



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

**TRUST WATER RIGHT
REPORT OF EXAMINATION**
Change of Purpose and Place of Use
WRTS File No.: CS4-23055J@2

PRIORITY DATE	CERTIFICATE NO.
04/06/1926	Salmon Creek Adjudicated Certificate No. 55 (S4-23055JWRIS)

NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM
Washington Water Trust

ADDRESS/STREET	CITY/STATE	ZIP CODE
1530 Westlake Avenue North, Suite 400	Seattle, Washington	98109-3011

TRUST WATER RIGHT ATTRIBUTES

SOURCE		
North Fork Salmon Creek		
TRIBUTARY OF (IF SURFACE WATERS)		
Salmon Creek		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
		1,200

QUANTITY, TYPE OF USE, PERIOD OF USE
1200 acre-feet per year for instream flow exclusively for fish and wildlife maintenance and enhancement in Salmon Creek during the irrigation season from 2010 to 2018. This water is intended to support steelhead passage for 6-8 weeks between April 1 and June 30.

HISTORIC POINT OF DIVERSION

APPROXIMATE LOCATION OF HISTORIC DIVERSION / WITHDRAWAL					
Outlet of Conconully Reservoir, located within the Salmon Creek Channel.					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
	18	35 N.	25 E.W.M.	49	Okanogan

AFFECTED REACHES -- DESCRIPTION OF PLACE OF USE
[See Attachment 1a and 1b for map of the Trust Water Right location]

The primary reach begins at the Okanogan Irrigation District diversion (within the SE ¹ / ₄ NW ¹ / ₄ of Section 31, T. 34 N., R. 26 E.W.M.) and extends down Salmon Creek approximately 4.3 river miles to its confluence with the Okanogan River (approximately 2600 ft south of the northwest corner of Section 16, T. 33 N., R. 26 E.W.M.).
The secondary reach is not required for this project

TRUST WATER RIGHT TERM

BEGIN DATE	END DATE
June 9, 2009	September 30, 2018

**PORTION OF WATER RIGHT
NOT PLACED INTO TRUST**

WRTS File No.: CS4-23055J@2

PRIORITY DATE April 6, 1926		CERTIFICATE NO. Salmon Creek Adjudicated Certificate No. 55 (S4-23055JWRIS)
NAME Okanogan Irrigation District (OID), a municipal corporation		
ADDRESS/STREET 37A Douglas Road	CITY/STATE Okanogan, Washington	ZIP CODE 98840

WATER RIGHT ATTRIBUTES

SOURCE North Fork Salmon Creek		
TRIBUTARY OF (IF SURFACE WATERS) Salmon Creek		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR

QUANTITY, TYPE OF USE, PERIOD OF USE

All waters of the North Fork of Salmon Creek, after the 1.33 cubic feet per second of Class One water rights have been filled, for irrigation of 5,032 acres from April 15 to September 30, and for domestic and stockwater, continuously.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL Outlet of Conconully Reservoir, located at the Salmon Creek Channel.					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
	18	35 N.	25 E.W.M.	49	Okanogan

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

[See Attachment 1a and 1b for maps of the place of use and point(s) of diversion or withdrawal]

Over 10,000 acres within T. 34 N, R. 26 E.W.M (Sections 1, 10-15, 21-28, and 31-36), T. 34 N., R. 27 E.W.M (Sections 6-8, 19, 30, and 31), and T. 33 N., R. 26 E.W.M (Sections 3-10 and 16-18), of which 5,032 acres are served.

DESCRIPTION OF WATER SYSTEM

The following description of the OID's irrigation system is from the September 1999 Joint Study on Salmon Creek, Final Report, Prepared for Colville Confederated Tribes and OID by Dames and Moore (1999, p. 2-1):

“Conconully Reservoir with storage capacity of 13,000 acre-feet, and Salmon Lake with storage capacity of 10,500 acre-feet are the two primary water storage reservoirs for the district. Although Salmon Lake receives runoff from a small basin, the reservoir is essentially an offstream storage reservoir, filled from the North Fork of Salmon Creek. The ability of the district to fill Salmon Lake Reservoir depends critically upon a feeder canal which conveys water diverted from the North Fork. [The capacity of the feeder canal is about 70 cfs, but OID operated it at 30 cfs in 1999 due to concerns regarding the safety of those living below it.] During the irrigation season, the district releases water from these two reservoirs into Salmon Creek. A diversion dam structure located approximately 12 miles downstream diverts water into a 7.6 mile open concrete-lined main canal. The main canal forms the western boundary of the irrigation district and is located at a much higher elevation than the farms it serves. There are five main diversions that deliver water under pressure to the farms through 44 miles of pipelines. The delivery system is designed to deliver 7.2 gallons per minute per acre at 40 psi of pressure to each irrigation block during peak demand. Excess water spills at the end of the main canal and is diverted to Duck Lake... Two pumps located at Duck Lake can pump the water back into the irrigation district via the diversion 5. The Shellrock pump station, located on the Okanogan River, is operated by the district during the time of drought. The station has a total capacity of 33 cfs, however due to restrictions the district can only deliver 25 cfs at this time. Table 2-1 shows the breakdown of irrigated acreage, flow rate and horsepower requirements at each irrigation.”

Table 2-1

Irrigation diversions and flow requirements (from Dames and Moore, 1999)

Description	Acre Served	Flow Cfs	Flow gpm	Description of pump and pipeline
Diversions 1	352	6	2,612	Gravity pipe to 13 on-farm booster pumps
Diversions 2	269	4	1,939	2x50 horsepower (hp) canal pumps and pipeline
Diversions 3	474	8	3,411	Gravity pipe to 2x38 hp booster pumps
Diversions 4	925	15	6,674	Gravity pipe
Diversions 5	3,002	48	21,655	Gravity pipe, 2x50 hp Eply & 2x200 hp Cunningham
Total	5,032	81	36,290	
Duck Lake		10	4,488	1x100 hp+1x200 hp pump
Shellrock		25	11,220	4x800 hp pumps, maximum capacity is 33 cubic feet per second

PROVISIONS

Provisions related to the Trust Water Right:

Okanogan Irrigation District will consider withholding delivery of water for this project in the event that the combined storage of the two reservoirs falls below 5,000 acre-feet at the close of the previous irrigation season.

Provisions related to the portion of the water right not placed into trust:

A. MEASUREMENTS, MONITORING, METERING AND REPORTING

A1. Meter Installation

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

A2. Record Daily, Report Monthly Totals

Water use data shall be recorded daily and maintained by the property owner for a minimum of five years. The maximum monthly rate of diversion/withdrawal and the monthly total volume shall be submitted to the Department of Ecology by January 31st of each calendar year.

A3. Electronic Reporting

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

A4. Metering Rule Description And Petition Info

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document titled "Water Measurement Device Installation and Operation Requirements". <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

B. SCHEDULE AND INSPECTIONS

B1. Authority To Access Project

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

C. GENERAL

C1. Temporary Change

This temporary change was processed under the Revised Code of Washington (RCW) 90.03.390 and is set to expire on September 30, 2018. On that date, OID's water right will revert back to its original status prior to this change, unless an extension of this agreement is accepted by Ecology.

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 as recommended will not be detrimental to existing rights or detrimental to the public interest.

Therefore, I ORDER the requested change of place and purpose of use under Trust Water Right Application No. CS4-23055J@2, to be approved subject to existing rights and the provisions specified above.

You have a right to appeal this ORDER. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

Department of Ecology
Appeals & Application for Relief Coordinator
PO Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

Department of Ecology
Appeals & Application for Relief Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Mark C. Schuppe, Section Manager
Department of Ecology
Central Region Office
15 West Yakima Avenue Suite 200
Yakima WA 98902-3452

Signed at Yakima, Washington, this _____ day of _____ 2010.

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

BACKGROUND

Description and Purpose of Proposed Change

Washington Water Trust (WWT) on behalf of Okanogan Irrigation District (OID) has proposed to temporarily transfer 1,200 ac-ft/yr into the Washington State Trust Water Program to be used for instream flows, enhancement, and maintenance of fisheries in Salmon Creek for 6-8 weeks in April to June from 2009 to 2018. This project would allow OID to rely on their other water rights instead of diverting water from Salmon Creek. OID's flexibility to use other rights will provide flows in Salmon Creek during times of critical fish passage.

WWT has previously submitted two applications for the same request that is presented in this report. The first application was submitted to the Department of Ecology (Ecology) on August 4, 2000, on behalf of Okanogan Irrigation District and requested a transfer for a portion of their Salmon Creek Adjudicated Certificate No. 55 to instream flows for one year¹. OID submitted the application as a result of working with the Confederated Tribes of the Colville Reservation and WWT to begin providing passage flows in lower Salmon Creek during the spring migration season. The application was assigned No. CS4-ADJ23VOL5P55. A SEPA Determination of Non-significance was issued on March 19, 2003 by Ecology's Water Resources Program. During the public notice process, several protest letters were submitted.

On March 21, 2003, Ecology issued a Temporary Change Authorization allowing for a portion of OID's water right to be managed for instream flows. An appeal was filed against the Temporary Authorization on April 15, 2003 with the Pollution Control Hearings Board and resulted in a Joint Stipulation and Agreed Order of Dismissal issued on September 26, 2003 (PCHB NO 03-064). Due to the appeal, the Temporary Authorization expired before it could be utilized.

WWT submitted a second application to Ecology on October 29, 2003 on behalf of OID that was assigned No. CS4-ADJ23VOL5P55@1. This request was basically a duplicate of the first application with a proposed trust term set to expire on March 31, 2011. However, Ecology never received a signed water lease agreement and the application was never acted on and will be obsolete as of March 31, 2011.

WWT submitted a third application to Ecology on behalf of OID on June 9, 2009, that was assigned No. CS4-23055J@2² and is the subject of this report. Like the earlier requests, WWT seeks to temporarily transfer a portion of the Salmon Creek Adjudicated Certificate No. 55 to instream flows for a nine-year period from April 15, 2009 to September 30, 2018. Ecology considers the earlier two applications inactive.

Application No. CS4-23055J@2 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. The proposed water use, if approved, would substantially enhance or protect the quality of the natural environment. Based on the provisions of RCW 43.21A.690 and RCW 90.03.265 Golder Associates Inc. (Golder) of Redmond, Washington, has assisted with the investigation and preparation of this Report of Examination under a master contract with Ecology.

1,200 acre-feet per year (ac-ft/yr) of the water right is proposed to be used exclusively for instream flows, enhancement, and maintenance of fisheries as allowed under RCW Chapters 90.03, 90.42, and 90.54. Water use changes associated with this Application are expected to result in significant environmental benefits to lower Salmon Creek by providing critical fish passage flow to promote access of high-quality habitat upstream of the OID diversion structure. This transfer would directly respond to recommended actions in the Biological Assessment for Salmon Creek Water Bank 2004-10.

In response to the issues that led to an appeal of this project in the past, Application No. CS4-23055J@2 includes a current water lease agreement between WWT and OID that includes the following discretionary sub-agreement:

“During the Lease Term, LESSOR [OID] will not be required to release water during any year in which water is unavailable. Water will be construed as not being available during a year if, at the end of the preceding irrigation season, the combined storage of the Conconully Reservoir and Salmon Lake falls below 5,000 acre-feet (“WATER IS UNAVAILABLE”).”

¹ Application No. CS4-ADJ23VOL5P55 was amended to change the one year term of the proposed Trust Water Right from the 2000 irrigation to the 2003 irrigation season.

² Ecology changed its numbering scheme for its applications. Application Nos. CS4-ADJ23VOL5P55, CS4-ADJ23VOL5P55@1, and CS4-23055J@2, all pertain to the same original water right and the same proposed change of providing flows to lower Salmon Cr.

Attributes of the Certificate and Proposed Change

Table 1
Summary of Existing Attributes and Proposed Changes to
Salmon Creek Adjudicated Certificate No. 55 (S4-23055JWRIS)

Attributes	Documented	Proposed
Name	Okanogan Irrigation District – Municipal Corp.	Washington Water Trust
Priority Date Date of Application for Change	April 6, 1926	June 9, 2009
Instantaneous Quantity	All waters of the North Fork of Salmon Creek, excepting 1.33 cubic feet per second of Class I water	Same
Annual Quantity	Not Given	1,200 acre-feet
Source	North Fork Salmon Creek	Same
Point of Diversion/Withdrawal	Outlet of Conconully Reservoir, located at the Salmon Creek Channel in Section 18, T. 35 N., R. 25 E.W.M.	Same
Purpose of Use	Irrigation, stock, and domestic	Instream flow
Period of Use	From April 15 – September 30 for irrigation and continuously for stock and domestic	6-8 weeks in April to June
Place of Use	Over 10,000 acres within T. 34 N, R. 26 E.W.M., Sections 1, 10-15, 21-28, and 31-36; T. 34 N., R. 27 E.W.M., Sections 6-8, 19, 30, and 31; and T. 33 N., R. 26 E.W.M., Sections 3-10, and 16-18), of which 5,032 acres are irrigated	4.3 river miles of Salmon Creek downstream of the OID diversion structure

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change from irrigation to instream flow enhancement in Salmon Creek.

- **Public Notice**

A notice of application was duly published in accordance with RCW 90-42.040(5) in the Omak Chronicle on January 20 and 27, 2010. Two protests and one letter of concern were received and are discussed in the *Consideration of Protests* section below.

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

This Application is not exempt from the provisions of the State Environmental Policy Act (SEPA), chapter 43.21 RCW, due to the fact that the cumulative quantity of water proposed for trust water constitutes a withdrawal of more than one cubic foot per second. Ecology, acting as lead agency, determined the subject action does not have a significant adverse impact on the environment and an environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). A final Determination of Non-Significance was issued by Ecology on January 21, 2010.

- **National Environmental Policy Act (NEPA)**

In accordance with the Action Agency Fish Accord memorandum of agreement with the Colville Confederated Tribes signed on May 2, 2008, U.S. Bureau of Reclamation (Reclamation) committed to supply funding to facilitate the delivery of 500 acre-feet of instream flow in Salmon Creek, a tributary of the Okanogan River in Okanogan County, Washington. Reclamation plans to provide funding to meet this commitment through a Streamflow Funding Agreement between Reclamation and the WWT. Bonneville Power Administration's (BPA) Supplemental Analysis in 2009 provides programmatic NEPA coverage for BPA fish and wildlife actions and instream water transactions under the Columbia Basin Water Transactions Program (CBWTP). As a result, no separate NEPA checklist is required for Reclamation's transaction.

- **Water Resources Statutes and Case Law**

This Application is subject to legal requirements in statute, administrative rules, and relevant case law, which must be considered prior to issuance of the requested change(s). Among these legal requirements:

- The Washington State Supreme Court has held that Ecology, when processing a Water Right Change Application, is required to make a tentative determination of extent and validity of the claim or water right. This is necessary to establish whether the claim or water right is eligible for change. *R.D. Merrill v. PCHB and Okanogan Wilderness League v. Town of Twisp*.
- RCW 90.03.380(1) allows for a water right that has been put to beneficial use to be changed. The point of diversion, place of use, and purpose of use may be changed if the change would not result in harm or injury to existing water rights.
- RCW 90.03.390 provides that Ecology may issue temporary changes that will not affect existing water users.
- RCW 90.14.160 states that any person entitled to divert water through an appropriation authorized through a general adjudication, who abandons or voluntarily fails, without sufficient cause, to divert all or any part of said water right for a period of five successive years after July 1, 1967, shall relinquish such water right or portion thereof, to the state.

INVESTIGATION

Site Inspection

On January 26, 2010, Alyssa Neir of Golder met with Greg McLaughlin of WWT to tour the points of diversion. The point of diversion under the water right is the outlet of the reservoir on Salmon Creek. The Conconully reservoir, dam, and spillway were visited. Water is released from Conconully Reservoir into Salmon Creek at river mile 14 where the entire flow of Salmon Creek is directed into OID's Main Channel (within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T. 34 N., R. 26 E.W.M.). This point of diversion is 4.3 river miles from the confluence of the natural streambed of Salmon Creek and the Okanogan River. The OID diversion point, diversion canal, and gate were also visited.

History of Water Use

OID consists of over 10,000 acres, of which 5,032 acres may be served with irrigation water, covering hundreds of parcels and land ownership regimes. OID manages the Salmon Creek watershed water supply to serve district agricultural lands east of Salmon Creek. Runoff from the upper watershed is stored in two reservoirs – Conconully Reservoir and Salmon Lake. Controlled releases for irrigation deliveries are made from Conconully Reservoir and conveyed through about 11 miles of the middle reach of Salmon Creek to the OID diversion dam, located 4.3 stream miles above the mouth of Salmon where it joins the Okanogan River. For more than 80 years, the last 4.3 stream miles of Salmon Creek have been dewatered due to OID's normal diverting and irrigating operations, except during spring runoff events that result in uncontrolled spill at the reservoirs and diversion dam (Dames and Moore, 1999).

The lack of streamflow below OID's diversion dam has historically precluded fish migration into lower Salmon Creek from the Okanogan River. Migration to the middle and upper watershed reaches has also been prevented by the lack of fish passage structures at the diversion dam and Conconully dam, respectively (Dames and Moore, 1999).

Extent and Validity

The large number of acres, parcels served, and ownership regimes within OID presents significant challenges in developing a beneficial use summary, and has necessitated a different approach normally used for Trust Water Applications. The approach used for this Application includes reviewing 2006 aerial photos to identify the number of irrigated acres and reviewing OID diversion records for 1946-2007.

The continued operation and maintenance of the irrigation district since its construction in the 1930s establishes that the right has never been abandoned. Due to the cost disincentives of pumping and their status as supplemental rights, OID's Okanogan River and Duck Lake/Johnson Creek Rights are assumed to be exercised after the Salmon Creek Rights, as evidenced in OID Delivery Records in Table 2.

WWT reviewed the 2006 NAIP aerial photos and positively identified close to 4,200 irrigated acres (84% of the 5,032 acres) and potentially as much as 4,700 irrigated acres (93% of the 5,032 acres) within the OID service

area³. In comparing the 2006 OID diversion records (Table 2) with the identified 2006 irrigated area, OID used a total of 17,332 acre-feet from Salmon Creek and Duck Lake to irrigate the 4,194 acres in 2006, or 4.13 acre-feet per acre. The highest use of water from Salmon Creek occurred in 1998 at 20,834 acre-feet, which would supply an estimated 5,045 acres assuming that 4.13 acre-feet of water were applied per acre. Therefore, Salmon Creek is capable of providing enough water to irrigate the full 5,032 acres of OID when water is available from Salmon Creek.

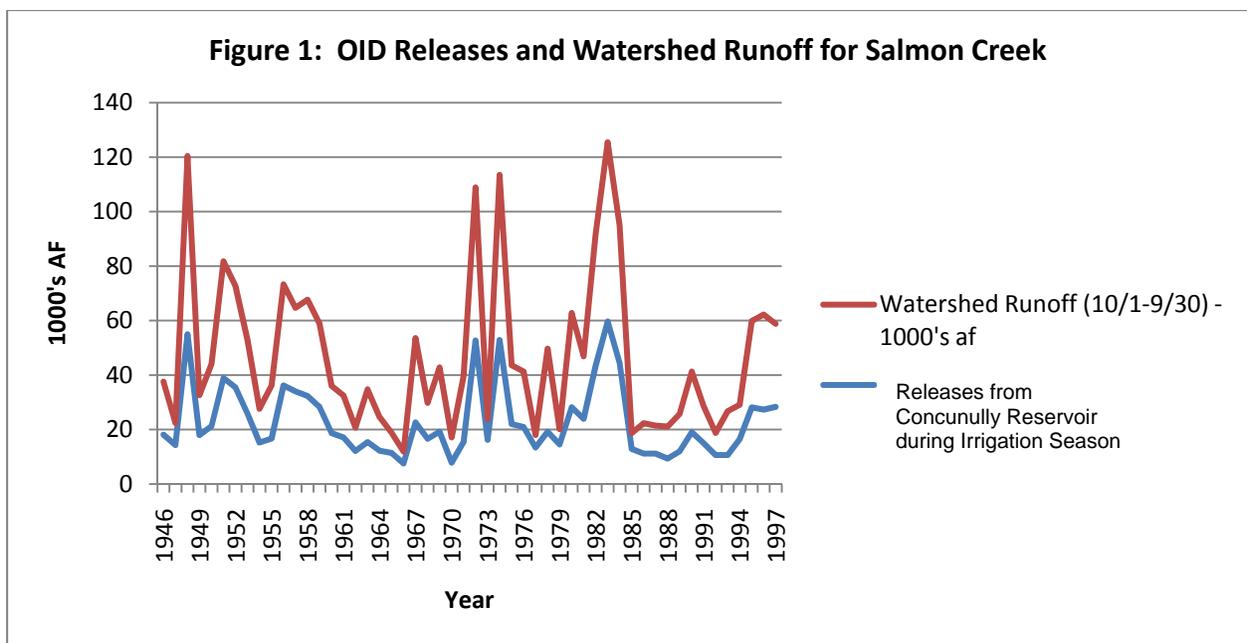
2005 marked the most recent of five consecutive years where Salmon Creek flows were not sufficient to provide water for the irrigation demands, and OID pumped supplemental Okanogan River rights via the Shell Rock Pump Station. This strongly suggests that Certificate No. 55 is the first water right used to fulfill OID’s irrigation requirements and that it is used at capacity each year.

In 1998, over 21,000 acre-feet were applied to over 5,000 acres (4.13 acre-feet per acre), and nearly all of this water came from Salmon Creek (see Table 2). At an application rate of 4.13 acre-feet per acre, OID would require at least 20,782 ac-ft/yr to meet irrigation requirements for 5,032 acres. Long-term data for watershed runoff into Salmon Creek indicates that the average runoff for the entire Salmon Creek watershed is 21,470 acre-feet (Figure 1). When runoff is low and water is not available, the circumstances qualify as a “sufficient cause for nonuse” under RCW 90.14, one of the exemptions to relinquishment.

Table 2
Annual Quantities of OID Water Supply, 1987-2007 (acre-feet/year)

Year	Salmon Creek	Duck Lake	Okanogan River	Total Irr. Supply
1987	12,555	2,065	4,679	19,299
1988	11,441	2,141	4,499	18,081
1989	13,916	1,352	1,961	17,229
1990	15,942	1,083	0	17,025
1991	17,590	1,295	0	18,885
1992	10,882	916	4,526	16,324
1993	11,337	1,016	349	12,702
1994	14,032	1,161	981	16,174
1995	13,545	395	0	13,940
1996	18,302	309	0	18,611
1997	16,345	425	0	16,770
1998	20,834	697	0	21,531
1999	19,936	1,355	0	21,291
2000	18,262	995	0	19,257
2001	12,603	667	4,823	18,093
2002	10,655	1,738	5,910	18,303
2003	12,818	1,663	4,784	19,265
2004	11,640	1,461	4,200	17,301
2005	11,775	990	6,019	18,074
2006	16,037	1174	0	17,211
2007	16,182	972	0	17,134
Average	14,601	1,137	2,035	17,773
Percent	82.0%	6.4%	11.45%	100%
Minimum	12,102	1,447	0	12,702
Maximum	20,834	2,141	5,910	21,531

³ As much as 500 additional acres were thought to be irrigated, for a possible total of 4,700 irrigated acres. Smaller portions of irrigated land were not counted toward the total (~2 acres or less), and neither were acres with other factors such as those harvesting hay.



Other Rights Appurtenant to the Place of Use

OID's delivery system includes the use of both Salmon Lake and Conconully Reservoir, and is supplemented by additional rights to Johnson Creek (No. S4-24075JWRIS) and Duck Lake (No. S4-81016JWRIS), and supplemental rights from Okanogan River (No. S4-CV1-4P156) supplied through Shell Rock Pumping Station.

Water Duties Needed For Fish In Salmon Creek

Dames and Moore (1999) estimated the flow requirements in the middle and lower reaches of Salmon Creek for summer steelhead and spring Chinook (by life stage), along with total acre-feet requirements by month and year (Table 3). The middle reach of Salmon Creek extends from Conconully Reservoir to the OID diversion dam and the lower reach of Salmon Creek extends from the OID diversion dam to the confluence with the Okanogan River. According to the November 28, 2008 Final Okanogan Project Biological Assessment submitted to NOAA Fisheries by the U.S. Bureau of Reclamation, 1200 ac-ft/yr will provide sufficient instantaneous flows to support the full passage season of steelhead from the Okanogan River to Salmon Creek above the OID diversion point, as shown in Table 3 below (USBR 2008). During 2009, Colville Confederated Tribe biologists monitored a flow release of 1220 acre-feet under a voluntary storage release agreement with OID, and documented that flows of 5-21 cfs during this time corresponded with the full passage season for steelhead and the passage of 62 adult steelhead above the OID diversion point (Fisher, 2009).

Table 3

Estimated flow requirements in the middle and lower reaches of Salmon Creek for summer steelhead and spring Chinook (by life stage), along with total acre-feet requirements by month and year (modified from Dames and Moore (1999)).

	March	April	May	June	July
Lower Reach					
Steelhead Passage		15 – 20 cfs			
Chinook Passage			15 – 20 cfs		
Combined Passage		15-20 cfs			
Middle Reach					
Steelhead Spawning		10-15 cfs			
Steelhead Incubation		7-10 cfs			
Chinook Spawning					10-15 cfs
Chinook Incubation	7-10 cfs				7-10 cfs
Combined	7-10 cfs	10-15 cfs			10-15 cfs
Irrigation Flows (ac-ft)¹	0	190	1621	2163	3003
Fish Flows (ac-ft) Required in Excess of Irrigation Releases²					
Steelhead	544-777	1128-1505	1166-1555	376-527	0
Chinook	430-614	208-297	1166-1555	1128-1505	1166-1555
Combined	544-777	1128-1505	1166-1555	1128-1505	1166-1555

1. Average monthly irrigation diversions from Salmon Creek based on a 95-year period of record.
2. Assumes irrigation releases through the middle reach from mid-April to early October (not counted as instream flow release) and 22% seepage loss in the lower reach. The numbers in this column are not additive down the column.

Trust Water Right Calculations

The total volume of water available to OID from 2005 to 2009 was calculated using flows measured at Ecology gage 49M100, which is on the North Fork Salmon Creek a few miles upstream of the diversion into the Salmon Lake Reservoir (see Table 4). Measured flows were available from January 1, 2005 through July 20, 2009; therefore, the flow record for 2009 is incomplete. This gage does not capture all of the flows in North Fork Salmon Creek and contributions to base flow may occur in the remaining reach of the creek above the reservoir. For this reason, the gage provides an indication of the minimum amount of flow available during these years, but does not fully quantify the flow associated with the water rights on North Fork Salmon Creek.

Table 4

Minimum Volume of Water Available in North Fork Salmon Creek as Measured at Ecology Gage 49M100, North Fork Salmon Creek Near Conconully

Month	Water Available in North Fork Salmon Creek (acre-feet)				
	2005	2006	2007	2008	2009 ^a
January	513	611	386	356	562
February	546	453	293	273	402
March	422	468	749	315	444
April	1,293	1,546	2,314	592	1,257
May	3,682	16,964	4,682	8,429	3,971
June	2,804	9,110	2,015	3,368	2,497
July	906	1,255	694	794	662
August	378	442	373	485	--
September	251	326	311	337	--
October	546	333	426	672	--
November	666	637	493	1,166	--
December	817	355	633	2,236	--
Total Annual	12,825	32,500	13,369	19,024	9,796

a: Data for 2009 only available from January 1 to July 20.

OID's water right is junior only to a Class 1 water right for 1.33 cfs located below the outlet of Conconully Reservoir, and above OID's diversion. Once the Class 1 right has been fulfilled, OID has a right to divert all of the flow in Salmon Creek. Therefore, the total volume of water available under the Class I water right was identified by setting aside 1.33 cfs of the measured daily flow and then allocating the remaining daily flow to OID (Table 5).

Table 5

Estimated Minimum Volume of Water Allocated to OID's Water Right

Month	Water Available in North Fork Salmon Creek under OID's Water Right (acre-feet)				
	2005	2006	2007	2008	2009 ^a
January	432	529	304	275	480
February	473	379	219	197	328
March	340	386	668	234	363
April	1,214	1,467	2,235	513	1,178
May	3,600	16,883	4,600	8,348	3,889
June	2,725	9,031	1,936	3,289	2,418
July	824	1,173	612	713	609
August	297	361	292	403	--
September	172	247	232	258	--
October	465	251	344	590	--
November	587	558	414	1,087	--
December	736	273	551	2,154	--
Total Annual	11,864	31,539	12,408	18,060	9,267

a: Data for 2009 only available from January 1 to July 20.

OID used 11,775 acre-feet of water from Salmon Creek in 2005; 16,037 acre-feet in 2006; and 16,182 acre-feet in 2007. In addition, the Colville Confederated Tribes' fish and wildlife staff and OID board developed a 12-year water lease program, which will provide a minimum of 700 acre-feet annually to ensure sufficient flow for the out-planting of summer steelhead smolts. Under this agreement, OID did not divert 710.8 acre-feet of water in 2007; 693 acre-feet of water in 2008; and 1,221.5 acre-feet of water in 2009. It is clear from this analysis that OID used the full extent of its water right in 2007. Therefore, it is clear that 1,200 acre-feet of water is available for instream flow purposes when it is present between April 1st and June 30th each year.

Trust Water Place of Use

The place of use of a Trust Water Right for instream flows is defined within a primary reach and, if applicable, a secondary reach. The primary reach is the portion of a water body that benefits from both the former consumptive use and return flow waters of a Trust Water Right. It is the reach between the original diversion point and the point where the last return flows reenter the stream or river. The primary reach for this trust water is from the OID diversion at river mile 4.3 on Salmon Creek downstream to the confluence of Salmon Creek and the Okanogan River (see Attachment 1b). There is no secondary reach for this Trust Water Right. [RCW 90.42.020(2) and RCW 90.38.010(2).]

Impairment Considerations

“Impair” or “impairment” means to: 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, and/or; 2) to prevent the beneficial use of the water to which one is entitled, and/or; 3) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150).

OID will continue to deliver water to the lands historically irrigated under Salmon Creek Adjudicated Certificate No. 55, and does not intend to change the amount and timing of water delivery to the lands within the irrigation district as a result of the trust water project. No other changes in OID management practices resulting from the trust water project will impact the primary reach directly or indirectly. Changes in irrigation quantities by individual landowners may result from the normal cycle of crop-rotation or water-budgeting irrespective of the trust water project. This project would allow OID to rely on their other water rights instead of diverting water from Salmon Creek.

Public Interest Considerations

This Trust Water Right will be used exclusively for instream flows and enhancement and maintenance of fisheries as allowed under RCW chapters 90.03, 90.42 and 90.54. Water use changes associated with this Application are expected to provide significant environmental benefits to Salmon Creek by providing critical passage flow to promote access of high-quality habitat upstream of the OID diversion structure. This transfer directly responds to recommended actions by the Northwest Power and Conservation Council and the Bonneville Power Administration for the Upper Columbia.

Consideration of Protests and Comments

One comment letter and two protest letters regarding this Application were received. One comment letter, dated February 2, 2010, was from the Okanogan County Office of Planning & Development. The first protest letter, dated February 26, 2010, was from the North Central ATV Club. The second protest letter, dated February 26, 2010, was from the Conconully Chamber of Commerce. The concerns expressed in these letters include: 1) the impact on agriculture currently in production, and the ability to expand production; 2) the impact that potentially lower Conconully Reservoir and Conconully Lake levels would have on tourism, the ability to fight wild fires, and water levels in nearby wells.

OID will continue to deliver water to the lands historically irrigated under Salmon Creek Adjudicated Certificate No. 55, and does not intend to change the amount and timing of water delivery to the lands within the irrigation district as a result of the trust water project. No other changes in OID management practices resulting from the trust water project will impact the irrigation diversion and delivery to lands within OID. Therefore, there is no impact to current agriculture in production.

On September 26, 2003, PCHB No. 03-064 established that drawdown of stored water by OID to fulfill irrigation and instream flow targets is not a detriment to the public interest or a violation of their water rights. Regardless, the current agreement between OID and WWT includes a discretionary agreement that if the Okanogan Project Storage (Conconully Reservoir and Conconully Lake) contain less than 5,000 acre-feet at the end of the preceding irrigation season, then OID is not obligated to lease the 1,200 acre-feet in the subsequent year. Further, OID has provided Ecology with a letter expressing their intention to exercise this provision in the event that 5,000 acre-feet is not present in Conconully Reservoir at the end of the irrigation season, thereby preserving/maintaining a minimum lake level.

CONCLUSIONS

It is the conclusion of this examiner that, in accordance with chapter 90.42 RCW, water is available to transfer a portion of Salmon Creek Adjudicated Certificate No. 55 to trust, and such a transfer will not impair existing water rights, will enhance flows in Salmon Creek, and is not detrimental to the public interest.

RECOMMENDATIONS

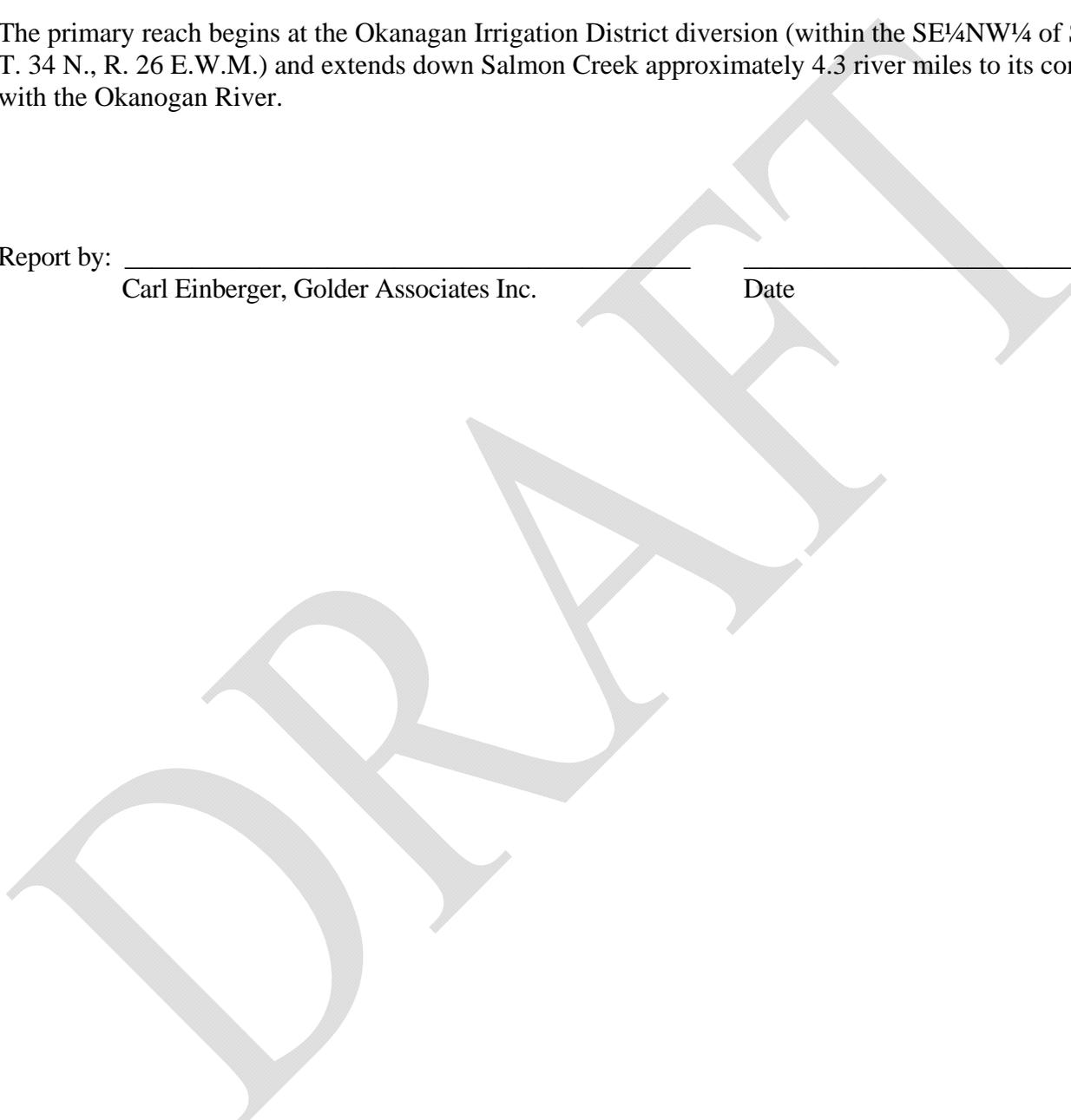
Based on the above investigation and conclusions, I recommend the request for change to Water Right Change Application No. CS4-23055J@2 is approved in the amounts and within the limitations listed below and subject to the provisions listed in the Report of Examination.

Trust Water Right Attributes

1200 ac-ft/yr from April 1 to June 30 for instream flow purposes in the primary reach.

The primary reach begins at the Okanagan Irrigation District diversion (within the SE¹/₄NW¹/₄ of Section 31, T. 34 N., R. 26 E.W.M.) and extends down Salmon Creek approximately 4.3 river miles to its confluence with the Okanogan River.

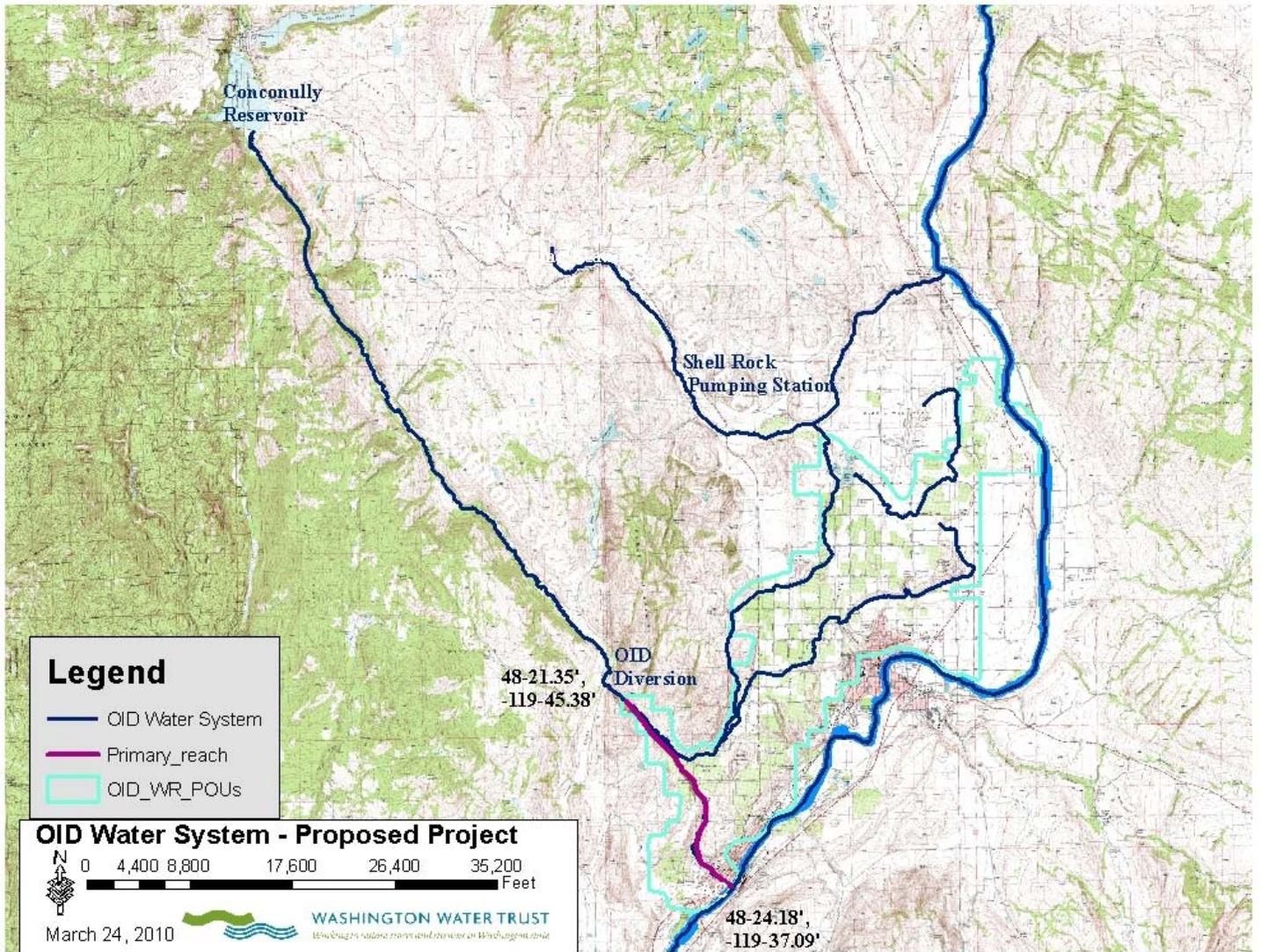
Report by: _____ Date _____
Carl Einberger, Golder Associates Inc.



References

- Dames and Moore. 1999. Joint Study on Salmon Creek, Final Report. Colville, WA. Prepared for Colville Confederated Tribes and Okanogan Irrigation District.
- U.S. Department of Energy, Bonneville Power Administration. 2004. Salmon Creek Project. Draft Environmental Impact Statement. (Includes data on release records submitted by Okanogan Irrigation District.)
- U.S. Fish and Wildlife Service. October 2008. Draft Biological Assessment for the Salmon Creek Project.
- U.S. Bureau of Reclamation, Department of the Interior. October 28, 2008. Biological Statement for the Operation of the Okanogan Project, Okanogan County, Washington.
- Fisher, Chris. Water Release Report at Salmon Creek - 2009. Letter dated June 30, 2009.

Attachment 1a



Attachment 1b

