



State of Washington
TRUST WATER RIGHT
REPORT OF EXAMINATION

File NR: CS4-07252J(A)(b)
WR DOC ID: 4700966

Change Purpose of Use

Change Place of Use

PRIORITY DATE 1889		WATER RIGHT NUMBER Beaver Creek Adjudicated Certificate 252
APPLICANT: Susan Marracci 451 Bally Hill Road Twisp, WA 98856-9762		FILE NUMBER CS4-07252J(A)(b)

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 requested change to Beaver Creek Adjudicated Certificate 252 is not available to be transferred to instream flows.

Therefore, I **ORDER Application No. CS4-07252J(A)(b) be DENIED.**

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearings 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 this 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
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503</p> <p>Pollution Control Hearings Board 1111 Israel Road SW, Ste 301 Tumwater WA 98501</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608</p> <p>Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903</p>

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

Signed at Yakima, Washington, this _____ day of _____, 2013.

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

If you need this document in an alternate format, please call the 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.

INVESTIGATOR'S REPORT

BACKGROUND

On October 14, 2010 Susan Marracci filed Application No. CS4-07252J(A)(b) with the Washington State Department of Ecology (Ecology) to transfer water savings to instream flows, upgrading from hand-lines to center pivot sprinklers. This application is part of an agreement between Susan Marracci and Trout Unlimited (TU), a nonprofit corporation working on behalf of Ecology to increase flows in Beaver Creek during times of critically low flows. TU leased the water savings associated Ms. Marracci's converting from hand-lines to center pivot sprinklers. The agreement stated that Ms. Marracci would lease the portion of saved water associated with Beaver Creek Adjudicated Certificate 252 for 25 years.

Table 1: Attributes of Certificate No. 252 and the Proposed Changes

Attributes	Existing	Proposed
Name	Methow Valley Livestock Company	Trust Portion: Department of Ecology Retained Portion: Susan Marracci, and the other existing property owners
Priority Date/Change Application Date	Priority Date – 1889 (Class 3)	Application Date – October 14, 2010
Instantaneous Quantity	1.21 cfs	Trust Portion: 0.04 cfs in the late season
Purpose of Use	Irrigation of 60.55 acres	Trust Water Portion: Instream Flow Retained Portion: Crop Irrigation
Period of Use	May 1 through September 15	Trust Portion: Instream Flow May 1 through July 31 Remained Portion: May 1 through July 31
Place of Use	S½NW¼ and NE¼NW¼ of Sec. 2, T. 33 N., R. 22 E.W.M.	Trust Water Portion: Instream flow in Beaver Creek Remained Portion: Same
Point of Diversion	SW¼SE¼ of Section 35, T. 34 N., R. 22 E.W.M.	Trust Water Portion: No diversion Remained Portion: Same

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing any change to a water right.

- **Public Notice**
 Notice of the proposed appropriation was published in the Methow Valley News of Twisp, Washington, on November 16th and November 23rd, 2011. The protest period ended on December 24, 2011. One protest letter was received; see the *Protests and Comments* section below.
- **State Environmental Policy Act (SEPA)**
 This project required a SEPA review under WAC-197-11-800(4). Ecology, acting as the SEPA lead agency, determined that this project will not have a probable significant adverse impact on the

environment and issued a Determination of Non-significance (DNS) on January 17, 2012. No comments were received.

- **Water Resources Statutes and Case Law**

Transferring a water right to the Trust Water Right Program is governed by RCW 90.42.

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.

R.D. Merrill v. PCHB and Okanogan Wilderness League v. Town of Twisp.

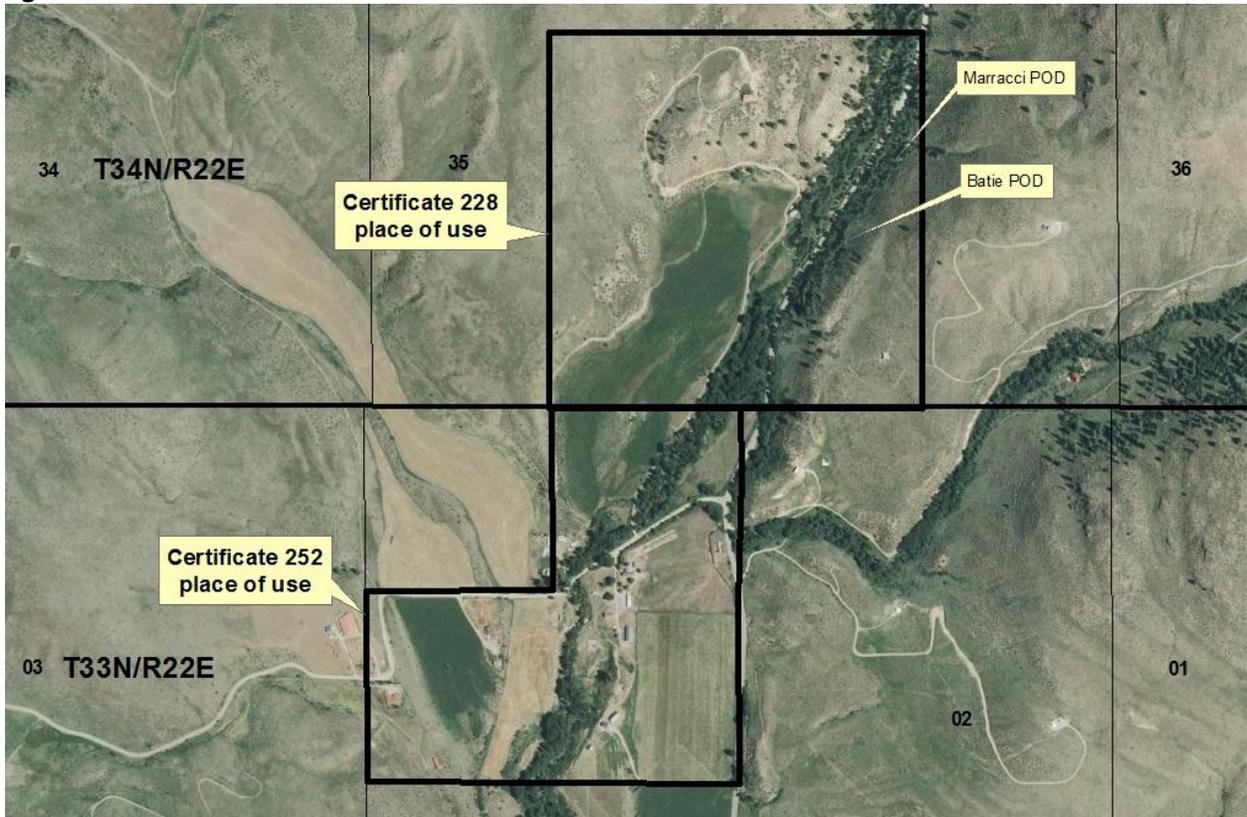
This application qualifies for expedited processing under WAC 173-152-050(3)(a) whereby water right change applications may be processed prior to applications submitted at an earlier date when the proposed water use, if approved, would substantially enhance or protect the quality of the natural environment.

INVESTIGATION

History of Water Use

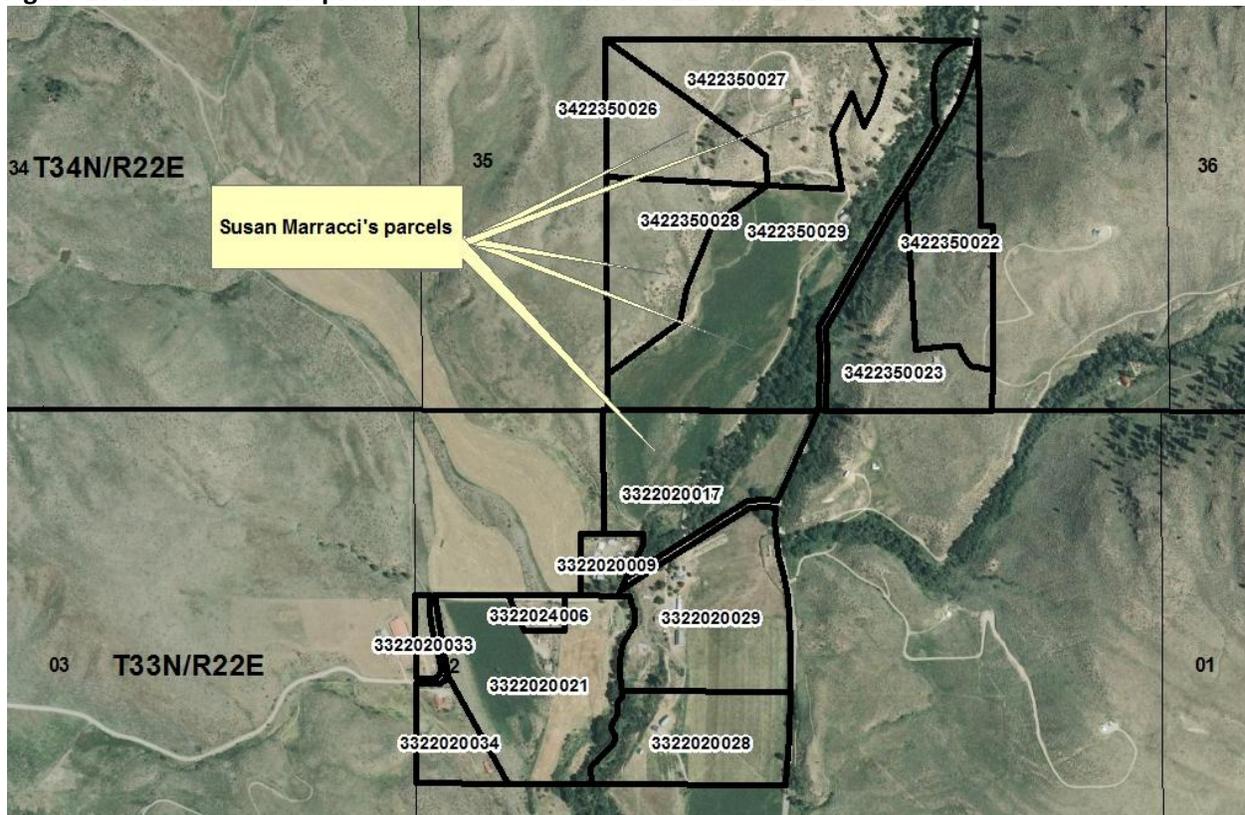
Beaver Creek and its tributaries were adjudicated in Okanogan Superior Court. Final Decree No. 3935 was issued on September 20, 1921. Beaver Creek Adjudicated Certificate No. 252 was issued to the Methow Valley Livestock Company and authorizes the use of 1.21 cfs to irrigate 60.55 acres of irrigation. The authorized point of diversion is in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T. 34 N., R. 22 E.W.M., which is the start of the Beaver Creek Canal. The place of use for Certificate 252 is S $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 2, T. 33 N., R. 22 E.W.M. Currently, there are eight land owners whose parcels intersect the place of use for Certificate 252. Susan Marracci owns a 25.08 acre parcel within the place of use (See Figure 1 and 2 below). Ms. Marracci's fields also straddle the place of use for Certificate 228. Application No. CS4-07228J(A)(b) was also filed requesting to transfer saved water to instream flows. That report is available upon request.

Figure 1: Places of use for Certificates 228 and 252



DRIFT

Figure 2: Parcels with the places of use for Certificates 228 and 252.



Site Visit

On April 12, 2012, Steven Hughes of Hart Crowser Consulting (hired on behalf of Ecology) met with Aaron Penvose of TU to observe the original point of diversion from Beaver Creek, irrigated lands, and irrigation methods.

Other Water Rights Appurtenant to Existing Place of Use

Beaver Creek Adjudicated Certificate 223 was issued to Edward Boning for irrigation of 2 acres and continuous stock and domestic use within the NE¼NW¼ of Section 2, T. 33 N., R. 22 E.W.M. from a point of diversion in the same area.

Tentative Determination of the Extent and Validity

To change a water right, Ecology must make a tentative determination as to the extent and validity of the right. Under RCW 90.14.160, any portion of a water right not exercised for a period of five successive years, without sufficient cause, shall be relinquished and revert to the state.

To assess the extent and validity of Certificate No. 252, past irrigation practices and water use were evaluated. Susan Burgdorff-Beery, Ecology's Watermaster, indicated that records for Beaver Creek were not kept after 2006. Due to limited water use records, aerial photographs of the site provided a better indicator of extent and validity of the right. Aerial photographs from 1964, 1974, 1989, 2000, 2005, 2006, 2009, 2011, 2012 were reviewed to identify the extent of irrigated lands within the authorized place of use.

Certificate 228 authorizes the irrigation of 60.55 acres of which Ms. Marracci owns one parcel (3322020017) within the described place of use. In all of the aerial photos before 2012, there appears that approximately 6 to 7 acres were irrigated. After 2011, it appears that center pivot sprinklers were installed and approximately 10 acres are now being irrigated with a center pivot sprinkler system. The additional 3 to 4 acres are located in the middle of the historically irrigated field and do not appear to be cultivated. The land surface is uneven and there are many large boulders scattered throughout.

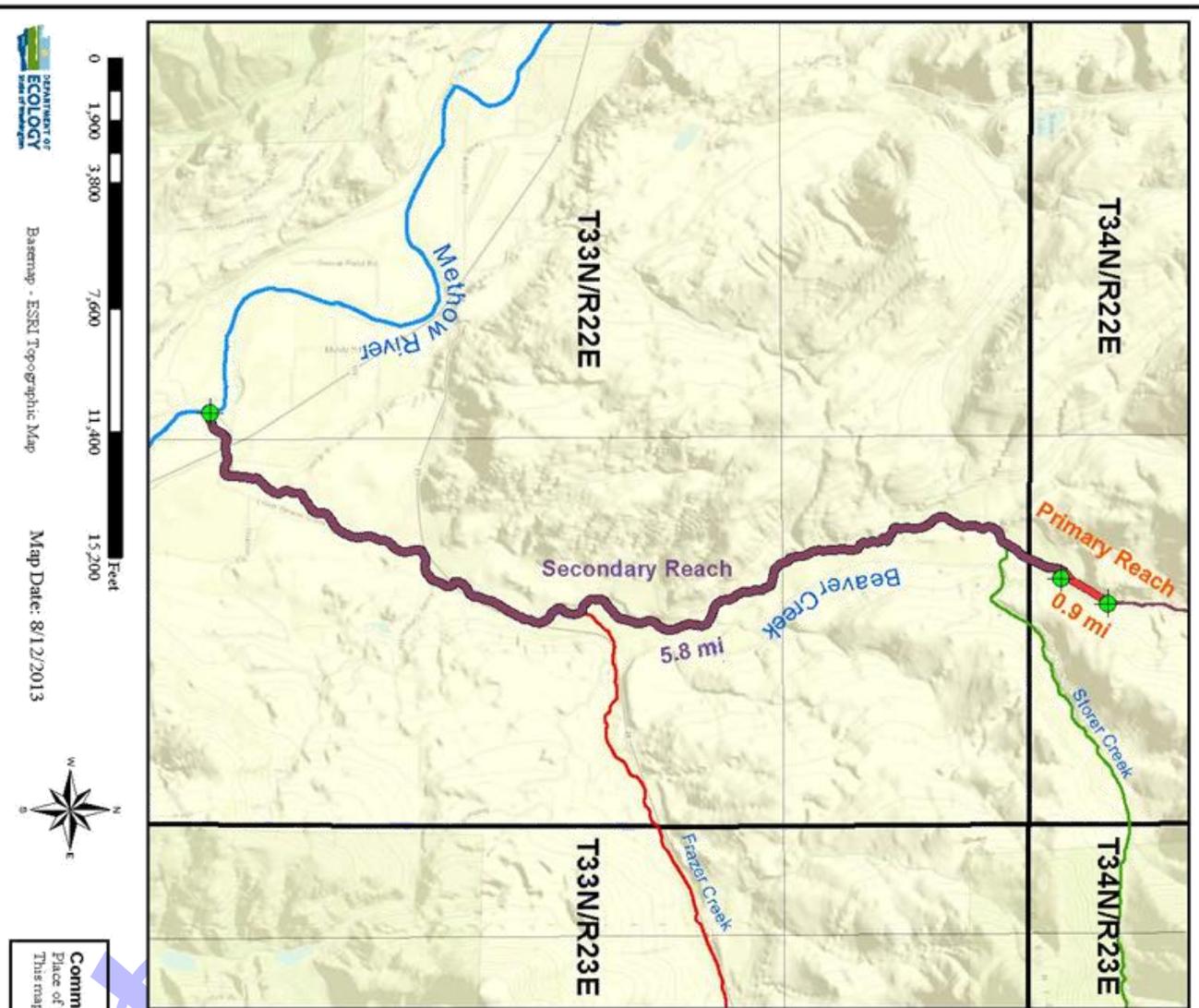
CONCLUSIONS

The tentative determination analysis indicates a conversion from hand-lines to center pivot sprinklers will not conserve water due to the additional acres being irrigated by the center pivots. Therefore, it is the conclusion of this examiner that the proposed 7.29 ac-ft/yr under Certificate 252 is not available for transfer to instream flows.

RECOMMENDATIONS

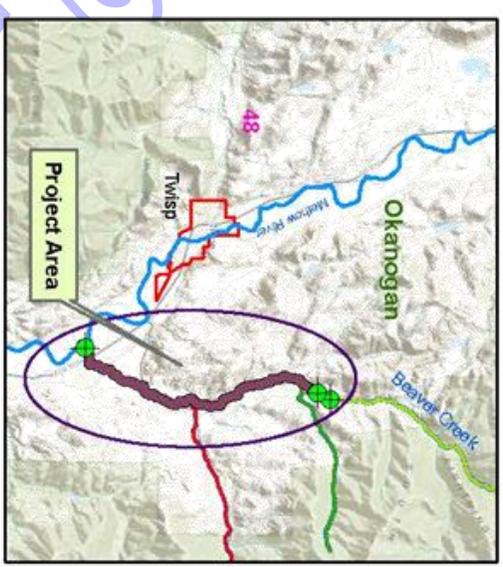
Based on the information presented above, the author recommends that CS4-07252J(A)(b) be denied.

Report by: _____ Date _____
Kelsey Collins



Beaver Creek Restoration Project

WRIA 48 - Okanogan County



Legend

- Point of Diversion
- Primary Reach
- Secondary Reach

Comment:
 Place of use and source locations are as defined according to the Application.
 This trap is to show location of POD and FOD's only, not to use in ROE.