify whether a state issued right being proposed for change coincides with a federally reserved right, based on the Boyd Walton case of the 1980's. Tribal members have federal water rights on reservation land, but as soon as property is sold to a non-member, that new owner has a reasonable amount of time (in most cases 15 years or less) to establish water use on the property to secure a federal water right.

Mr. Goroch stated that the property was homesteaded by a non-tribal member around 1910. A description of this project was sent to the Colville Tribal Council on April 17, 2006, for their review and comment. Ecology received a response from Lois Trevino on August 10, 2006 stating that the property owned by John Goroch has been in fee status (deeded to a non-tribal member). Air photos from 1954 and 1964 showed no irrigated acres or cultivation on this property. Certificate No. 7601-A was issued to Parm Dickson in 1972. At least 15 years passed between when the property may have been cultivated by a tribal member and when a non-tribal member obtained a state issued water right for the property. Ecology did not find any evidence of irrigation prior to 1972. Therefore, Ecology concluded that the property had no federal reserve right and that the state issued water right could be considered for transfer.

To quantify the extent of the right, Ecology reviewed power records from 1996 to 2000 showing that Mr. Goroch used at least his full water right of 564 ac-ft/yr during those years. Mr. Goroch then removed his orchard in early spring of 2002 and ceased irrigated up to the present. The last beneficial use of the water right took place in 2001 and five consecutive years of non-use occurred from 2002 to present.

According to RCW 90.14.180 a water right that has not been beneficially used for a period of five or more years may be subject to relinquishment unless a sufficient cause for non use can be identified. Mr. Goroch and Riverview assert that they have a *Determined Future Development Plan* (DFD) for supplying irrigation water to the Sunsera Resort. Other determined future developments are also asserted for portions of the Goroch right not contracted for sale to Riverview, the subject of the other change applications filed to transfer this water right. Under RCW 90.14.140(2)(c), a DFD plan is considered an

exemption to relinquishment of a water right. Several court cases have clarified the DFD relinquishment exemption (e.g. *R.D. Merrill v. PCHB*, 1999). DFD criteria are described in Ecology's Policy 1280, summarized below for applicability to the Goroch water right:

- *The DFD must be established by an equity interest holder in the water right and the plan must be fixed within 5 years of the last date of nonuse of water.*
  - The applicant submitted a water right change on June 30, 2005.
  - Riverview entered into a purchase and sale agreement (PSA) on August 8, 2005 to purchase 160 ac-ft/yr, 411.72 gpm of the Goroch water right. On October 26, 2006 Riverview entered into another PSA with Mr. Goroch for 315 ac-ft/yr, 930 gpm to replace the first PSA, prior to the five years of non-use.
  
- *The scope of the DFD must require more than 5 years to complete. And the water right holder must have a firm definitive plan.*
  - The 90 acres of proposed irrigation are part of a 200+ unit development including a golf course and recreational facilities.
  - Sunsera transferred several water rights and put them to beneficial use prior to 2006 (see Attachment 2).
  - Grant County issued a Mitigated Determination of Non-Significance for 118.34 acres of development by May 15, 2006 (see SEPA section above).
  - Sunsera's water system plan was approved for 255 connections on January 11, 2006. (Department of Health's website)
  - 2005 air photos show grading and construction at Sunsera and two wells were drilled and operating before 2006.

In 2009, Mr. Goroch began negotiations to sell his land to the Confederated Tribes of the Colville Reservation. On January 23, 2010 John Goroch signed a Statutory Warranty Deed conveying his property to the Confederated Tribe of the Colville Reservation, but did not convey interest in Certificate No.7601-A. Mr. Goroch and his family still retain full interest in the water right, which allows them to maintain the validity of their purchase and sale agreements.

#### **Annual Consumptive Quantity**

Riverview is proposing to change their portion of the Goroch water right to instream flows between the original point of withdrawal and the proposed point of diversion. Riverview will convey their instream flow right to Ecology to be managed in the Trust Water Right Program. This request to add instream flows as a purpose of use is governed by RCW 90.03.380(1) which states that such a change shall not increase the annual consumptive quantity of water used under the water right. Ecology is required to perform an annual consumptive quantity (ACQ) test to determine that the proposed future consumptive use will not exceed the historic use of the water right.

The consumptive quantity is estimated by subtracting all return flows from the total amount of water diverted (not to exceed the water right). This consumptive quantity is determined for the most recent five years of continuous beneficial use that predate any excused nonuse, and then the average of the greatest two years of use equals the *Annual Consumptive Quantity*. In this case the appropriate time period for review is the first 5 year period of continuous use (1997 to 2001) before Mr. Goroch asserted his determined future development relinquishment exemption in 2006.

Calculations of annual water use were based on Mr. Goroch's power records from 1997 to 2001. In the two highest years of use, Mr. Goroch exceeded his water right. Since Ecology cannot authorize the

transfer of water in excess of the right, the following ACQ calculations are based on the full quantity authorized for Superseding Certificate No. 7601-A; 1500 gpm, and 564 ac-ft/yr. In these years, Mr. Goroch irrigated 122 acres of apple orchards with a cover crop. According to the Washington Irrigation Guide (WIG), this crop requires 2.64 ft/acre of water annually. Mr. Goroch stated that more water was required to keep his trees and cover crop viable due to the "course sandy soils." Solid-Set, overtree sprinklers are estimated to have a 15% evaporation rate (based on Ecology Guidance 1210). The following table provides the calculations for the total consumptive use.

|                                                                   |                            |                         |
|-------------------------------------------------------------------|----------------------------|-------------------------|
| Total Use ÷ No. of Acres = Ac-ft/acre                             | 564 ac-ft/yr ÷ 122 acres   | = 4.62 ac-ft/ac         |
| Crop Irrigation Requirement ÷ Total Use = Ea <sup>2</sup>         | 2.64 ft/ac ÷ 4.62 ac-ft/ac | = 0.57 or 57%           |
| Ea + % Evaporation = % Consumptive Use                            | 57% + 15%                  | = 72%                   |
| Total Use per acre × % Consumptive Use = Consumptive Use per acre | 4.62 ac-ft/ac × 0.72       | = 3.33 ac-ft/ac         |
| Ac-ft/acre × No. of Acres = <b>Total Consumptive Use</b>          | 3.33 ac-ft/ac × 122 acres  | = <b>406.3 ac-ft/yr</b> |

### Proposed Use

Riverview has purchased 315 ac-ft/yr of Superseding Certificate No. 7601-A and intends to use 252 ac-ft/yr consumptively, and 63 ac-ft/yr will be return flows or non-consumptive use<sup>3</sup>. The golf course irrigation system is not intended to be "closed" or set up for recapture, so there will be water passing through the system as return flows. Riverview's consultant, Tim Reierson, provided a breakdown of irrigation plans for the proposed 90 acres into 21 acres of golf course, 41 acres of open space/recreation/miscellaneous, and 28 acres of condominium lot irrigation. Landscape irrigation around the condominiums is estimated as half pop-up impact sprinklers, and half microsprayers. The open space irrigation will most likely be pop-up impact sprinklers as well. The golf course has sandy soils and uses large nozzled impact sprinklers.

<sup>2</sup> *Application Efficiency (Ea)* is the ratio of the average depth of water infiltrated and stored in the root zone to the average depth of water applied, expressed as a percentage.

<sup>3</sup> This leaves 249 acre-feet (total) and 154.3 acre-feet (consumptive use) available for the remaining applications for transfer which will be processed subsequent to this decision.

The Washington Irrigation Guide (WIG) lists the pasture/turf irrigation requirement in the Wenatchee area as 30.1 inches (2.5 feet) per year. The change application for this project proposes to transfer 3.5 feet per acre, allowing for roughly 70% application efficiency. The applicant also contends that the south-facing slopes of the proposed place of use may tend to increase consumption over the irrigation season. Ecology used the sprinkler type and acreages provided by Tim Reiersen in columns 1 and 2 to calculate the consumptive use quantities:

| Sprinkler Type | Acres | Total Irrigation Requirement = $CIR \div Ea$<br>Crop Irrigation Requirement (CIR)<br>% Application Efficiency (Ea) | Consumptive Use = $TIR \times \%CU$<br>Total Irrigation Requirement (TIR)<br>% Consumed Use (CU) | Total Consumptive Use = $CU \times Acres$ |
|----------------|-------|--------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-------------------------------------------|
| Big Gun        | 21    | $2.5 \text{ ac-ft/ac} \div 0.65 = 3.85 \text{ ac-ft/ac}$                                                           | $3.85 \times 0.75 = 2.89 \text{ ac-ft/ac}$                                                       | $2.89 \times 21 = 60.7 \text{ ac-ft}$     |
| Impact         | 55    | $2.5 \text{ ac-ft/ac} \div 0.75 = 3.33 \text{ ac-ft/ac}$                                                           | $3.33 \times 0.85 = 2.83 \text{ ac-ft/ac}$                                                       | $2.83 \times 55 = 155.7 \text{ ac-ft}$    |
| Microsprayers  | 14    | $2.5 \text{ ac-ft/ac} \div 0.85 = 2.94 \text{ ac-ft/ac}$                                                           | $2.94 \times 0.95 = 2.79 \text{ ac-ft/ac}$                                                       | $2.79 \times 14 = 39.1 \text{ ac-ft}$     |
| Total          | 90    |                                                                                                                    |                                                                                                  | Total = 255.5 ac-ft                       |

These calculations are based on estimated acreages (per sprinkler type) and average efficiencies. A modern system may operate more efficiently than what was assumed above, which would result in a lower consumptive use amount. During review of the application, Riverview proposed that the 252 ac-ft/yr is the consumptive portion of the 315 ac-ft/yr they purchased. A Water Resource Management Plan submitted by the applicant based on actual system design, in conjunction with Ecology's proof inspection conducted prior to issuance of a superseding certificate, can be used to ensure consumptive use is not exceeded.

Riverview will also be limited to an instantaneous diversion rate based on historic use and what is reasonable for the proposed uses. Mr. Goroch's historic diversions were consistent with the water right authorization of 1500 gpm (3.34 cfs). This equates to 0.023 cfs/acre. An estimated peak instantaneous rate of 0.02 cfs per acre has been commonly awarded for irrigation uses. Assuming this rate for Riverview equates to a peak diversion rate of 1.8 cfs ( $0.02 \text{ cfs} \times 90 \text{ acres}$ ). Riverview contracted for 1.85 cfs of this quantity, which is reasonable. While Riverview's contracted diversion rate is reasonable, it is also limited by the quantity of water that is available at the new point of diversion based on quantities available in trust.

#### Other Water Rights Appurtenant to the Proposed Place of Use

Riverview has purchased several water rights for domestic supply and irrigation water for the resort. Attachment 2 provides a list of all the approved water rights for the resort. Riverview plans to utilize the water transferred from the Ed Kane rights for municipal supply and plans irrigate with its Riverview LLC rights and this change authorization. According to Ecology's database, there are no other Columbia River diversions within a 3-mile radius of the proposed Riverview diversion.

#### Hydrologic/Hydrogeologic Evaluation

A *Technical Memorandum* written by Ecology technical staff was created as part of Ecology's draft approval of this application in 2007. At that time, Riverview had proposed to utilize the Goroch water right via multiple wells. Riverview has amended the application to propose a new surface water diversion instead of ground water for this change. The memorandum's discussion of the historic manner of water use and its effect on the Okanogan River is still applicable.

The *Well Pumping Depletion Model* was used to approximate depletion from the Okanogan River due to pumping at the Goroch's well, which are approximately 4,080 feet apart. The results of the model indicate that the effects of pumping extend beyond the irrigation season and into the following water year. Modeling the 33 years of water use under Certificate 7601-A indicates that the longer pumping occurred, the depletion effects on the river begin to approach a baseline throughout the year.

### Trust Water Calculations

RCW 90.42.080(1)(a) provides that the State may acquire water rights and when acquired, such rights are trust water rights. The proposed method of acquisition in this case is a quit claim deed from Riverview to Ecology to ensure that water will be available for use at the new location downstream. Ecology's protection of this water right in trust as a water right senior to that of the Okanogan and Columbia River instream flow rules and junior water users regulated under that rule, will ensure that the water is available at Riverview's proposed Columbia River diversion.

Ecology typically manages its trust water rights by defining a primary and a secondary reach. The primary reach is the length of the river that benefits from both the former consumptive use and former return flow waters of a water right. The secondary reach is the length of river that benefits only from the former consumptive use portion of a water right.

In this case, there is no primary reach since the water right proposed for trust is for ground water that discharges to the Okanogan River. It is difficult to identify a point on the Okanogan River where return flows and unpumped ground water would return to the river. Uncaptured ground water from the original well may fully discharge to the Okanogan River by River Mile 24 based on the confining bedrock morphology. Therefore, the secondary reach for the proposed trust water right is estimated to begin at Okanogan River Mile 24 and extend down the Okanogan and Columbia Rivers to the proposed point of diversion at Columbia River Mile 441 (see the map in Attachment 1).

Water available for trust in the secondary reach is quantified based on the historic effect of pumping on the Okanogan River. Because of the distance from the Goroch well to the river, the historic effect on the river can be approximated as an average rate throughout the year. Therefore, Riverview's 252 ac-ft/yr available for trust, may be distributed as a monthly water duty. The volume of trust water available per month is calculated by multiplying the acre-feet per day by the number of days in each month. The monthly water duties are listed in the table on page 3 of this report.

$$315 \text{ ac-ft/year} \div 365 \text{ days/year} = 0.863 \text{ ac-ft/day total use}$$

$$252 \text{ ac-ft/year} \div 365 \text{ days/year} = 0.690 \text{ ac-ft/day consumptive use}$$

$$315 \text{ ac-ft/year} \div 1.98^4 \div 365 \text{ days/year} = 0.435 \text{ cfs continuous diversion}$$

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<sup>4</sup> 1 cubic foot per second(cfs) of water is equal to 1.98 ac-ft/day.

### **Impairment Considerations**

When considering the potential for impairment from the proposed change, Ecology considered intervening water users between the historic point of withdrawal and the proposed diversion location. Changing the water right downstream and trusting the right for instream flows in the intervening reach will not reduce the availability of water to intervening water users, provided Ecology only protects the consumptive use historically exercised. Riverview will be required to provide a Water Resource Management Plan describing exactly how water will be used such that they do not exceed the consumptive use amount in trust.

### **Public Interest Considerations**

Ecology is required to consider whether the public interest would be adversely impacted by this transfer, according to RCW 90.44. There will be a small increase in instream flows in the reach between the old and new points of diversion, which is in the public interest. The proposed uses are beneficial and will create additional job and tax benefits for the economy. The project has received county approval and SEPA review. The proposed development will provide provided amenities that support additional housing in Grant County, WA.

### **Consideration of Protests and Comments**

July of 2007, the Center for Environmental Law and Policy (CELP) sent a comment letter to Ecology expressing concerns<sup>5</sup> about the draft approval Ecology had posted on the internet (see the History section above). Since 2007, Ecology has some of CELP's concerns by requiring Mr. Goroch and Riverview to amend their application. The applicants responded by requesting to convey the water right to trust in the intervening reach between the original point of withdrawal to the Sunsera Resort. Riverview proposes to divert water from the Columbia River instead of pumping from a well for their future use of the right. Adding a point of diversion does not require consideration of the same body of public ground water. Elements of the determined future development have been better documented. Other CELP concerns, such as climate change and past violations of the water code for use above the historic quantities were not considered by Ecology to prohibit this transfer from moving forward.

On July 12, 2007, Okanogan County's Office of Planning and Development sent a letter commenting on the draft authorization. The County's primary concern was impacts associated with moving the subject water right out of the county. The Legislature commissioned a report on this subject in 2008 titled "Protecting Local Economies – Legislative Options to Protect Rural Communities in NE Washington from Disproportionate Economic, Agricultural, and Environmental Impacts when Upstream Water Rights are Purchased and Transferred for Use, or Idled and Used as Mitigation, in a Downstream Watershed or County". While Ecology agrees there are valid policy considerations regarding exporting water out of the area of origin, however nothing in state law prevents the applicant from transferring this water right provided there is no impairment of existing rights.

No protests or comments were received by Ecology during the December 2010 public notice period.

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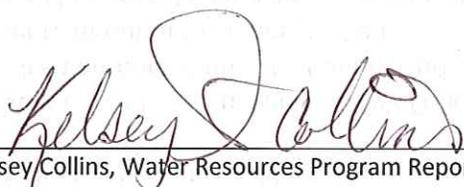
<sup>5</sup> CELP's concerns: 1) Ecology's failure to consider climate change and the project not being in the public's interest, 2) The original and proposed wells not being in the same body of ground water, 3) The project would have improper impacts on the Columbia River, 4) The original water right holder, and the buyer are in violation of the water code, 5) The determined future development exemption to relinquishment is not satisfied.

## CONCLUSIONS

In accordance with chapters 90.44 and 90.42 RCW, the author makes a tentative determination that Certificate of Water Right No. 7601-A is a valid right and is eligible for change. Approval of change Application No. CG4-GWC7601-A@5, as provisioned above, will not cause impairment of existing water rights and not enlarge the original water right and will not be detrimental to public interest.

## RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend the request for change to Superseding Certificate No. 7601-A be approved, subject to the provisions and within the limitations on page 1 through 5 of this report.



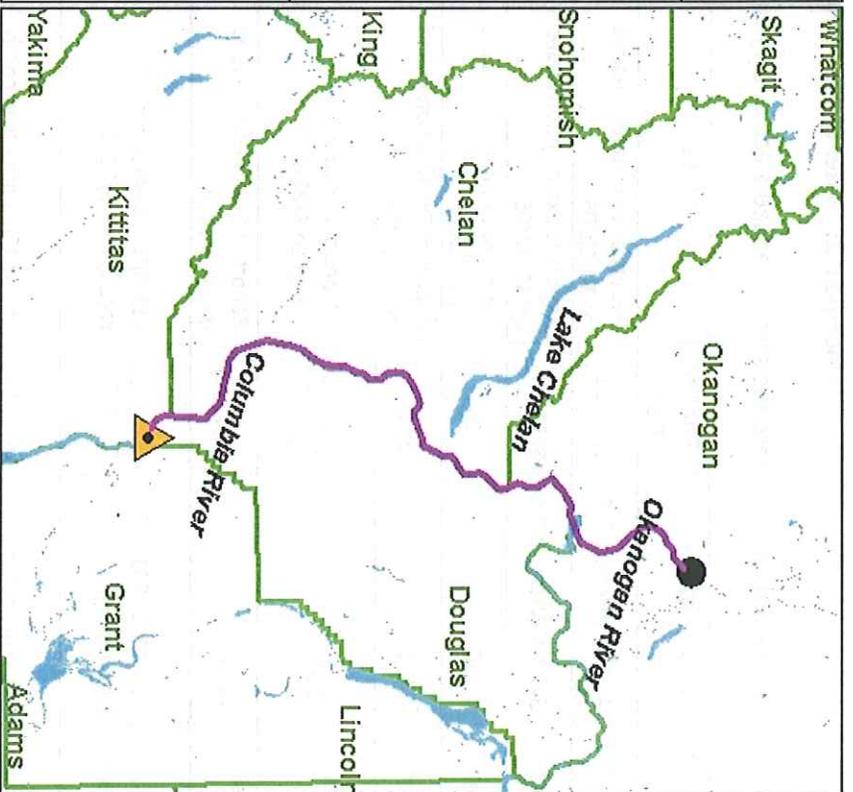
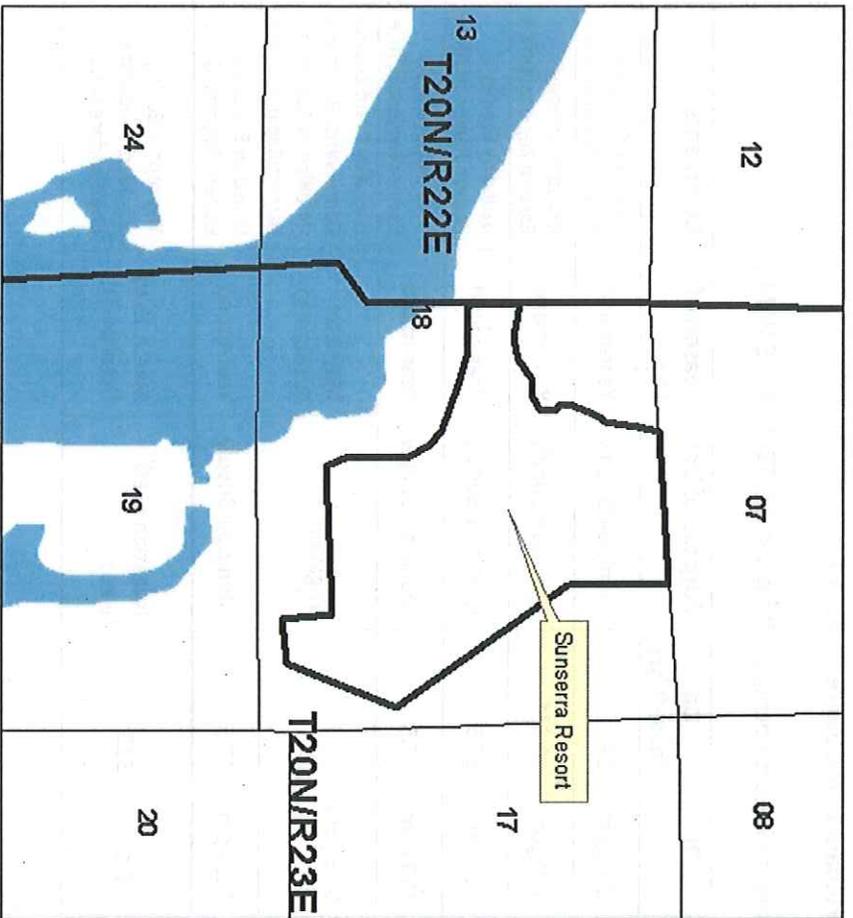
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Kelsey Collins, Water Resources Program Report Writer

3/2/11

Date

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-  Water Bodies
-  Proposed Place of Use
-  Secondary Reach / Intervening Reach
-  County Boundaries
-  Proposed Point of Diversion



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

**John Goroch**  
CG4-GWC7601-A@5  
T. 20 N., R. 23 E., Sec. 18  
WRIA 41, Grant County, WA



**Attachment 2: Water Rights Appurtenant to the Sunserra Resort**

All the entries in the table below share the same intended place of use, Sunserra Resort (located within Sec. 18, T20N, R23E.W.M).

| Applicant                   | Water Right #                 | Priority Date | Status                                          | Qi       | Qa (acre-ft/yr) | Purpose of Use         | Season of Use          | Comments                                                                                    |
|-----------------------------|-------------------------------|---------------|-------------------------------------------------|----------|-----------------|------------------------|------------------------|---------------------------------------------------------------------------------------------|
| Ed Kane*                    | 4178-A W/cng. II 3-5          | 3/20/61       | Report of Examination issued on 10/12/05        | 180 gpm  | 59              | Municipal Supply       | Year-round             | Issued by Ecology's Eastern Regional Office                                                 |
| Ed Kane*                    | 5428-A W/chg. II-3-6          | 8/31/64       | Report of Examination issued on 10/12/05        | 120 gpm  | 10.5**          | Municipal Supply       | Year-round             | Issued by Ecology's Eastern Regional Office                                                 |
| Ed Kane*                    | 371-D                         | 1906          | Report of Examination issued on 10/12/05        | 120 gpm  | 25.5            | Municipal Supply       | Year-round             | Issued by Ecology's Eastern Regional Office                                                 |
| Ed Kane*                    | 370-D                         | 1900          | Report of Examination issued on 10/12/05        | 120 gpm  | 25.5            | Municipal Supply       | Year-round             | Issued by Ecology's Eastern Regional Office                                                 |
| Riverview LLC               | 7263-A                        | 7/29/05       | Record of Decision issued on 8/28/06            | 87.5 gpm | 50              | Irrigation             | May 1 to October 31    | Issued by Grant County Conservancy Board and modified by Ecology's Eastern Regional Office. |
| Riverview LLC               | 2410-A                        | 12/23/05      | Report of Examination issued on 9/13/2006       | 120 gpm  | 13.5            | Municipal Supply       | Year-round             | Issued by Ecology's Eastern Regional Office                                                 |
| John Goroch / Riverview LLC | CG4-GWC7601-A@5 (this report) | 1/2/1958      | <b>PENDING:</b> application received on 6/30/05 | 1.8 cfs  | 315             | Irrigation of 90 acres | March 15 to October 31 | This report, Ecology considers a request to divert surface water.                           |

\*Collectively, the Ed Kane rights are limited to 540 gpm and 120.5 acre-ft/yr combined.

\*\*10.5 ac-ft/yr are primary and 66.5 ac-ft/yr are additive with respect to ground water Certificate No. 5428-A and non-additive with respect to Certificate No. 4178-A.