STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Change of: Yakima Adjudication Court Claim No. 1752
Additional Point of Diversion
WRTS File No. CS4-1752CTCL@1

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
June 30, 1878	Yakima Adjudication Court Claim No. 1752		

NAME

Benton Irrigation District (c/o Tonya Garberg, Chairperson, Board of Directors)

ADDRESS/STREET	CITY/STATE	ZIP CODE
PO Box 626 (47506 N Highland Rd)	Benton City WA	99320-0626

These water rights are confirmed in the name of the United States on behalf of Sunnyside Division

1. The United States of America, by and through the Bureau of Reclamation, 1917 Marsh Road, Yakima, WA 98901-2058, (509) 575-5848; on behalf of
2. The Sunnyside Division Board of Control, c/o Sunnyside Valley Irrigation District, PO Box 239 (120 South 11th Street), Sunnyside, WA 98944, (509) 837-6980

PUBLIC WATERS TO BE APPROPRIATED

SOURCE

Yakima River

TRIBUTARY OF (IF SURFACE WATERS)

Columbia River

MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr)
34		14,089

QUANTITY, TYPE OF USE, PERIOD OF USE

34 cubic feet per second, 14,089 acre-feet per year, for irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses, from April 1 through October 31 each year.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION—WITHDRAWAL

1. Existing Diversion (POD) from Yakima River: 130 feet south and 1500 feet west of the east quarter corner of Section 28, being within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M.;
2. Proposed Additional POD from Yakima River: TBD - Probable location is 480 feet west and 3989 feet south of the NE corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
Existing Yakima River Point of Diversion: NW¼SE¼	28	12 N.	19 E.W.M.	37	Yakima
PARCEL NUMBER	LATITUDE		LONGITUDE	DATUM	
19122899989	46.49859°N		120.44410°W	NAD 83	
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
Proposed Point of Diversion: SE¼	11	09 N.	26 E.W.M.	37	Benton
PARCEL NUMBER	LATITUDE		LONGITUDE	DATUM	
111964000003000	46.27479°N		119.51717°W	NAD 83	

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

[Enclosures 1 & 2 show location of the authorized place of use and points of diversion or withdrawal]

Per Amended Stipulation entered August 12, 2003, re: Sunnyside Division Court Claim No. 1752, "Irrigable acres within the Sunnyside Division exterior boundaries as of the date of this Stipulation, as described in the Attachment 1 metes and bounds legal description and the Attachment 2 map which are incorporated herein. Attachment 1 is controlling as the description of the Sunnyside Division's place of use." See Attachment 1 copy enclosed.

This water right is confirmed for irrigation of 99,244 irrigated acres of the total 103,570 irrigable acres within the unitary place of use for the Sunnyside Division, and related uses.

DESCRIPTION OF PROPOSED WORKS

The applicant proposes to add a point of diversion (POD) under this water right and each of the other five water rights confirmed by the Yakima Adjudication Court's August 14, 2003 Conditional Final Order, to the United States on behalf of Sunnyside Division for irrigation and related uses from April 1 through October 31 each year.

This added POD is a proposed new pump plant and pipeline system located approximately 71.3 river miles downstream of the current Sunnyside Canal POD. This added POD will contractually deliver water only to the Benton Irrigation District portion (4630 irrigable acres) of the unitary place of use for the six water rights confirmed by the Court to the United States on behalf of the Sunnyside Division for irrigation and related uses from April 1 through October 31 each year.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
May 1, 2010	May 1, 2012	May 1, 2013

PROVISIONS

Measurements, Monitoring, Metering and Reporting

1. 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", Chapter 173-173 WAC. http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html

2. Water use data shall be recorded daily. The following information shall be included with each submittal of water use data and shall be submitted to the Department of Ecology by January 31st of each calendar year:
   a. owner, contact name if different
   b. mailing address
   c. daytime phone number
   d. WRIA
   e. Court Claim No.
   f. source name
   g. annual quantity used including units
   h. maximum rate of diversion including units
   i. period of use
   j. purpose of use
   k. daily meter readings including units
   l. peak daily flow including units
   m. fish screen status

3. In the future, the Department of Ecology may require additional parameters to be reported or more frequent reporting. The Department of Ecology will provide data entry information and forms. http://www.ecy.wa.gov/pubs/ecy070170.pdf

4. Chapter 173-173 WAC 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 entitled "Water Measurement Device Installation and Operation Requirements" http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html

Provisions Specific to the Department of Fish and Wildlife

5. This authorization is subject to Washington Department of Fish and Wildlife fish screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria. http://www.wdfw.wa.gov/reg/regions.htm

Schedule and Inspections

6. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above provisions, and to inspect at reasonable times any measuring device used to meet the above provisions.

7. The water right holder shall file the notice of project completion when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. After the Department of Ecology receives the notice, a proof inspection shall be conducted after which a superseding certificate shall issue. The superseding certificate will reflect the extent of the project perfected within the limitations of the change authorization. Elements of the proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, point of diversion, and satisfaction of provisions.

General Conditions

8. The water source and/or water transmission facilities may not be wholly located upon land owned by the applicant. Issuance of a water right change authorization by the Department of Ecology 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.

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 change of water right (the additional point of diversion) as recommended will not be detrimental to existing rights.

Therefore, I ORDER approval of the recommended change to add a point of diversion under Change Application No. CS4-1752CTCL@1, subject to existing rights and the provisions listed above.

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

The name and mailing address of the appellant;
Name and address of the appellant's attorney, if any;
The name and address of the Department of Ecology;
The specific application number of the decision being appealed;
A copy of the decision;
A brief explanation of Ecology's decision;
Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
Facts that demonstrate the appellant is entitled to obtain judicial review;
The appellant's reasons for believing that relief should be granted; and
A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed.** The appeal must be filed in the same manner as described above.

Signed at Yakima, Washington, this _____ day of _____ 2009.

_____

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

DRAFT

This is the Consolidated Report for all six associated water right change applications to add a point of diversion (POD) to each of the six United States/Sunnyside Division water rights confirmed under Court Claim No. 1752 for irrigation during irrigation season and related uses: CS4-1752CTCL, CS4-1752CTCL@1, CS4-1752CTCL@2, CS4-1752CTCL@3, CS4-1752CTCL@4, and CS4-1752CTCL@5.

BACKGROUND

Description and Purpose of Proposed Change

On October 16, 2008, the Benton Irrigation District filed one water right change application for each of the six water rights (for a total of six change applications) confirmed to the United States on behalf of Sunnyside Division for irrigation and related uses from April 1 through October 31 each year by the Yakima Adjudication Court under the Sunnyside Division Court Claim No. 1752 in the Court's August 14, 2003 Conditional Final Order, entered in *The State of Washington, Department of Ecology v. James J. Acquavella, et al. (Acquavella).* Each of these six water right change applications requests authorization to add one additional point of diversion (POD) to each of the six water rights; that additional POD being the one proposed new pump plant and pipeline water delivery system with its new POD situated approximately at Yakima River mile 32.5, approximately 71.3 river miles downstream of the currently authorized POD: the Sunnyside Canal POD located at river mile 103.8.

This new pump and pipeline system is a water conservation project funded by the Yakima River Basin Water Enhancement Project (YRBWEP) and is designed to improve the reliability of water supply specifically for the Benton Irrigation District service area. In fact this proposed new pump and pipeline system will contractually deliver water only to the BID portion (4630 irrigable acres) of the unitary place of use for these six water rights confirmed by the Acquavella Court for the United States on behalf of Sunnyside Division. This water conservation project will also augment instream flows for an 80-mile segment of the Yakima River, from river mile 103.8 (the Sunnyside Diversion Dam) downstream to the point on the Yakima River where the last of the return flows from the BID irrigation service area discharge to the Yakima River at river mile 23.8 (the old Kiona Canal wasteway return), for the benefit of fish and wildlife, water quality, and wetlands habitat.

The unitary place of use for these six U.S./Sunnyside Division water rights is confirmed by the Yakima Adjudication Court as 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division.

The BID has historically been the last Sunnyside Division member water user district supplied water by the Sunnyside Canal, situated at the physical end of the approximately 100-mile long Sunnyside Canal. BID's location at the end of the canal has made it difficult for Sunnyside and BID water managers to maintain a full water supply for BID water users at certain times in the past. The proposed added POD will improve the security of BID's irrigation water supply in the future.

The Sunnyside Division Board of Control has historically managed its several water rights as one 'blended' source of water, once that water has been diverted out of the river and into the Sunnyside Canal. Each of its water users, including BID, has historically been entitled to an equal allocation share of whatever water the entire Sunnyside Division has been entitled to divert for irrigation and related uses during the irrigation season in a water short year. This practice has been recognized by the Yakima Adjudication Court in its August 14, 2003 Conditional Final Order and Amended Stipulation Re: Sunnyside Division, Court Claim No. 1752. The Sunnyside Division Water Right Settlement Agreement, filed with the Adjudication Court on May 12, 2003, and as amended on August 12, 2003, in paragraph 17 on page 27, defines the Sunnyside Division's annual water allocation in the Yakima Basin's Total Water Supply Available (TWSA) water management scheme, as derived from the federal water service contracts for the Sunnyside Division, the U.S. District Court, Eastern District of Washington, January 31, 1945 Judgment in *Kittitas Reclamation District, et al. vs. Sunnyside Valley Irrigation District, et al.* (1945 Judgment, at paragraphs 3 and 19), and historic water delivery practices by Reclamation. The Amended Sunnyside Division Water Right Settlement Agreement defines the Sunnyside Division annual water allocation in TWSA as 68.9% non-proratable and 31.1% proratable. This is based on the federal water contract "entitlement" amounts that contractually authorize Sunnyside Division a total of 458,520 acre-feet per year (ac-ft/yr) of water, allocated as 315,836 ac-ft/yr non-proratable (68.9%) and 142,684 ac-ft/yr proratable (31.1%).

In the Yakima Basin, water rights senior in priority to the May 10, 1905 priority date of the federal Yakima Project water rights are generally classed as non-proratable water rights under the TWSA water management scheme established by the 1945 Judgment and as managed each year by Reclamation. May 10, 1905 priority water rights in the Yakima Basin are generally classed as proratable water rights that are subject to prorationing during drought years in the basin when inadequate water is available to fully satisfy both the non-proratable senior priority water rights and the proratable junior priority water rights.

The current set of six water right change applications filed by BID propose to add a POD (the proposed BID pump plant) to each of the six water rights confirmed by the Adjudication Court to the United States on behalf of Sunnyside Division for irrigation during irrigation season and related uses (April 1-October 31 each year). In this way, the United States and the Sunnyside Division Board of Control agree to allow BID in the future to continue to use its same "blended" allocation share of available water that BID has received in the past from the Sunnyside Canal, no longer from the Sunnyside Canal, but instead redirected downstream to the proposed BID Yakima River pump plant. This "blended" BID water allocation share of the six U.S./Sunnyside Division water rights will continue to be 68.9% non-proratable and 31.1% proratable, under the TWSA water management scheme established by the 1945 Judgment and managed each year by the U.S. Bureau of Reclamation, and will be diverted by BID exclusively from the proposed new added diversion point, the pump plant located approximately at river mile 32.5, that will contractually deliver water only to the BID portion (4630 irrigable acres) of the unitary place of use for these six U.S./Sunnyside Division water rights.

The total amount of Yakima River water authorized to be diverted under this set of six water rights confirmed by the Yakima Adjudication Court to the United States on behalf of Sunnyside Division for irrigation during irrigation season and related uses is 435,422 ac-ft/yr. The portion of this set of six water rights that BID has historically used is a total of 21,044 ac-ft/yr of water from the Yakima River, or the equivalent of 4.833% of each of the six individual U.S./Sunnyside Division water rights [21,044 ac-ft/yr divided by 435,422 ac-ft/yr = 0.0483301 = 4.833%].

This YRBWEP-funded water conservation project will create up to as much as 18 cubic feet per second (cfs) of water savings that will, by processing a set of six separate trust water right applications to be filed with Ecology in the near future, be placed into the State Trust Water Rights Program, for primary reach instream flow augmentation trust water right use in the Yakima River. The U.S. Bureau of Reclamation (Reclamation), Sunnyside Division (Sunnyside), and the Benton Irrigation District (BID), will submit the necessary six trust water right applications, one for each of these six affected water rights, upon completion of this water conservation project or sooner, upon final quantification of the resulting saved water.

Additional de facto instream flow augmentation will occur by the redirection of the entire irrigation water demand for the BID portion (4630 irrigable acres) of the unitary Sunnyside Division place of use downstream to the proposed new pump plant at approximately river mile 32.5, about 71.3 miles downstream. The BID diversion amount at the new pumpsite will be contractually limited to 'up to a maximum of' 60 cfs, 15,623 acre-feet annually. Sunnyside Division has contractually agreed to reduce its diversion at Sunnyside Diversion Dam by 70 cfs, 21,044 acre-feet of water annually, such quantity to be redirected to the proposed additional downstream POD (pump plant), in order to accommodate BID's use of the new downstream pump plant as its sole source of its water supply for its portion of the United States/Sunnyside Division water rights. The parties have agreed to these water diversion reduction quantities in the November 4, 2008 "Diversion Reduction Agreement, Sunnyside Division Board of Control-Benton Irrigation District-United States Bureau of Reclamation", as amended by the February 19, 2009 "Addendum to Diversion Reduction Agreement, Sunnyside Division Board of Control-Benton Irrigation District-United States Bureau of Reclamation"

Current estimates of water savings that will be placed into the State Trust Water Rights Program, by the trust water right applications that will be filed in the future, are 2524 ac-ft/yr of historic conveyance loss water in the Sunnyside Canal and an additional 2897 ac-ft/yr of water savings within the BID service area, for a total of 5421 ac-ft/yr of conserved water [Note: 21,044 ac-ft/yr for BID, less 5421 ac-ft/yr of conserved trust water, = the 15,623 ac-ft/yr diversion limit for BID at its proposed new downstream pumpsite]. This conserved water will be transferred in the future to the State Trust Program for primary reach instream flow augmentation trust water right use in the Yakima River, beginning at Sunnyside Diversion Dam at river mile 103.8 and ending 80 miles downstream at the old Kiona Canal wasteway return to the Yakima River at river mile 23.8, where the last return flows from the BID service area return to the Yakima River.

The parties will place the saved water into the State Trust Water Rights Program under the provisions of the Memorandum of Understanding between the U.S. Bureau of Reclamation and the Washington State Department of Ecology "for Water Marketing and for Management of Trust Water Rights in the Yakima River Basin", entered July 9, 2008.

Application Fees

RCW 90.03.470(3)(c)(ii) provides that no ($0.00) examination fee is required for "an application to process a change when the department otherwise acquires a trust water right for purposes of improving instream flows or for other public purposes".

Expedited Processing

This application for change qualifies for expedited processing under WAC 173-152-050(3)(a) whereby water right change applications may be processed prior to applications submitted at an earlier date when the proposed water use, if approved, would substantially enhance or protect the quality of the natural environment. The requested water right change is an integral part of the larger Yakima River Basin Water Enhancement Project, whose goals include enhancing and augmenting instream flows for the benefit of fish and wildlife, improving water management, improving water quality, enhancing wetlands, and improving habitat by other appropriate means; and improving the reliability of water supply for irrigation for existing Yakima Basin water rights.

This change proposal will substantially augment instream flows in the critically dewatered reach of the lower Yakima River below Sunnyside Diversion Dam. This change proposal will play a role in achieving the goals of improving fish flows and habitat and improving water quality during critical fish migration periods and throughout the irrigation season, and improving water management and the reliability of irrigation water supply for BID. The Yakima River and its tributaries contain habitats that support the migration, rearing, and spawning of a suite of salmonid species, including ESA-listed species such as Mid-Columbia Steelhead and Bull Trout, both listed as threatened in the Yakima Basin.

Attributes of the Six Water Rights Confirmed for Irrigation during Irrigation Season and Related Uses to the United States on Behalf of Sunnyside Division under Court Claim No. 1752 and Proposed Change

Table 1 Summary of Proposed Changes to Water Right No. CS4-1752CTCL

Attributes	*Existing*	*Proposed*
Name	United States on behalf of Sunnyside Division	United States on behalf of Sunnyside Division
Priority Date | Date of Application for Change	**Priority Date** June 29, 1878	**Application Date** October 16, 2008
Instantaneous Quantity	24 cfs	24 cfs
Annual Quantity	1925 ac-ft/yr	1925 ac-ft/yr
Source	Yakima River	Yakima River
Point of Diversion/Withdrawal	Existing POD from Yakima River: 130 feet south and 1500 feet west of the east quarter corner of Section 28, being within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M.	Proposed Additional POD from Yakima River: TBD - Approximate probable location is 480 feet west and 3989 feet south of the NE corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M.
Purpose of Use	Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses	Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses
Period of Use	April 1 through October 31	April 1 through October 31
Place of Use	Irrigable acres within the Sunnyside Division exterior boundaries as of the date of the Stipulation filed with the court on 8-12-2003, as described in the metes and bounds legal description and the map filed with the Stipulation. The legal description is controlling as the description of the Sunnyside Division's place of use.	Irrigable acres within the Sunnyside Division exterior boundaries as of the date of the Stipulation filed with the court on 8-12-2003, as described in the metes and bounds legal description and the map filed with the Stipulation. The legal description is controlling as the description of the Sunnyside Division's place of use.

Table 2 Summary of Proposed Changes to Water Right No. CS4-1752CTCL@1

Attributes	*Existing*	*Proposed*
Name	United States on behalf of Sunnyside Division	United States on behalf of Sunnyside Division
Priority Date | Date of Application for Change	**Priority Date** June 30, 1878	**Application Date** October 16, 2008
Instantaneous Quantity	34 cfs	34 cfs
Annual Quantity	14,089 ac-ft/yr	14,089 ac-ft/yr
Source	Yakima River	Yakima River
Point of Diversion/Withdrawal	Existing POD from Yakima River: 130 feet south and 1500 feet west of the east quarter corner of Section 28, being within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M.	Proposed Additional POD from Yakima River: TBD - Approximate probable location is 480 feet west and 3989 feet south of the NE corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M.
Purpose of Use	Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses	Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses
Period of Use	April 1 through October 31	April 1 through October 31
Place of Use	Irrigable acres within the Sunnyside Division exterior boundaries as of the date of the Stipulation filed with the court on 8-12-2003, as described in the metes and bounds legal description and the map filed with the Stipulation. The legal description is controlling as the description of the Sunnyside Division's place of use.	Irrigable acres within the Sunnyside Division exterior boundaries as of the date of the Stipulation filed with the court on 8-12-2003, as described in the metes and bounds legal description and the map filed with the Stipulation. The legal description is controlling as the description of the Sunnyside Division's place of use.

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Table 3 Summary of Proposed Changes to Water Right No. CS4-1752CTCL@2

Attributes	*Existing*	*Proposed*
Name	United States on behalf of Sunnyside Division	United States on behalf of Sunnyside Division
Priority Date | Date of Application for Change	**Priority Date** September 3, 1890	**Application Date** October 16, 2008
Instantaneous Quantity	537 cfs	537 cfs
Annual Quantity	145,776 ac-ft/yr	145,776 ac-ft/yr
Source	Yakima River	Yakima River
Point of Diversion/Withdrawal	Existing POD from Yakima River: 130 feet south and 1500 feet west of the east quarter corner of Section 28, being within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M.	Proposed Additional POD from Yakima River: TBD - Approximate probable location is 480 feet west and 3989 feet south of the NE corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M.
Purpose of Use	Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses	Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses
Period of Use	April 1 through October 31	April 1 through October 31
Place of Use	Irrigable acres within the Sunnyside Division exterior boundaries as of the date of the Stipulation filed with the court on 8-12-2003, as described in the metes and bounds legal description and the map filed with the Stipulation. The legal description is controlling as the description of the Sunnyside Division's place of use.	Irrigable acres within the Sunnyside Division exterior boundaries as of the date of the Stipulation filed with the court on 8-12-2003, as described in the metes and bounds legal description and the map filed with the Stipulation. The legal description is controlling as the description of the Sunnyside Division's place of use.

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Table 4 Summary of Proposed Changes to Water Right No. CS4-1752CTCL@3

Attributes	*Existing*	*Proposed*
Name	United States on behalf of Sunnyside Division	United States on behalf of Sunnyside Division
Priority Date | Date of Application for Change	**Priority Date** July 18, 1893	**Application Date** October 16, 2008
Instantaneous Quantity	30 cfs	30 cfs
Annual Quantity	12,698 ac-ft/yr	12,698 ac-ft/yr
Source	Yakima River	Yakima River
Point of Diversion/Withdrawal	Existing POD from Yakima River: 130 feet south and 1500 feet west of the east quarter corner of Section 28, being within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M.	Proposed Additional POD from Yakima River: TBD - Approximate probable location is 480 feet west and 3989 feet south of the NE corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M.
Purpose of Use	Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses	Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses
Period of Use	April 1 through October 31	April 1 through October 31
Place of Use	Irrigable acres within the Sunnyside Division exterior boundaries as of the date of the Stipulation filed with the court on 8-12-2003, as described in the metes and bounds legal description and the map filed with the Stipulation. The legal description is controlling as the description of the Sunnyside Division's place of use.	Irrigable acres within the Sunnyside Division exterior boundaries as of the date of the Stipulation filed with the court on 8-12-2003, as described in the metes and bounds legal description and the map filed with the Stipulation. The legal description is controlling as the description of the Sunnyside Division's place of use.

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Table 5 Summary of Proposed Changes to Water Right No. CS4-1752CTCL@4

Attributes	*Existing*	*Proposed*
Name	United States on behalf of Sunnyside Division	United States on behalf of Sunnyside Division
Priority Date | Date of Application for Change	**Priority Date** May 9, 1905	**Application Date** October 16, 2008
Instantaneous Quantity	2 cfs	2 cfs
Annual Quantity	138 ac-ft/yr	138 ac-ft/yr
Source	Yakima River	Yakima River
Point of Diversion/Withdrawal	Existing POD from Yakima River: 130 feet south and 1500 feet west of the east quarter corner of Section 28, being within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M.	Proposed Additional POD from Yakima River: TBD - Approximate probable location is 480 feet west and 3989 feet south of the NE corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M.
Purpose of Use	Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses	Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses
Period of Use	April 1 through October 31	April 1 through October 31
Place of Use	Irrigable acres within the Sunnyside Division exterior boundaries as of the date of the Stipulation filed with the court on 8-12-2003, as described in the metes and bounds legal description and the map filed with the Stipulation. The legal description is controlling as the description of the Sunnyside Division's place of use.	Irrigable acres within the Sunnyside Division exterior boundaries as of the date of the Stipulation filed with the court on 8-12-2003, as described in the metes and bounds legal description and the map filed with the Stipulation. The legal description is controlling as the description of the Sunnyside Division's place of use.

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Table 6 Summary of Proposed Changes to Water Right No. CS4-1752CTCL@5

Attributes	*Existing*	*Proposed*
Name	United States on behalf of Sunnyside Division	United States on behalf of Sunnyside Division
Priority Date | Date of Application for Change	**Priority Date** May 10, 1905	**Application Date** October 16, 2008
Instantaneous Quantity	689 cfs	689 cfs
Annual Quantity	260,796 ac-ft/yr	260,796 ac-ft/yr
Source	Yakima River	Yakima River
Point of Diversion/Withdrawal	Existing POD from Yakima River: 130 feet south and 1500 feet west of the east quarter corner of Section 28, being within the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M.	Proposed Additional POD from Yakima River: TBD - Approximate probable location is 480 feet west and 3989 feet south of the NE corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M.
Purpose of Use	Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses	Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, and related uses
Period of Use	April 1 through October 31	April 1 through October 31
Place of Use	Irrigable acres within the Sunnyside Division exterior boundaries as of the date of the Stipulation filed with the court on 8-12-2003, as described in the metes and bounds legal description and the map filed with the Stipulation. The legal description is controlling as the description of the Sunnyside Division's place of use.	Irrigable acres within the Sunnyside Division exterior boundaries as of the date of the Stipulation filed with the court on 8-12-2003, as described in the metes and bounds legal description and the map filed with the Stipulation. The legal description is controlling as the description of the Sunnyside Division's place of use.

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change to add an additional POD:

- **Public Notice**
  The applicant published a consolidated public notice for these six change applications in the Yakima Herald-Republic newspaper on January 22, 2009 and January 29, 2009. Ecology received no letters of protest during the 30-day protest period that ended on February 28, 2009.

  The applicant published a second consolidated public notice for these six change applications in the Tri-City Herald newspaper on January 23, 2009 and January 30, 2009. Ecology received no letters of protest during the 30-day protest period that ended on March 1, 2009.

- **State Environmental Policy Act (SEPA)**
  This project required a SEPA review under WAC 197-11-800(4). Benton County, acting as the SEPA lead agency for this project, determined that this project will have no probable significant adverse impact on the environment and issued a Determination of Nonsignificance (DNS) on April 29, 2009. The DNS and the entire official SEPA file for this project are available from the Benton County Planning Department in Prosser, WA, at (509) 786-5612; or a copy of the DNS is available by contacting Ecology's Central Region Office in Yakima, WA, at (509) 575-2490.

- **Water Resources Statutes and Case Law**
  RCW 90.03.380(1)
  States a water right that has been put to beneficial use may be changed. The POD, place of use, and purpose of use may be changed if it would not result in detriment or injury to other water rights.

  WAC 173-152-050(3)(a)
  States that an application for change or transfer to an existing water right may be processed prior to competing applications provided the change or transfer, if approved, would substantially enhance the quality of the natural environment.

  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 (See *R.D. Merrill v. PCHB and Okanogan Wilderness League v. Town of Twisp*). This is necessary to establish whether the claim or right is eligible for change. In this case, the proposed six water rights for change have been adjudicated by the Yakima Superior Court and a Conditional Final Order (CFO) for the Sunnyside Division Court Claim No. 1752 issued on August 14, 2003. As there has been at least a 5 year period since the issuance of the CFO, a tentative determination of the extent and validity of these six rights is required.

INVESTIGATION

The author, Stan Isley, is Ecology's liaison to the YRBWEP team at the Bureau of Reclamation. This federal YRBWEP Act was enacted by Congress in 1994 as Title XII of Public Law 103-434. The YRBWEP Act's goals are to enhance and augment instream flows for the benefit of fish and wildlife, improve water management, improve water quality, enhance wetlands, improve habitat by other appropriate means, and improve the reliability of water supply for existing Yakima Basin water rights. A major component of the 1994 YRBWEP Act is the Basin Conservation Program's grant program that funds water use efficiency and water conservation improvements for participating irrigation districts and entities in the Yakima Basin. YRBWEP provides funding for water conservation planning and feasibility studies for participating entities, and then provides funding for implementation of water conservation measures with the following cost-share: 82.5% federal grant, 17.5% state grant, and 17.5% local (i.e., district or entity) funding. The resulting water savings result in a formal diversion reduction agreement entered with the participating entity that puts two-thirds (2/3rds) of the conserved water instream for instream target flow augmentation, and one-third (1/3rd) of the conserved water that is allocated to the participating irrigation district or entity to improve the reliability of that entity's water supply during drought years for its existing service area acreage.

The YRBWEP team has been working with BID and the Sunnyside Division for longer than 5 years to fund water conservation projects within the Sunnyside Division. This set of six applications to add a POD to each of these six U.S./Sunnyside Division water rights is a component of a YRBWEP-funded water conservation program for BID that will improve the security of the BID water supply for irrigation and related uses during irrigation season and will augment instream flows in the Yakima River from the current Sunnyside Canal diversion point to the proposed new pump plant located 71.3 river miles downstream, with some additional instream flow augmentation resulting from water conservation on the BID service area extending an additional 9 miles further downstream in the Yakima River. The current set of six applications represent a simple request to add a POD to each of the six water rights confirmed to the United States on behalf of Sunnyside Division, for irrigation of 99,244 irrigated acres of the total 103,570 irrigable acres and related uses within the unitary place of use of the Sunnyside Division from April 1 through October 31 each year, upon entry of the Adjudication Court's Conditional Final Order (CFO) for the Sunnyside Division on August 14, 2003.

The author's investigation has included:

- various site visits to portions of the Sunnyside Division and BID project area over the last several years and ongoing visits;
- meetings with the BID and Sunnyside Division district managers and consultants;
- review of the BID water conservation planning documents funded with YRBWEP funds;
- review of the Adjudication Court CFO and associated documents relating to the Court's confirmation of the water rights to the United States on behalf of Sunnyside Division;
- review of federal contracts and other agreements related to the water rights and water deliveries to the Sunnyside Division and BID;
- extensive conversations and negotiations about this project with YRBWEP team members and irrigation district staff and managers;
- review of stream flow data, fisheries concerns, tribal and federal and WDFW interests and issues, maps, and other relevant information; and
- review of the Washington State Water Code, relevant case law, and administrative rules and policies.

History of Water Use

The Sunnyside Division, currently including the BID service area, is located in the Yakima River Basin of south central Washington State, wholly within Water Resources Inventory Area (WRIA) 37. The entire Sunnyside Division, including the BID, is situated within the lower Yakima River Basin downstream of the City of Yakima and extending southeasterly to the Benton City area. The Sunnyside Division is generally northerly and outside of the boundaries of the Yakama Reservation. The Yakima River, a tributary of the Columbia River, is the source of the water supply for irrigation and related uses during irrigation season each year for the Sunnyside Division, including the BID, under the authority of the six water rights confirmed for these purposes to the United States on behalf of the Sunnyside Division by entry of the Court's August 14, 2003 CFO.

The Adjudication Court confirmation of these water rights for the United States on behalf of Sunnyside Division came after the completion of a mediation process occurring over a period of more than a year among the major claimants and other affected parties in the Yakima Basin Adjudication. The Sunnyside Division Water Right Settlement Agreement is the culmination of that mediation effort, representing the consensus agreement of the parties, including the United States, the Sunnyside Division and its member entities including BID, the Yakama Nation, and Ecology. The parties filed the Amended Settlement Agreement and an Amended Stipulation Re: Sunnyside Division water rights with the Court on August 12, 2003, and those documents became the foundation documents for the Court's CFO entered on August 14, 2003, confirming all of the water rights of the United States on behalf of Sunnyside Division, including the subject six water rights requesting the additional POD.

These six U.S./Sunnyside Division water rights were perfected over time, beginning with the June 29, 1878 priority water right and concluding with the May 10, 1905 priority water right. A lengthy description of the history of the water right development for these six water rights confirmed to the United States on behalf of Sunnyside Division can be found in the October 23, 2001 Report of the Court for Sunnyside Division and in the May 12, 2003 Sunnyside Division Water Right Settlement Agreement, as amended on August 12, 2003. The court confirmed these six water rights for the irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses during the April 1 through October 31 irrigation season each year. The Sunnyside Division is supplied water from the Yakima River via one approximately 100-mile long main canal and lateral gravity-feed delivery system, beginning at the Sunnyside Diversion Dam near Parker.

The Sunnyside Division, including BID, has fully exercised its confirmed water rights, with actual annual diversion quantities varying from year to year, depending on annual climatic conditions and annual water demand within the Division, and depending on yearly water supply and periodic prorationing or reduction of its water supply imposed by Reclamation's management of the Yakima Basin TWSA. The Sunnyside Division Board of Control has historically managed these six water rights confirmed to the US/Sunnyside Division for irrigation and related uses during irrigation season as one "blended" water supply, despite the varying priority dates of each water right, once the water left the Yakima River and entered the Sunnyside Canal. Each of the Sunnyside Division water users, including BID water users, has historically enjoyed the same water allocation during water short years, as a result of this equitable shared-delivery policy. The mix of Sunnyside Division water rights, as defined by the 1945 Judgment of Federal District Court, confirmed by Acquavella Court rulings, federal water delivery contract limitations and provisions, and the historic practices of Reclamation and the Sunnyside Division Board of Control, provides a 68.9% non-proratable, 31.1% proratable water supply during water short years to all of the Sunnyside Division water users.

The Court entered its CFO for the Sunnyside Division Court Claim No. 1752 on August 14, 2003. Subsequently, in March 2005, the Governor and the Director of the Department of Ecology issued a statewide drought declaration for 2005. Yakima Basin water right holders suffered a shortfall in water supply in 2005, resulting in a final prorationing level of 41% of full water entitlement being imposed on the proratable "junior priority" water rights in the Yakima Basin by Reclamation. Additionally, all Yakima Basin water right holders were encouraged to conserve water that year to stretch the poor water supply as far as possible and share the shortfall. Reclamation imposed a water conserving management measure at the early part of the 2005 irrigation season, prior to the "storage control date" (i.e., prior to the date when the releases from the federal storage reservoirs exceed the inflows, and the reservoirs begin drafting stored water in order to meet downstream water demand), in which all of the water users accept what Reclamation refers to as the users' natural river proportion (NRP). This NRP water management operation requires all water users, both senior-priority non-proratable rights and junior-priority proratable rights, to accept a lesser amount of water than their full "entitlement" amount for a period of time early in the irrigation season in order to allow Reclamation to maximize the water it can store in the federal Yakima Project reservoirs to meet demand later in the year. The districts and water users get what water is present in the river (thus, 'natural river proportion') for their use during this early-season spring runoff period for as long as NRP operations are feasible. At the end of the 2005 irrigation season, the final total of water supply that the proratable water rights received totaled just 41% of their full water delivery contract "entitlement" amount.

In the 2005 irrigation season, these six water rights confirmed to the U.S. on behalf of Sunnyside Division for irrigation and related uses from April 1 through October 31, all received a reduced supply of water as a result of the declared statewide drought and the resultant prorationing in the Yakima River Basin. Recall that 31.1% of the U.S./Sunnyside Division water rights are proratable, and received only 41% of their full "entitlement" amount in 2005. The 68.8% of the U.S./Sunnyside Division water rights that are non-proratable still suffered reduction in their 2005 water supply as a result of the NRP water management operation implemented by Reclamation for several weeks in the early part of the 2005 irrigation season, and because all water purveyors made their best effort to reduce their water demand and water use by better/tighter water management practices during 2005.

Consistent with the normal practice of the Acquavella Court as it has conducted the Yakima Surface Water Right Adjudication proceedings, the 2005 drought year must be thrown out as a year of record for the purpose of determining the possible relinquishment or partial relinquishment of these six U.S./Sunnyside Division water rights. RCW 90.14.140(1)(a) provides that "(d)rought, or other unavailability of water" is a sufficient cause for non-use of water.

RCW 90.14.160 provides that failure, without sufficient cause, to beneficially use all or any portion of a water right for five successive years after July 1, 1967, results in relinquishment of that water right or portion thereof.

The Adjudication Court's CFO for Sunnyside Division, Court Claim No. 1752, was entered on August 14, 2003. One and a half years after entry of that CFO, the 2005 statewide drought was officially declared and represented sufficient cause for non-use of a portion of these six U.S./Sunnyside Division water rights. Only 3 years of usage of these six U.S./Sunnyside Division water rights have passed since the end of the 2005 drought. No period of five successive years of water usage has transpired, during which there was no sufficient cause for nonuse of water (as there was during the 2005 drought), since the entry of the Court's August 14, 2003 CFO for these six U.S./Sunnyside Division water rights.

The Sunnyside Canal is equipped with a measuring device immediately below its Yakima River diversion near Parker Washington. The measuring device is maintained and continuously monitored by Reclamation and is connected via satellite telemetry to Reclamation's Hydromet system. Online real-time flow data and instantaneous and annual diversion records for the Sunnyside Division, including BID, over a long period of record, are available on Reclamation's Hydromet webpage. These historical diversion records provided a basis for the determinations by the mediation group and the Acquavella Court of the extent and validity of these six subject U.S./Sunnyside Division water rights.

Reclamation and BID will equip the proposed additional diversion point, the proposed new downstream pump plant, with a measuring device that will also be connected via telemetry to Reclamation's Hydromet system, allowing access to real-time diversion data via the Reclamation Hydromet internet website.

Reclamation and BID intend to equip the proposed new pump plant intake from the Yakima River with fish screens designed to Reclamation and state standards.

Proposed Use

Reclamation, Sunnyside Division, and BID, all propose to add a POD to each of the subject six water rights confirmed by the Court to the United States on behalf of Sunnyside Division for irrigation and related uses during the April 1 through October 31 irrigation season. This proposed additional POD is a new pump plant to be constructed on the Yakima River upstream of Benton City, approximately 71.3 river miles downstream of the currently-authorized Sunnyside Canal diversion point for these six water rights.

This downstream added diversion point will be contractually limited to use only by BID as BID's exclusive source of water to satisfy BID's water demand on the BID portion (4630 irrigable acres) of the unitary place of use confirmed for the Sunnyside Division.

This added diversion point will enable BID to upgrade its current inefficient irrigation water delivery system to a pipeline system delivering pressurized water to the BID farm turnouts. This new pump and pipeline system will enable BID to improve the security of its water supply to its water users and will conserve a substantial amount of water currently lost on the BID service area as a result of delivery system losses and inefficiencies. The conserved water will be placed in the State Trust Water Rights Program by separate application process in the near future.

Reclamation and Ecology have negotiated separate contract agreements and diversion reduction agreements with BID and the Sunnyside Division Board of Control to fund and otherwise accommodate this water conservation project.

The author determined the development schedule after conversations with his fellow YRBWEP team member Jerry Jacoby to ensure that the proposed development schedule is consistent with BID's proposed construction schedule. The development schedule is reasonable and leaves a little bit of additional time for BID, Sunnyside Division, and Reclamation to complete construction and for BID to put the water to full beneficial use.

Other Rights Appurtenant to the Place of Use

The Court confirmed two other surface water rights from the Yakima River that are appurtenant to the Sunnyside Division or to a part of the Sunnyside Division place of use:

1) A "flood water" right to the United States on behalf of Sunnyside Division for diversion from the Yakima River and carriage in the Sunnyside Canal of up to 700 cfs, 12,000 ac-ft/yr of water from March 1 through March 31 during years when Reclamation determines flood water is available, for irrigation and related uses during March, with a May 10, 1905 priority date. This right is confirmed as generally appurtenant to the entire Sunnyside Division service area, but has not generally been used in the past by BID and will not be used by BID in the future, and will not be affected in any way by this set of six applications to add a POD to the subject six U.S./Sunnyside Division water rights.

2) A "supplemental" water right to the City of Prosser for diversion from the Yakima River of up to 2.11 cfs, 260 ac-ft/yr of water from April 1 through October 15 each year for "supplemental irrigation of 150 acres" of land within the corporate limits of the City of Prosser, Washington, that are also a portion of ("within and not additive to") the annual maximum 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division, with a February 14, 1941 priority date. The pumped diversion point for this right is within Government Lot 6 of Section 2, T. 8 N., R. 24 E.W.M. Water may not be diverted under this right during the salmon run period when the normal flow of the Yakima River is insufficient to fill the fish ladder at Prosser Dam to capacity; and also no water may be diverted under this right that will interfere with the present or future needs of any U.S. Bureau of Reclamation project.

Other surface and ground water rights exist across this approximately 100,000 acre Sunnyside Division service area, none of which will suffer detriment or injury as a result of this proposed project to add an additional POD, the proposed downstream pump plant on the Yakima River, to each of the subject six water rights confirmed to the United States on behalf of Sunnyside Division for irrigation and related uses during the April 1 through October 31 irrigation season each year.

Hydrologic/Hydrogeologic Evaluation

The subject project and the subject set of six applications to add a POD to each of the subject six U.S./Sunnyside Division water rights propose the following (and the parties have contractually agreed to these actions in a separate agreement, the November 4, 2008 "Diversion Reduction Agreement, Sunnyside Division Board of Control-Benton Irrigation District-United States Bureau of Reclamation", as amended by the February 19, 2009 "Addendum to Diversion Reduction Agreement, Sunnyside Division Board of Control-Benton Irrigation District-United States Bureau of Reclamation"):

1) to contractually reduce the water diversion amount from the Yakima River into Sunnyside Canal by 70 cfs, 21,044 ac-ft/yr, with such quantity of water redirected downstream to the proposed additional downstream POD (pump plant), in order to accommodate BID's use of the new downstream pump plant as its sole source of its water supply for its portion of the U.S./Sunnyside Division water rights.

2) to contractually limit the diversion amount from the Yakima River at the new downstream pump plant to "up to a maximum of 60" cfs,15,623 ac-ft/yr, said water to be used exclusively by BID for irrigation and related uses during the April 1 through October 31 irrigation season each year, as BID's sole source of water supply for its portion of the U.S./Sunnyside Division water rights.

3) to transfer an estimated 5421 ac-ft/yr of conserved water (21,044 – 15,623 = 5421) to the State Trust Water Rights Program for primary reach instream flow enhancement use in an 80-mile reach of the Yakima River from the Sunnyside Diversion Dam downsteam to the end of the primary reach, said instream flow augmentation trust water right reducing to zero at the point approximately 9 river miles below the new pump plant where the old Kiona Canal wasteway discharges to the Yakima River, located at river mile 23.8. This point is the point where the last return flows from the BID service area return to the Yakima River. This conserved water will be transferred to the State Trust Water Rights Program in the near future, upon final quantification of the resulting saved water. Reclamation, the Sunnyside Division Board of Control and BID will submit the necessary six trust water right applications to Ecology, one for each of these six affected water rights.

Impairment Considerations

This contractual (i.e., the 'Diversion Reduction Agreement' described above) reduction in the diversion amount at the Sunnyside Canal diversion from the Yakima River at river mile 103.8, which totals 70 cfs, 21,044 ac-ft/yr; the redirection of this diversion reduction amount downstream in the Yakima River towards the proposed additional POD (new pump plant) for the six subject U.S./Sunnyside Division water rights, located 71.3 miles downstream at approximately river mile 32.5; the contractual diversion limit at the additional diversion point of 'up to 60' cfs, 15,623 ac-ft/yr; and the future transfer of the estimated 5421 ac-ft/yr of conserved water to the State Trust Water Rights Program for primary reach instream flow augmentation trust water right use in the Yakima River; will not cause detriment or injury to any other (third-party) water rights.

This project will enhance the instream target flows managed by Reclamation below the Sunnyside Diversion Dam and below the Prosser Diversion Dam, enhance fish and wildlife habitat, improve water quality, and enhance wetlands and riparian floodplain habitats, in the affected primary reach of the Yakima River, which currently is a seriously flow-limited and flow-poor reach of the Yakima River during portions of every year.

This project will improve the reliability of irrigation water supply for the BID portion of the unitary U.S/Sunnyside Division place of use.

Consideration of Protests and Comments

Ecology received no protests or formal comments to this set of six applications. This water conservation and water use efficiency improvement project has widespread support among the parties involved, including the affected BID water users.

CONCLUSIONS

In accordance with Chapter 90.03 RCW, and after the investigation and examination of the factual information and documents described in this report, the author makes the tentative determination that:

The subject six water rights confirmed by the Adjudication Court to the United States on behalf of Sunnyside Division for irrigation and related uses during the April 1 through October 31 irrigation season each year remain fully valid to the full extent of those water rights as confirmed by the Court's CFO. No period of 5 successive years of nonuse of water without sufficient cause has occurred since the August 14, 2003 date of entry by the Acquavella Court of the CFO for Sunnyside Division Court Claim No. 1752.

Approval of the requested additional downstream POD for each of the subject set of six U.S./Sunnyside Division water rights will not cause detriment or injury or impairment to any other existing water rights.

Approval of the requested additional downstream point of diversion for each of the subject set of six U.S./Sunnyside Division water rights will not enlarge those six subject U.S./Sunnyside Division water rights (Court Claim No. 1752).

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the subject set of six requests (six applications) for change to add a point of diversion to each of the subject six water rights, confirmed to the United States on behalf of Sunnyside Division for irrigation and related uses during the April 1 through October 31 irrigation season each year, and confirmed under Court Claim No. 1752 by the Acquavella Court's August 14, 2003 CFO, be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, et seq.

Purpose of Use and Authorized Quantities

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

1) QUANTITIES AND PRIORITY DATE, which are different for each of the six subject U.S./Sunnyside Division Water Rights:

   a. CS4-1752CTCL
      - Priority Date: June 29, 1878
      - 24 cfs
      - 1925 acre-feet per year

   b. CS4-1752CTCL@1
      - Priority Date: June 30, 1878
      - 34 cfs
      - 14,089 acre-feet per year

   c. CS4-1752CTCL@2
      - Priority Date: September 3, 1890
      - 537 cfs
      - 145,776 acre-feet per year

   d. CS4-1752CTCL@3
      - Priority Date: July 18, 1893
      - 30 cfs
      - 12,698 acre-feet per year

   e. CS4-1752CTCL@4
      - Priority Date: May 9, 1905
      - 2 cfs
      - 138 acre-feet per year

   f. CS4-1752CTCL@5
      - Priority Date: May 10, 1905
      - 689 cfs
      - 260,796 acre-feet per year

2) PURPOSE OF USE for all six Subject U.S./Sunnyside Division Water Rights: Irrigation of a maximum of 99,244 irrigated acres of the total 103,570 irrigable acres within the Sunnyside Division and related uses.

3) PERIOD OF USE for all six subject U.S./Sunnyside Division Water Rights: April 1 through October 31 each year

DRAFT

Point of Diversion

EXISTING YAKIMA RIVER POD (Sunnyside Canal Diversion – all six subject U.S./Sunnyside Division Water Rights):

130 feet south and 1500 feet west from the east quarter corner of Section 28, being within the NW¼SE¼, of Section 28, Township 12 North, Range 19 E.W.M.

ADDITIONAL YAKIMA RIVER POD (New Pump Plant – all six subject U.S./Sunnyside Division Water Rights):

TBD - Approximate probable location is 480 feet west and 3989 feet south of the NE corner of Section 11, being within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

PLACE OF USE for all six subject U.S./Sunnyside Division Water Rights: Per Amended Stipulation entered August 12, 2003, re: Sunnyside Division Court Claim No. 1752, "Irrigable acres within the Sunnyside Division exterior boundaries as of the date of this Stipulation, as described in the Attachment 1 metes and bounds legal description and the Attachment 2 map which are incorporated herein. Attachment 1 is controlling as the description of the Sunnyside Division's place of use." See Attachment 1 copy enclosed.

This water right is confirmed for irrigation of 99,244 irrigated acres of the total 103,570 irrigable acres within the unitary place of use for the Sunnyside Division, and related uses.

Report by: _____ _____

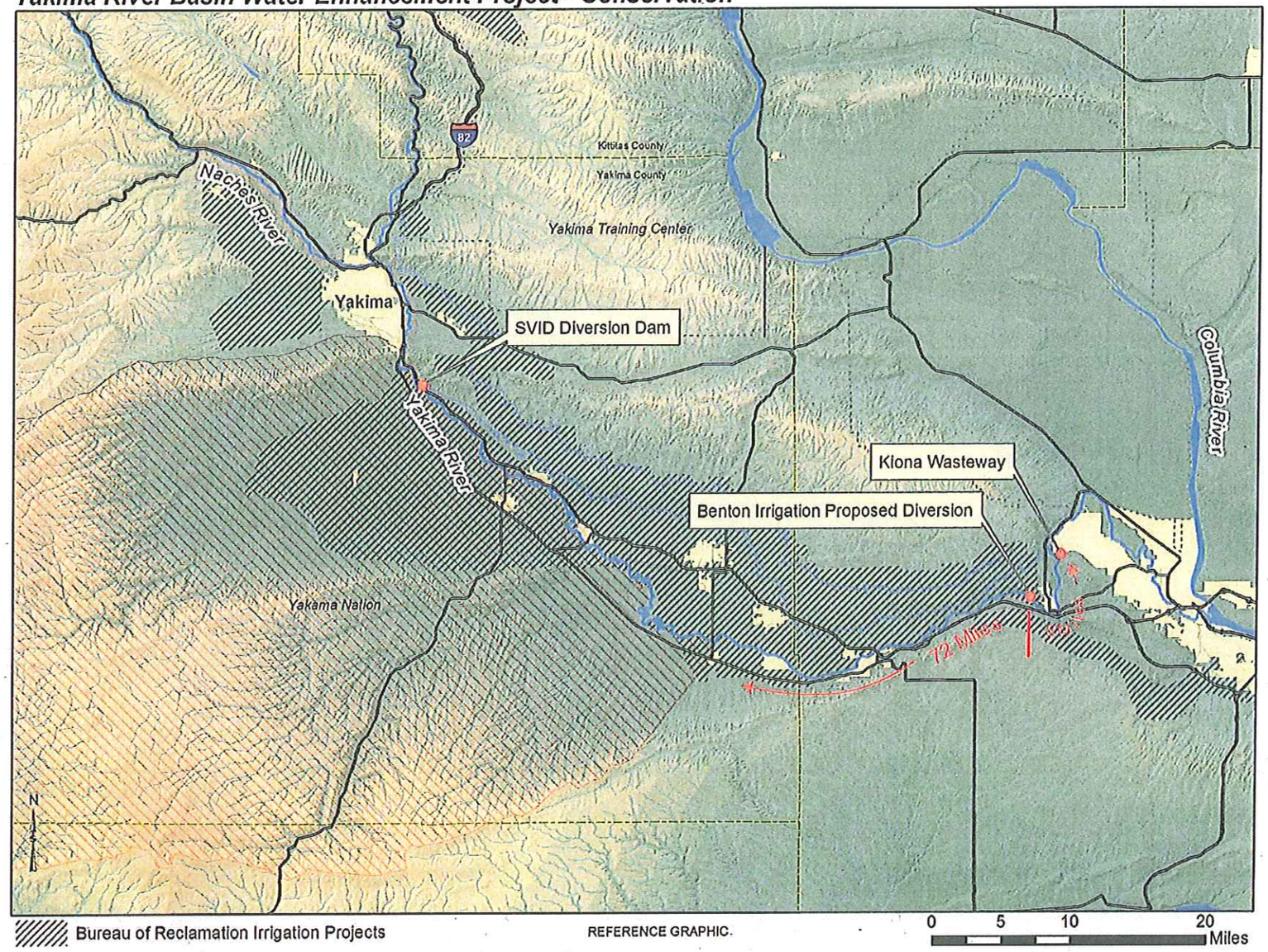
Stan Isley, Water Resources Program Date

DRAFT

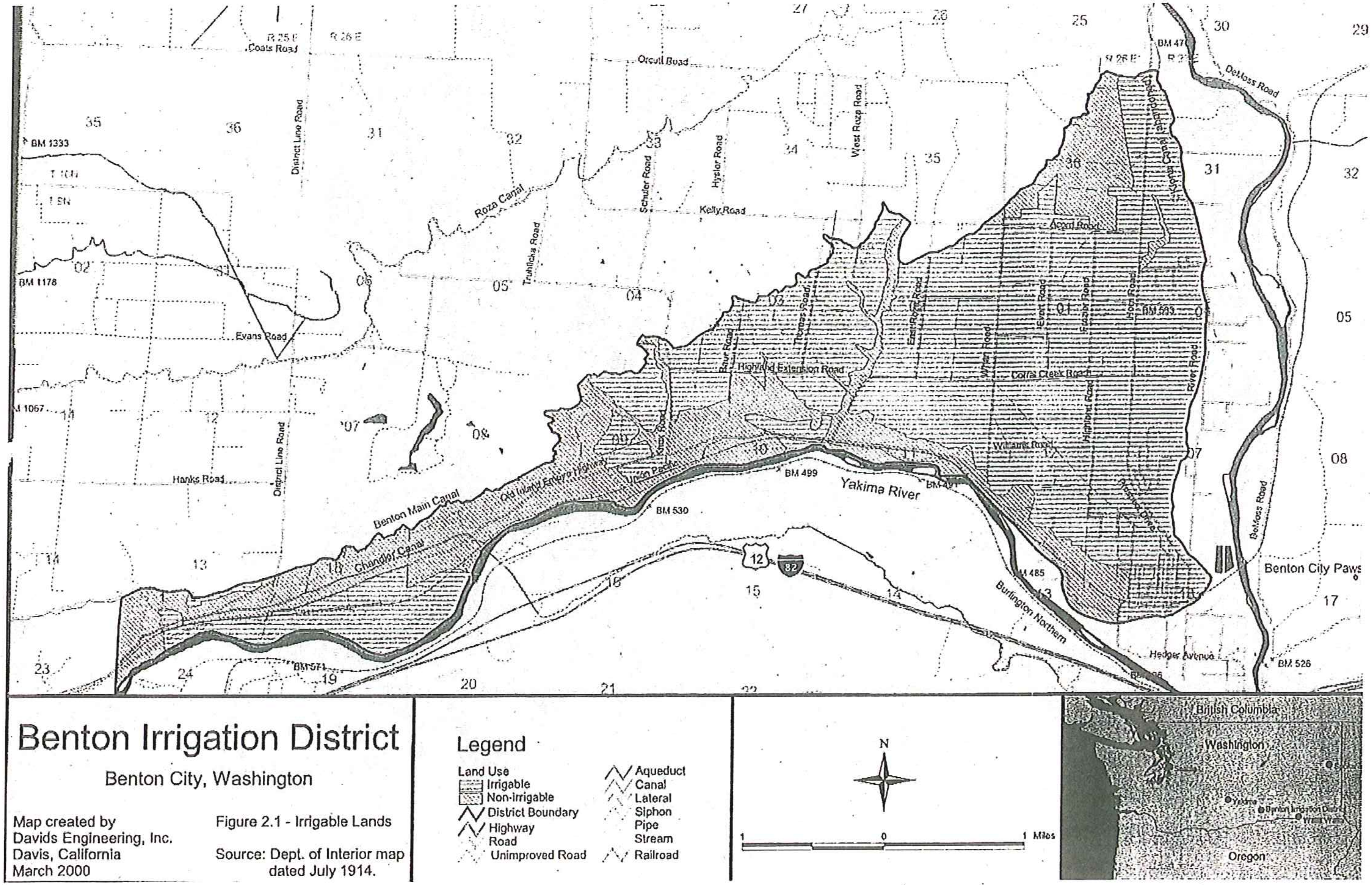
If you need this publication in an alternate format, please call Water Resources Program at 509 575-2490. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Enclosure 1

Yakima River Basin Water Enhancement Project - Conservation



Enclosure 2


Benton Irrigation District
Benton City, Washington
Map created by
Davids Engineering, Inc.
Davis, California
March 2000
Figure 2.1 - Irrigable Lands
Source: Dept. of Interior map
dated July 1914.
Legend
Land Use
Irrigable
Non-Irrigable
District Boundary
Highway
Road
Unimproved Road
Aqueduct
Canal
Lateral
Siphon
Pipe
Stream
Railroad
N
1
0
1 Miles
British Columbia
Washington
Oregon
Yakima River
Roza Canal
Benton Main Canal
Chandler Canal
Burlington Northern
Benton City Paws
Coats Road
Orcutt Road
Evans Road
Hanks Road
Kelly Road
Highland Extension Road
Cotta Creek Road
Williams Road
DeMoss Road
Hedger Avenue
District Line Road
Truhitticks Road
Schuler Road
Hyslop Road
West Roza Road
River Road
Acord Road
Old Inland Empire Highway
BM 1333
BM 1178
BM 1067
BM 499
BM 530
BM 485
BM 526
BM 593
12
82