STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

TRUST WATER RIGHT
AMENDED REPORT OF EXAMINATION
Change of Purpose and Place of Use
Water Right Change Application No. CS4-00521CTCLsb7

This Amended Report of Examination for Change No. CS4-00521CCTCLsb7 **SUPERSEDES** the previous Report of Examination for Change, dated October 13, 2008.

This Amended Report is a result of the Stipulation and Agreed Order of Dismissal in *Ellensburg Water Company, Cascade Irrigation District, and West Side Irrigating Company v. Department of Ecology and City of Roslyn*, Pollution Control Hearings Board No. 09-019.

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
July 30, 1885	Court Claim No. 00521 Subbasin No. 7 (Reecer Creek)		

NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM

City of Roslyn

ADDRESS/STREET	CITY/STATE	ZIP CODE
100 East Pennsylvania Ave	Roslyn WA	98121-3140

TRUST WATER RIGHT ATTRIBUTES

SOURCE

Yakima River

TRIBUTARY OF (IF SURFACE WATERS)

Columbia River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
4.29	N/A	485.4

QUANTITY, TYPE OF USE, PERIOD OF USE

For Instream Flow in the Primary Reach:

4.29 cubic feet per second and 485.4 acre-feet per year from April 1 to October 31.

For Instream Flow and mitigation in the Secondary Reach from April 1 to October 31 as follows:

Instream flow during periods when City of Roslyn's Domerie Creek water right is not curtailed:

	April	May	June	July	August	September	October	Total
Cubic feet per second	0.00	0.20	0.45	0.60	0.49	0.28	0.04	
Acre-feet per year	0.00	12.14	26.90	36.87	29.39	16.73	2.37	124.4

Mitigation during periods when City of Roslyn's out-of-priority Domerie Creek water right is curtailed:

	April	May	June	July	August	September	October	Total
Cubic feet per second	0.04	0.23	0.48	0.62	0.50	0.31	0.07	
Acre-feet per year	2.21	14.08	28.50	38.24	30.94	18.56	4.53	137.1

AFFECTED REACHES

APPROXIMATE LOCATION OF HISTORIC DIVERSION

1,744 feet west and 2,393 feet north of the southeast corner of Section 12, T. 18 N., R. 17 E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
NE¼NW¼SE¼	12	18 N.	17 E.	39	Kittitas

PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM
18-17-12040-0010	N47°03'50.8"	W120°39'07.8"	NAD 83

DESCRIPTION OF PLACE OF USE

[See Attachment 1 for map of the trust water right location]

The **Primary Reach** begins at the Ellensburg Water Company point of diversion on the Yakima River located approximately 3,200 feet south and 1,850 feet west from the northeast corner of Section 12, being within the NE¼ NW¼ SE¼ of Section 12, T. 18 N. R. 17 E.W.M. with diversion into the Ellensburg Water Company Town Canal; then diverted into the Olson Ditch being within the SE¼SE¼ of Section 12, T. 18 N., R. 17 E.W. M.; then diverted into the Peter Wold Canal (also known as "Wold Ditch") being within the NW¼ of Section 18, T. 18 N., R. 18 E.W.M.; then continuing through the Peter Wold Canal or ditch system within Sections 19, 20, and 29, T. 18 N., R. 18 E.W.M until ending in Dry Creek and its confluence with the Yakima River being within the SE¼ of Section 29, T.18 N., R. 18 E.W.M. all within the County of Kittitas. The waters diverted into the canals identified herein may return to the Yakima River through various surface and subsurface returns from the canal and ditch systems to the Yakima River prior to the confluence of Dry Creek and the Yakima River.

The **Secondary Reach** begins at a point on the Yakima River approximately 2,037 feet north and 1640 feet west of the southeast corner of Section 29, being within the NE¼NW¼SE¼, T. 18 N., R. 18 E.W.M. in the county of Kittitas, Washington, and ends at a point located at the confluence of the Columbia River and Pacific Ocean at River Mile 0 in Section 18, T. 9 N., R. 11 W.W.M., Pacific Co., WA.

PROJECT SUMMARY
The City of Roslyn proposes to change the purpose and place of use of Court Claim No. 00521 owned by City of Roslyn, and to place the water right into the Washington State Trust Water Right Program (TWRP). Placing Court Claim No. 00521 into the TWRP will provide mitigation for the out-of-priority use of the City of Roslyn's existing Domerie Creek water right when pro-rationing of May 10, 1905 water rights is imposed and the exercise of surface water rights with priority dates after May 10, 1905, are curtailed pursuant to the Revised Order Limiting Post-1905 Diversions During Periods of Water Shortage (Curtailment Order), dated March 10, 2005, in Department of Ecology v. Acquavella, Yakima County Superior Court No. 77-2-01484-5. When the City of Roslyn is not subject to interruption under the curtailment order and has full use of its Domerie Creek water right the trust water right will be left in the TWRP for instream flow purposes or may be transferred to other uses.

TRUST WATER RIGHT TERM	
BEGIN DATE	END DATE
April 1, 2009	Up to 40 years (October 31, 2049), subject to a yet-to-be finalized Trust Water Right Agreement

PROVISIONS

This Report of Examination relates solely to the City of Roslyn's application to change Court Claim No. 00521. Nothing in this Report of Examination shall be deemed to waive, abrogate, diminish, define or interpret either the Treaty or other rights of the Yakama Nation or the rights of any other party other than the City of Roslyn.

This water right proposed as mitigation to avoid curtailment under the Yakima County Superior Court's ORDER LIMITING POST-1905 DIVERSIONS DURING PERIODS OF SHORTAGE, and to ensure no impairment of other water rights, is located downstream from Roslyn's Court Claim No. 01474. To prevent impairment to existing diversionary and non-diversionary water rights located on (1) the Cle Elum River, (2) the Yakima River between the confluence of the Cle Elum River and the point of diversion of the Ellensburg Water Company, and (3) TWSA water users throughout the Yakima River basin, the following five conditions shall apply to this change of water right:

1. At all times, whether or not post-May 10, 1905 priority date water rights in the Yakima Project are curtailed, Roslyn may rely on this trust water right to continue to use its Domerie Creek water pursuant to Court Claim No. 01474 (hereinafter the "Roslyn Municipal Right") only if stream flows in the Cle Elum River meet or exceed flow levels set pursuant to the Yakama Nation's Treaty water right for fish and other aquatic life.

2. Whether or not post-May 10, 1905 priority date water rights in the Yakima Project are curtailed, Roslyn may rely on this trust water right to continue to exercise its water right under the Roslyn Municipal Right ONLY when and if the water right which is the subject of this transfer is exercised through the Long-Term Water Storage and Exchange Agreement Between the United States and the State of Washington, Department of Ecology, dated January 2009 (Exchange Contract), or through another suitable mechanism(s), that will provide for a public process including notice and an opportunity to comment, that will ensure Roslyn's diversion of water from Domerie Creek pursuant to the Roslyn Municipal Right will not cause a reduction in flow of the Yakima River when the Bureau of Reclamation engages in "flip flop"[1] operation in the Yakima River Basin Project. To exercise the water right which is the subject of this transfer through the Exchange Contract, Roslyn must (a) transfer this water right to the TWRP by entering into a Trust Water Right Agreement with Ecology substantially in the form attached as Exhibit B to the Stipulation and Agreed Order of Dismissal in PCHB No. 09-019; (b) Ecology must accept this water right into the TWRP; (c) Ecology must assign this water right to the Bureau of Reclamation; (d) the Bureau of Reclamation must accept the assignment under the terms of the Exchange Contract; and (e) Roslyn must obtain from Ecology a secondary use permit associated with the assignment of this water right to the Bureau of Reclamation.

3. When post-May 10, 1905 water rights are curtailed and/or holders of May 10, 1905 water rights are subject to prorationing of water supplies, Roslyn may continue to exercise the Roslyn Municipal Right, its Domerie Creek diversion, by relying on this trust water right to divert water out of priority ONLY when the consumptive water quantity associated with this trust water right that stays instream is equal to or greater than the consumptive water quantity associated with exercise of the Roslyn Municipal Right and the exercise of this trust water right shall not reduce the Total Water Supply Available as defined in *Ecology v. Acquavella* and the 1945 Consent Decree in *Kittitas Reclamation District v. Sunnyside Valley Irrigation District*, Civil No. 21.

4. When Court Claim No. 00521 trust water right is used to mitigate for the City of Roslyn's use of its Domerie Creek water right the secondary reach will end on the Yakima River at Parker Dam.

5. If water under this trust water right is proposed to be leased and used for other out-of-stream beneficial uses, it shall be the responsibility of the City of Roslyn to provide notice to Ecology of the lease and obtain any permits or approvals necessary to approve the transfer of the water right which is the subject of this transfer before that out-of-stream use can commence. Ecology shall provide notice to the proposed transfer as provided to it by Roslyn by posting it on its Web page or other suitable means calculated to notify members of the public. Any such proposed lease or out-of-stream use is beyond the scope of this authorization and would constitute a separate proposed action subject to such notice, application, and review procedure as provided by law. Specifically, under current law, Roslyn would need to seek a temporary authorization before an out-of-stream use will be considered.

[1] "Flip-flop" for this purpose means and includes the process late in the irrigation season each year of reducing flows in the Cle Elum and Yakima Rivers by ramping down flows from irrigation season reservoir releases to those instream flows set pursuant to court order and statute to protect fish and other aquatic life in the Upper Yakima Basin.

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.

Therefore, I ORDER the recommended change of place and purpose of use under Trust Water Right Application No. CS4-00521CTCLsb7, be approved subject to existing rights and the provisions specified above.

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

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

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

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

Mark C. Schuppe, Section Manager
Water Resources Program

BACKGROUND

Description and Purpose of Proposed Change

On July 02, 2007, the City of Roslyn, Washington applied to Washington State Department of Ecology (Ecology) to change the purpose and place of use of their water right. The City of Roslyn proposes to change the purpose and place of use of water authorized under Court Claim No. 00521 and proposes to place the right into the Washington State Trust Water Right Program (TWRP). Water placed in the TWRP is to be used for instream flow purposes, either as mitigation for the City of Roslyn's existing Domerie Creek water right when such use is disallowed pursuant to the Curtailment Order or as mitigation for other uses when such use is not curtailed. The application was accepted and assigned Application No. CS4-00521CTCLsb7.

The City of Roslyn's Domerie Creek municipal water right, confirmed Court Claim No. 01474, is subject to regulation pursuant to the Curtailment Order in favor of senior water right holders when the water supplies for the Yakima River Basin Project are not sufficient to satisfy surface water rights with priority dates of May 10, 1905 and earlier.

This application qualifies for expedited processing under WAC 173-152-050(2)(a) whereby water right change applications may be processed prior to applications submitted at an earlier date when immediate action is necessary for the preservation of public health and safety.

Attributes of the Court Claim and Proposed Change

Table 1: Summary of Existing Attributes and Proposed Changes to Court Claim No. 00521

Attributes	Documented	Proposed
Name	Mary McManamy & Mary Patricia Seubert	City of Roslyn
Priority Date	July 30, 1885	No change
Instantaneous Quantity	4.29 cubic feet per second	No change
Annual Quantity	485.4 acre-feet per year	No change
Source	Yakima River	Yakima River
Point of Diversion/Withdrawal	500' S and 850' E from the center of Section 12, being within the NE¼NW¼SE¼ of Section 12, T 18 N, R 17 EWM	500' S and 850' E from the center of Section 12, being within the NE¼NW¼SE¼ of Section 12, T 18 N, R 17 EWM
Purpose of Use	Irrigation of 38.2 acres	Instream Flow and Mitigation
Period of Use	April 1 to October 31	April 1 to October 31
Place of Use	That portion of the E½ of Section 18, T 18 N, R 18 EWM lying southwest of the Burlington Northern Railroad right of way and northeast of the Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way	**Primary Reach** beginning at the Ellensburg Water Company point of diversion on the Yakima River located approximately 3,200 feet south and 1,850 feet west from the northeast corner of Section 12, being within the NE¼ NW¼ SE¼ of Section 12, T. 18 N. R. 17 E.W.M. with diversion into the Ellensburg Water Company Town Canal; then diverted into the Olson Ditch being within the SE¼SE¼ of Section 12, T. 18 N., R. 17 E.W. M.; then diverted into the Peter Wold Canal (also known as "Wold Ditch") being within the NW¼ of Section 18, T. 18 N., R. 18 E.W.M.; then continuing through the Peter Wold Canal or ditch system within Sections 19, 20, and 29, T. 18 N., R. 18 E.W.M until ending in Dry Creek and its confluence with the Yakima River being within the SE¼ of Section 29, T.18 N., R. 18 E.W.M. all within the County of Kittitas. The waters diverted into the canals identified herein may return to the Yakima River through various surface and subsurface returns from the canal and ditch systems to the Yakima River prior to the confluence of Dry Creek and the Yakima River. **Secondary Reach** beginning at a point on the Yakima River approximately 2,037 feet north and 1640 feet west of the southeast corner of Section 29, being within the NE¼NW¼SE¼, T. 18 N., R. 18 E.W.M. in the county of Kittitas, Washington, and ends at a point located at the confluence of the Columbia River and Pacific Ocean at River Mile 0 in Section 18, T. 9 N., R. 11 W.W.M., Pacific Co., WA.

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in purpose and place of use.

- **Application Public Notice**
  Public Notice was published on January 03, 2008, and January 10, 2008, in newspapers of general circulation in Kittitas County. Publication occurred in the Ellensburg Daily Record and the Northern Kittitas County Tribune. A 30-day combined application and SEPA public comment period began January 11, 2008, and ended February 9, 2008. One comment was received on the application.

- **Application Processing**
  This application is being processed as a purchase with other public funds transaction. This acquisition was publicly funded through an Ecology drought relief grant in the Yakima Basin. Purchases with other public funds are subject to RCW 90.03.380 and chapter 90.38 RCW. Trust water acquisitions under RCW 90.03.380 require a tentative determination of extent and validity, Policy 1120. The tentative determination of extent and validity is conducted using methodology from GUID-1210.

- **State Environmental Policy Act (SEPA)**
  In accordance with chapter 43.21C RCW and acting as lead agency, Ecology determined the proposed water right change was not categorically exempt from SEPA, WAC 197-11-800(4). The applicant proposed to change the purpose of use on a water right in excess of 1 cfs. The City of Roslyn was required to fill out a SEPA checklist and submit it to Ecology for review.

  Ecology determined during non-drought years when prorationing does not occur in the Yakima Basin there would be a net benefit in the Yakima River and TWSA[2]. However, during drought years, when prorationing occurs in the Yakima Basin and City of Roslyn's appropriations from Domerie Creek are not curtailed, then flows would be reduced in a combined 30-mile stretch of the Yakima River, Cle Elum River, and Domerie Creek, if mitigation is not provided through the change of purpose of use of this right to instream flows and its transfer into the TWRP. The reduction in flow will be equal to the amount of consumptive water to be used as mitigation.

  The affected environment, from the existing point of diversion to Domerie Creek, contains two fish targets set by the Systems Advisory Operating Committee (SOAC) for the Yakima Basin[3]. Fish targets affected are: 1) Cle Elum Outflow (CLE) from dam to Yakima River; and 2) Yakima River at Cle Elum (YUMW) from Cle Elum River to Teanaway River, Figure 1. Both fish targets encompass two seasons, fall (September 10 to October 20) and winter (October 21 to March 31).

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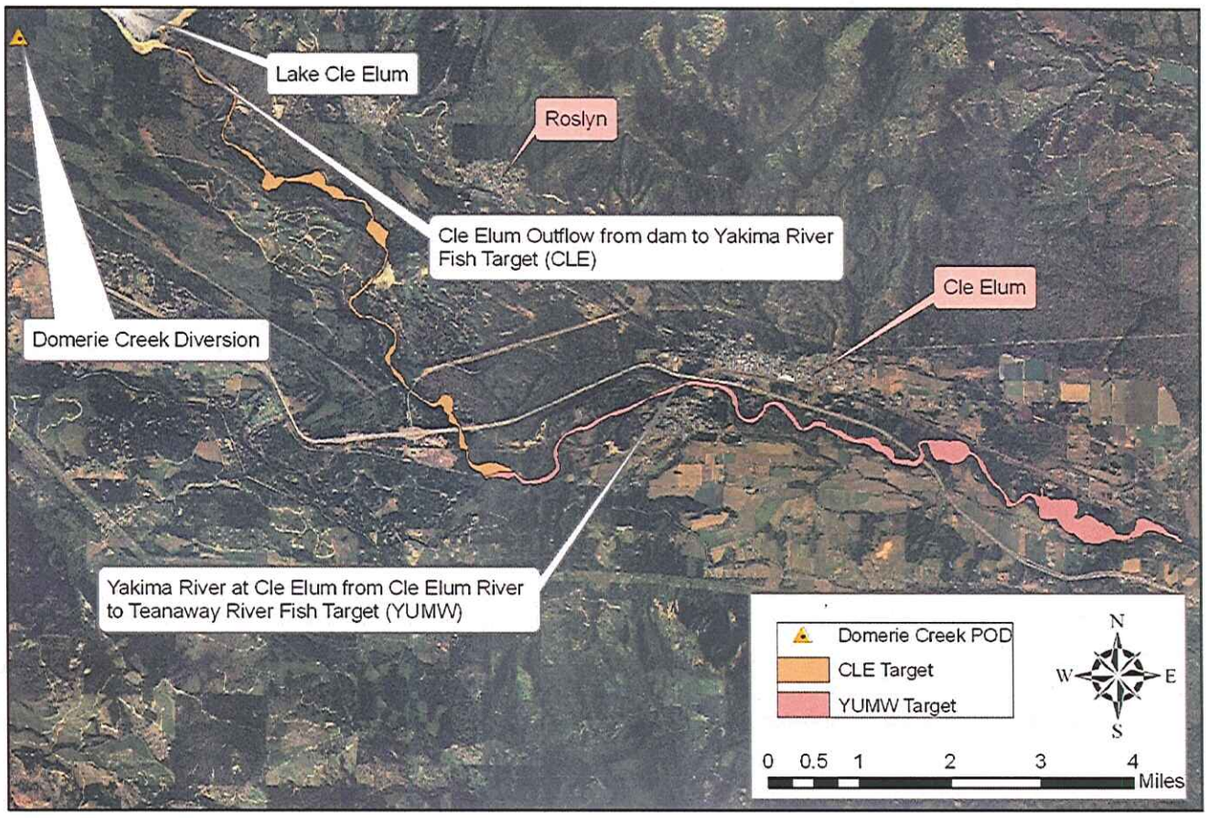
[2] Total Water Supply Available (TWSA) – Is a quantification of water supplies in the Yakima River Basin used by all parties (Ecology, Yakama Nation, Bureau of Reclamation, Fish and Wildlife, and water users).
[3] U.S. Bureau of Reclamation. "Interim Operating Plan". February 2002. Pg. 5-43-44.

Figure 1: SOAC Fish Target Locations



Ecology issued a SEPA Determination of Nonsignificance (DNS) for the project. The SEPA DNS public notice was published on January 03, 2008 and January 10, 2008, in newspapers of general circulation in the county in which the change is taking place. Publication occurred in the Ellensburg Daily Record and Northern Kittitas County Tribune. A 30-day combined application and SEPA comment period was provided beginning January 11, 2008, and ending February 9, 2008.

- **Comments**
  One comment was received during the 30-day comment period. This comment was from Lawrence Martin, Velikanje Halverson, P.C., representing Ellensburg Water Company, West Side Irrigating Company, and Cascade Irrigation District. Mr. Martin had three substantive comments: 1) the SEPA checklist and DNS was not substantial to cover all of the project effects; 2) the upstream mitigation may cause impairment to authorized water users in the intervening reach; and 3) a flow deficit in the Yakima River between the historic point of diversion and Domerie Creek will occur.

  In addition, Ellensburg Water Company asserts that there is a potential for impacts to fish screens at their main diversion. This is also the same point of diversion as the historic point of diversion of Court Claim No. 00521. During personal communication with Larry Brown, Ellensburg Water Company's District Manager, Mr. Brown stated the district has difficulty in keeping fish screen coverage at or above 70% coverage as mandated by ESA and enforced by Washington State Department of Fish and Wildlife and Nation Marine Fisheries Service. Mr. Brown also stated that coverage often drops below 70% during their season of use.

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

  Chapter 90.38 RCW establishes and guides the Trust Water Rights Program in the Yakima Basin.

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

  The Washington Supreme Court has held that Ecology, when acting on change applications under RCW 90.03.380, may not deny an application based upon public interest considerations. Public Utility District No. 1 of Pend Oreille v. State of Washington, Department of Ecology (2002).

PCHB (Pollution Control Hearings Board) Case (Ege) addressed the "unavailability of water" exemption to relinquishment under chapter 90.14 RCW. The PCHB concluded that the water right holder must take "reasonably diligent steps to make use of the water" before it becomes truly unavailable. Ege references other cases where the, "...reviewing bodies have examined the reasonableness of the actions of the water rights holder and their diligence in making beneficial use of the water." Ege v. Department of Ecology, PCHB No. 05-033 (2006).

General Adjudication of the Yakima River Basin. Department of Ecology v. Acquavella, Yakima County Superior Court No. 77-2-01484-5.

INVESTIGATION

History of Water Use

This Court Claim is located in the Reecer Creek Subbasin (Subbasin No. 7) of the Yakima Basin which is currently under adjudication in the Yakima County Superior Court. The Yakima County Superior Court entered the Conditional Final Order (CFO) for Subbasin No. 7 and consequently confirmed Court Claim No. 00521 on October 25, 2001. The Superior Court confirmation validates the extent and validity of Court Claim No. 00521 as of October 25, 2001.

Using aerial photography from 2003, 2004, 2005, and 2006, Ecology has verified that the Court Claim was exercised during every year of available photography. Gary Steele and Jason D. McCormick conducted a site visit and confirmed full beneficial use at the time of site visit on November 15, 2007. The landowner corroborated the conclusion that continuous beneficial use has occurred subsequent to the issuance of the CFO. Since the Court confirmed the court claim, the full 38.2 acres have been irrigated each year.

On November 1, 2005, Mary McManamy and Mary Patricia Seubert, who owned the 38.2 acres associated with Court Claim No. 00521, entered into a real estate contract with Gary and Jennifer Powell and Daniel Powell of Ellensburg, collectively known as DAGA Development LLC. The contract was established so that DAGA could use the property until the note on the property was paid in full. In November 2007, DAGA Development LLC paid the remaining balance and is now the vested owner of the property.

In 2007, DAGA Development entered into a contract with City of Roslyn for purchase of the water right for the 38.2 acres authorized under Court Claim No. 00521. The City of Roslyn acquired interest in the water right documented by the Court Claim to mitigate for their out-of-priority diversion from Domerie Creek which is subject to Curtailment Order during water short years. Funding for the acquisition is being provided from an Ecology drought relief grant. The transaction between the City of Roslyn and DAGA Development LLC will be completed once the water right is changed to instream flow.

City of Roslyn History

The City of Roslyn's only surface water right, Court Claim No. 01474, has a point of diversion on Domerie Creek and has a priority date of September 2, 1908. In response to drought during the Acquavella Adjudication in the Yakima River Basin the Yakima County Superior Court has issued several Orders Limiting Post-1905 Diversions During Periods of Water Shortage since 2001. In 2001 the Yakima County Superior Court issued the first Order Limiting Post-1905 Diversion for the period of the 2001 drought year. On June 10, 2004, the Yakima County Superior Court issued the second Order Limiting Post-1905 Diversions During Periods of Water Shortage. Over the winter of 2004-2005 interested parties met and discussed the implementation of that Order. In total, 240 water rights were affected as a result of the Order. The City of Roslyn's surface water right is one of those. Thirdly, a Revised Order Limiting Post-1905 Diversions During Periods of Water Shortage was issued by the Yakima County Superior Court on March 10, 2005. The Order has been standing since 2005 and the City of Roslyn has been subject to curtailment.

Proposed Use

The City of Roslyn proposes to change the purpose of use to instream flow as mitigation for out-of-stream uses and to change the place of use of Court Claim No. 00521 to the Yakima River. The City of Roslyn requests that Ecology admit the instream flow water right into the State of Washington TWRP. If accepted into the TWRP the City of Roslyn proposes to leave the water right in the TWRP temporarily, conditioned to a Trust Water Right Agreement between Ecology and the City of Roslyn, which will be completed after this change is approved, but before Ecology manages the right in trust.

The City of Roslyn proposes to use the above mentioned trust water right to mitigate for the City of Roslyn's out-of-priority water diversion on Domerie Creek subject to the Curtailment Order during times of prorationing or water shortage in the Yakima River Basin. The City of Roslyn also intends to lease, assign, or otherwise

designate all or a portion of the trust water right for out-of-stream beneficial use or mitigation for other uses during years when their Domerie Creek water right is not affected by the Curtailment Order or when less than all of the trust water right is needed to mitigate for the City's Domerie Creek diversions. Any such lease, assignment, or designation for other use is beyond the scope of this application and would constitute a separate proposed action subject to such notice, application, and review procedure as is provided by law. Specifically, under current law, any out-of-stream beneficial use proposed in the future would require Roslyn to seek an authorization.

Other Rights Appurtenant to the Place of Use

There are no other rights appurtenant to the existing place of use.

Water Use Estimate\Consumptive Use Estimate\Trust Water Right Calculations

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The purpose of use and place of use may be changed if it would not result in harm or injury to other water rights. The Supreme Court held that Ecology is required to make a tentative determination of extent and validity of a water right proposed for change. The following summarizes Ecology's tentative determination of extent and validity:

The CFO was signed six years prior to this application, the supporting documents attest to full use in each five-year period, and field investigation, and analysis of aerial photography indicates full use of Court Claim No. 00521 within the last six years. Ecology's GUID-1210 is used in this report as the basis for estimating beneficial and consumptive use.

In the absence of water use and metering data, Ecology's policy provides the discretion to use local crop irrigation requirement estimates. There are several sources that provide data for estimating crop irrigation requirement including: Washington Irrigation Guide (WIG), Washington State University Public Agricultural Weather System (PAWS), Agrimet, and the Modified Blaney-Criddle Method.

The applicant's consultant, WestWater Research LLC, produced a beneficial use report detailing the history of water use, aerial photography analysis, and a consumptive use analysis. This report is titled, "Water Right Summary and Beneficial Use Analysis for Court Claim No. 00521 – DAGA Development, LLC," November 8, 2007. Except for the consumptive use analysis, Ecology concurs with the information in this report; see WestWater's report in file. Ecology's consumptive use calculations are contained in the application file.

The following summarizes Ecology's analysis of Court Claim No. 00521:

> WestWater's report uses the WIG as the basis for estimating crop irrigation requirements for the existing water right. Ecology recognizes the WIG as a source of irrigation values used to calculate the total irrigation requirement. For the Ellensburg, WA area the WIG net irrigation requirement (NIR) for pasture/turf is 31.46 inches/acre. Table 2. The City of Roslyn requests, WestWater calculated, and Ecology allowed the addition of 4 inches/acre of irrigation requirement during drought years[4]. This determination is made because evapotranspiration is higher in a drought and in this irrigation system it appears that the system design and efficiency was such that water was always available for crop uptake. The effect of the additional drought allowance for consumptive use is that efficiency is slightly higher during a drought than in a normal year, but in any case does not exceed the authorized quantities of the CFO for Court Claim No. 00512.
>
> The water system in question is flood irrigation over 38.2 acres. Flood irrigation average application efficiency (Ea) is 50% with an estimated 5% total evaporation loss. For this case, a 20.61% Ea during normal water years and a 23.3% Ea is applicable during drought years due to irrigation system design and site geology based on Richard C. Bains,' P.E. testimony and engineering report in the evidence for the Court Claim No. 00521 court proceeding. According to GUID-1210, irrigation efficiencies below 35% for flood irrigation may suggest inefficient and wasteful use of water. However, this efficiency was confirmed in the adjudication as a reasonable and beneficial use of water. See technical report in the water right file by Jason D. McCormick for discussion on Ecology's methodology.

[4]Stan Isley. "Yakima River Basin Conservation Advisory Group Report; Yakima River Basin Water Transfers – Drought Year; Methodology; Calculating TWSA Water Budget Neutral Water Transfers Quantities Using Consumptive Use Calculations." 2001.

Table 2: Summary of WIG Water Use Analysis

Monthly and Seasonal Crop Requirements Based on WIG Data for the Ellensburg, Washington Area

	April	May	June	July	August	September	October	Total
WIG NIR (inch/acre)	0.00	3.07	6.80	9.32	7.43	4.23	0.60	31.46
Total WIG NIR (acre-feet per year) 38.2 acres	0.00	9.77	21.65	29.67	23.65	13.47	1.91	101

Consumptive use is estimated for the subject water right using the methods described in Ecology's GUID-1210. Flood irrigation results in a 5% total evaporative loss. It is determined that the total consumptive use for this water right based on site geology from Richard C. Bain's engineering report, irrigation practices, and the method of irrigation is 25.61% and non-consumptive use is 74.39% during normal water years and 28.3% and 71.7% respectively during drought years. The following Tables 3 & 4 summarizes the consumptive quantities:

Table 3: Consumptive Use using WIG

	April	May	June	July	August	September	October	Total
Cubic feet per second	0.00	0.20	0.45	0.60	0.49	0.28	0.04	
Acre-feet	0.00	12.14	26.90	36.87	29.39	16.73	2.37	124.4

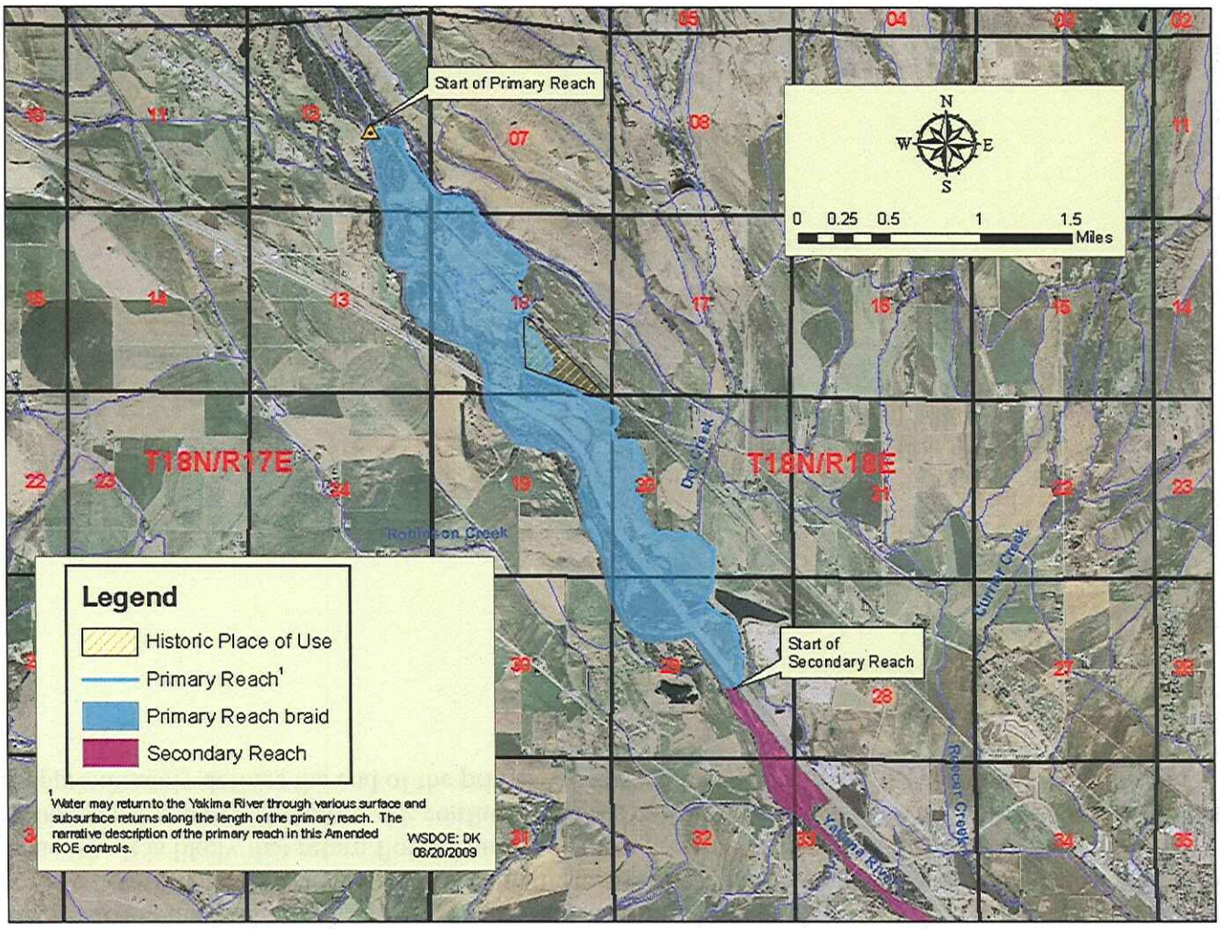
Table 4: Consumptive Use for drought year (2001 Model) using WIG

	April	May	June	July	August	September	October	Total
Cubic feet per second	0.04	0.23	0.48	0.62	0.50	0.31	0.07	
Acre feet	2.21	14.08	28.50	38.24	30.94	18.56	4.53	137.1

Primary and Secondary Reach Determination

The original place of water use in Section 18, T. 18 N., R. 18 E.W.M. is underlain by alluvial sands, silts, and gravels. Railroad beds bound the subject property on two of three sides and likely act as semi-pervious dams to surface runoff. After exiting the property, an irrigation ditch referred to as the Peter Wold ditch runs for a short distance parallel to the southerly boundary of the subject property before entering a culvert that transports water under the railroad bed. It is likely that water exiting the property travels in a southerly direction through the railroad grade via the Wold ditch and as subsurface seepage before entering a cutoff meander of the Yakima River. The cutoff meander is connected to the mainstem of the Yakima River via a channel that is bridged by Interstate 90. It is likely that return flows from the subject property re-enter the Yakima River system in approximately this area. Therefore, the confluence of the cutoff meander channel and the mainstem Yakima River approximately defines the end of the primary reach and the beginning of the secondary reach.

Figure 2: Primary and Secondary Reaches



Primary and Secondary Reaches

The **Primary Reach** is that portion of a stream that benefits entirely from reduced diversion. It begins at the Ellensburg Water Company point of diversion on the Yakima River located approximately 3,200 feet south and 1,850 feet west from the northeast corner of Section 12, being within the NE¼ NW¼ SE¼ of Section 12, T. 18 N. R. 17 E.W.M. with diversion into the Ellensburg Water Company Town Canal; then diverted into the Olson Ditch being within the SE¼SE¼ of Section 12, T. 18 N., R. 17 E.W. M.; then diverted into the Peter Wold Canal (also known as "Wold Ditch") being within the NW¼ of Section 18, T. 18 N., R. 18 E.W.M.; then continuing through the Peter Wold Canal or ditch system within Sections 19, 20, and 29, T. 18 N., R. 18 E.W.M until ending in Dry Creek and its confluence with the Yakima River being within the SE¼ of Section 29, T. 18 N., R. 18 E.W.M. all within the County of Kittitas. The waters diverted into the canals identified herein may return to the Yakima River through various surface and subsurface returns from the canal and ditch systems to the Yakima River prior to the confluence of Dry Creek and the Yakima River. The trust water right for the primary reach is 4.29 cubic feet per second (cfs), and 485.4 acre-feet per year (ac-ft/yr).

Downstream of the primary reach, flow in the **Secondary Reach** is increased by the amount of water normally consumptively used within the place of use. The secondary reach begins at a point on the Yakima River approximately 2,037 feet north and 1640 feet west of the southeast corner of Section 29, being within the NE¼NW¼SE¼, T. 18 N., R. 18 E.W.M. in the county of Kittitas, Washington, and ends at a point located at the confluence of the Columbia River and Pacific Ocean at River Mile 0 in Section 18, T. 9 N., R. 11 W.W.M., Pacific Co., WA.

The trust water right for the secondary reach is 124.4 ac-ft/yr during a normal water year and 137.1 ac-ft/yr during drought years when there is curtailment.

Trust Water Place of Use

The place of use for this water right as placed in the TWRP would be in the canal and ditch system, described above, and in the Yakima River downstream of the confluence of Yakima River and Dry Creek. The instantaneous and annual quantities at the point of diversion will remain unchanged. Therefore, the trust water during times when this water right is exercised will extend down the canal and ditch system, and then in the Yakima River, be tracked over Parker Dam, and be accounted for to the mouth of the Columbia River. This trust water right will remain instream in the Yakima River for approximately 156 miles to the confluence with the Columbia River and remain instream approximately 650 miles to the mouth of the Columbia River at the

Pacific Ocean. During times when the City of Roslyn's out-of-priority Domerie Creek water right is subject to curtailment the secondary reach will end at Parker Dam to ensure TWSA neutrality. In the event that Ellensburg Water Company is incapable of diverting water into the canal and ditch system, or does not divert water into the canal and ditch system for any other reason, the primary reach will be the Yakima River.

Trust Water Management

Ecology and the City of Roslyn will enter into a contractual agreement or memorandum of understanding. This document will outline the management and accept the water right into the State's TWRP. Management of the trust water right will include use as mitigation for City of Roslyn's Domerie Creek right when such use is curtailed or otherwise needed to prevent impairment of other rights, and mitigation for out-of-stream use (i.e., leasing) when such use is not curtailed.

Impairment Considerations

Exercising the water right described in Court Claim No. 00521 for instream flow purposes increase river flows from the historic point of diversion downstream to Parker Dam. At that point, it would be added to the target flow, but only during times and to the extent that it is not required by the City of Roslyn as mitigation for its out-of-priority diversion when curtailment of Post-1905 users is in effect[5] or otherwise leased to other users when curtailment is not in effect.

When considering impairment, Ecology reviewed flow targets set by SOAC to protect the adjudicated instream flow water rights held by the Yakama Nation in association with their treaty fishing rights (which have a priority date of "time immemorial"), potential impacts to Total Water Supply Available (TWSA), and potential impacts to other existing water rights in the intervening 30-mile reach.

The commentors have the three largest diversionary water rights in the intervening reach and they are West Side Irrigating Company, Cascade Irrigation District, and Ellensburg Water Company, Attachment 2. During an average water year when the small portion of West Side Irrigating Company's water rights that is subject to prorationing is not prorated[6] the combined diversions for the three districts are 355 cfs from April 1-20, 380 cfs from April 20-August 31, 355 cfs from September 1-30, 247 cfs from October 1-15, and 97 cfs from October 15-31. Table 5 below, depicts river flows in both drought (2001 and 2005) and non-drought (2006) years.

Table 5: Average Monthly Yakima River Flows below the Teanaway River (Calculated from YUMW and TEAW Stations)

	Combined Average Flow		
Month	2001	2005	2006
April	1214	1512	none
May	1369	1441	1270
June	1990	2765	2072
July	2989	3234	3432
August	2701	2986	3506
September	748	885	962
October	534	463	514

The City of Roslyn holds the only surface water right on Domerie Creek from their existing point of diversion downstream to the confluence with the Cle Elum River.

The historic point of diversion for Court Claim No. 00521 is at the headworks of the Town/Wold/Olsen Ditches (Ellensburg Water Company and other users). The historic point of diversion will remain water budget neutral according to TWSA. There will be no change in TWSA at the headworks of Ellensburg Water Company and other users as well as other water users downstream (Attachment 2) during normal water years and during years when curtailment of Post-1905 users is in effect.

The City of Roslyn's September and October consumptive use has decreased since July 2006, when the City of Roslyn joined a regional waste water treatment (WwTP) plant with Cle Elum and Suncadia. Prior to July 2006, the City of Roslyn operated its own WwTP plant which was considered in the adjudication as 100% consumptive because they retained water in their lagoon system. The new Cle Elum regional wastewater

[5] State of Washington, Department of Ecology vs. James J. Acquavella. Superior Court State of Washington for Yakima County. Revised Order Limiting Post-1905 Diversions During Periods of Water Shortage. March 10, 2005.

[6] Cascade Irrigation District and Ellensburg Water Company do not hold any water rights that are subject to prorationing in the Yakima River Basin Project. A portion of West Side Irrigating Company's water rights is subject to prorationing. During a drought year the diversion of West Side Irrigating Company associated with its proratable water right is likely to be reduced due to prorationing.

treatment plant does not retain water for later discharge; it is treated and discharged soon after it is received. Based on the City of Roslyn's effluent contribution to the regional wastewater treatment plant return flows are increased by approximately 0.14 cfs downstream of the Cle Elum WwTP plant in September and October.

During "flip flop," a project operating mode designed to comply with a 1980 Federal Court Order (the Quackenbush Order), Yakima project operations are significantly altered from normal operations. The river reaches below Keechelus, Kachees, and Cle Elum reservoirs are set to low flows to improve the survival of spawning Chinook salmon species, incubation of their eggs, and retain manageable amounts of water in the project reservoirs over the winter. Winter fish targets are designed to maintain flows over spawning locations; so reductions in flow during this time period could impact fisheries goals during the last 11 days in October of the season of use of the proposed trust water right.

The flip-flop causes the low flows in the Cle Elum to Thorp reach of the Yakima River after September 10. The parties that commented recognize it as such in their comment letter stating, "Presently, the Irrigation Entities [Cascade Irrigation District, West Side Irrigating Company, and Ellensburg Water Company] already have difficulty diverting their water supply during most years, especially during times of 'flip flop' when the Yakima River is run at its lowest available point."

Reclamation and Ecology cooperate in the management of trust water rights acquired for the purposes of instream flow, primarily under chapter 90.38 RCW and the Yakima River Basin Water Enhancement Program[7]. Ecology is primarily responsible for management of the tributary acquisitions and Reclamation is responsible for management of the mainstem diversions and target flows at selected locations. Cooperation between Reclamation and Ecology is required to manage trust water rights created in basin tributaries and on the mainstem. Reclamation manages the Yakima Project to meet its contractual obligations to water users and to meet environmental and fisheries targets identified in federal legislation.

Public Interest Considerations

The Washington Supreme Court has held that Ecology, when acting on change applications under RCW 90.03.380, may not deny an application based upon public interest considerations. Public Utility District No. 1 of Pend Oreille v. State of Washington, Department of Ecology (2002).

Consideration of Protests and Comments

Lawrence Martin's comments were considered in the processing of this Report of Examination. Jason McCormick met with Larry Browne (Ellensburg Water Company) and Pat Taylor (Olsen Ditch) concerning their comments. Their comments are thoroughly discussed in the SEPA review and in this section.

September and October flows in the Cle Elum to Thorp reach of the Yakima River are significantly higher than the combined diversions of the Cascade Irrigation District, West Side Irrigating Company, and Ellensburg Water Company. Although the river flows are more than sufficient to satisfy the water rights of the commenting parties, they have operational issues with their head works and fish screens that make diversion of their full diversion rate difficult in some instances.

Using Court Claim No. 00521 as mitigation for out-of-priority diversion at Domerie Creek under City of Roslyn's 1908 water right may, compared to the base condition during times when exercise of City of Roslyn's Domerie Creek right is curtailed pursuant to the Curtailment Order, cause a small flow deficit in a 30-mile reach of the Cle Elum and Yakima Rivers. Whether there is a deficit depends on the time of year and Reclamation's response to City of Roslyn's curtailment or, alternatively, their out-of-priority diversion. Two cases, one with a pair of scenarios, illustrate the effect of City of Roslyn's out-of-priority use of water.

> Case 1. From the <u>start of irrigation season to the beginning of flip-flop</u> (typically by September 10), if USBR imposes pro-rationing, there would be a reduction in the Cle Elum to Thorp reach of the Yakima River equal to City of Roslyn's consumptive use (CU). Actual stream flows in the reach are dependent upon TWSA and Reclamation's reservoir release schedule. However, flow in the Cle Elum to Thorp reach is typically more than 2,000 cfs.

[7] Bureau of Reclamation, U.S. Department of the Interior. "Yakima River Basin Water Enhancement Project, Washington, Final Environmental Impact Statement." 1999.

Case 2. After flip flop begins, Reclamation's expected response would be to release water from Cle Elum reservoir to offset the City of Roslyn's impact on the Cle Elum River, but there is still the matter of the consumptive impact to the Cle Elum to Thorp reach to consider. Assuming the Post-1905 mitigation was in place, allowing City of Roslyn to continue to divert out of priority, the impacts to Cascade Irrigation District, West Side Irrigating Company, and Ellensburg Water Company would model the following:

2a. If USBR did not increase releases from Cle Elum reservoir to offset City of Roslyn's diversion, the flow deficit from Domerie Creek downstream to the Cle Elum wastewater treatment plant (WwTP) would equal City of Roslyn's gross diversion. **Below the Cle Elum WwTP, the flow deficit would equal City of Roslyn's CU.**

2b. If USBR increased releases from Cle Elum reservoir to meet the spawning flow target there would be no deficit in the Cle Elum River and Yakima River down to the Cle Elum WwTP. **Below the Cle Elum WwTP, there would be a flow increase equal to City of Roslyn's fraction of WwTP outflow.**

The foregoing example indicates the effect of City of Roslyn's out-of-priority diversion on instream flow from their Domerie Creek diversion downstream to the Ellensburg Water Company diversion (Town Ditch). However, if City of Roslyn's diversion was curtailed during flip-flop each year, Reclamation's expected response would be to reduce its reservoirs outflows to maintain low levels in an attempt to maintain a low target spawning flow for the Cle Elum River. Curtailing City of Roslyn's use of water would not alter the situation for Cascade Irrigation District, West Side Irrigating Company and Ellensburg Water Company (Town Ditch). The Yakima River is low in the Cle Elum to Thorp reach because Reclamation manages its storage releases in September and October to achieve the targets it sets.

Suncadia, formerly Trendwest, modeled the effect of transferring water rights from Ellensburg upstream to the Cle Elum area. The effect of reducing flow in September and October by 8.1 and 4.9 cfs[8] respectively is approximately 0.01 feet[9] in the Yakima River.

Suncadia's model is an approximate comparison of the City of Roslyn's upstream mitigation to be supplied during a drought year. In the most extreme case, if City of Roslyn was curtailed and Reclamation took no action to reduce reservoir releases at Cle Elum dam to maintain the target flow, flows would decrease downstream of the Cle Elum wastewater treatment plant by no more than 3.00 cfs, resulting in a river stage change of under 0.01 foot.

Case 2b. highlights a conflict between the City of Roslyn's use of water and Reclamation's target flow on the Cle Elum River. If Reclamation has insufficient operational flexibility to manage TWSA without negatively affecting Yakima Project water users, then the City of Roslyn's mitigation would not be fully effective and the process of calling for water would ensue. For example, if Reclamation has insufficient water in Cle Elum Reservoir to meet the Cle Elum River target flows from September 10 through March, then the time immemorial right of the Yakama Nation would be impaired. City of Roslyn's out-of-priority diversion would be curtailed as the result of a "call" by the Yakama Nation. It is not City of Roslyn's mitigation that causes impairment, but instead it is the out-of-priority diversion under their 1908 water right.

Ecology and Reclamation signed a Memorandum of Understanding on March 7, 2007, that created the basis for negotiation of a contract between Ecology and Reclamation to assign trust water rights to a contract to store and deliver water at the location and time that Ecology requires. Pursuant to this Memorandum of Understanding, in January 2009, Ecology and Reclamation entered into the Exchange Contract. Assigning a portion of City of Roslyn's two mitigation rights (the subject water right and the P.L.P. right, CS4-00402CTCLsb7) pursuant to the Exchange Contract would allow Reclamation to hold the City of Roslyn's water in Cle Elum reservoir and to offset the impact of their Domerie Creek diversion on Reclamation's operation of Cle Elum reservoir. This mechanism could provide relief to Cascade Irrigation District and West Side Irrigating Company if Reclamation released the water assigned to the contract at a rate above its target for the Cle Elum River. However, it is Reclamation's responsibility to manage the Yakima Project to meet the multiplicity of environmental, irrigation, and other purposes, not City of Roslyn's.

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[8] Cle Elum Urban Growth Area Final Environmental Impact Statement Draft Supplemental Water Supply Technical Report. Water Balance Model Technical Memorandum. Brown and Caldwell. December 12, 2001.

[9] A.C. Kindig & Co., Mentor Law Group PLLC, and Foster Wheeler, Inc. "MountainStar Master Planned Resort, Upper Yakima River Water Monitoring and Management Plan." 2003.

CONCLUSIONS

The author finds that the water right confirmed under Court Claim No. 00521 has been fully exercised since the Subbasin No. 7 Conditional Final Order was entered on October 25, 2001, and that in accordance with RCW 90.03.380 and Chapter 90.38 RCW the Court Claim No. 00521 is eligible for change.

Approval of the requested transfer of Court Claim No. 00521 to the TWRP for instream flow purposes will not cause impairment of existing water rights.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for changes to purpose and place of use be 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

4.29 cfs, 484 ac-ft/yr from April 1 to October 31 for instream flow purposes in the primary reach.

The **Primary Reach** begins at the Ellensburg Water Company point of diversion on the Yakima River located approximately 3,200 feet south and 1,850 feet west from the northeast corner of Section 12, being within the NE¼ NW¼ SE¼ of Section 12, T. 18 N. R. 17 E.W.M. with diversion into the Ellensburg Water Company Town Canal; then diverted into the Olson Ditch being within the SE¼SE¼ of Section 12, T. 18 N., R. 17 E.W. M.; then diverted into the Peter Wold Canal (also known as "Wold Ditch") being within the NW¼ of Section 18, T. 18 N., R. 18 E.W.M.; then continuing through the Peter Wold Canal or ditch system within Sections 19, 20, and 29, T. 18 N., R. 18 E.W.M until ending in Dry Creek and its confluence with the Yakima River being within the SE¼ of Section 29, T.18 N., R. 18 E.W.M. all within the County of Kittitas. The waters diverted into the canals identified herein may return to the Yakima River through various surface and subsurface returns from the canal and ditch systems to the Yakima River prior to the confluence of Dry Creek and the Yakima River.

For instream flow purposes in the secondary reach from April 1 to October 31 as follows:

Instream flow during years when City of Roslyn's Domerie Creek water right is not curtailed:

	April	May	June	July	August	September	October	Total
Cubic feet per second	0.00	0.20	0.45	0.60	0.49	0.28	0.04	
Acre-feet	0.00	12.14	26.90	36.87	29.39	16.73	2.37	124.4

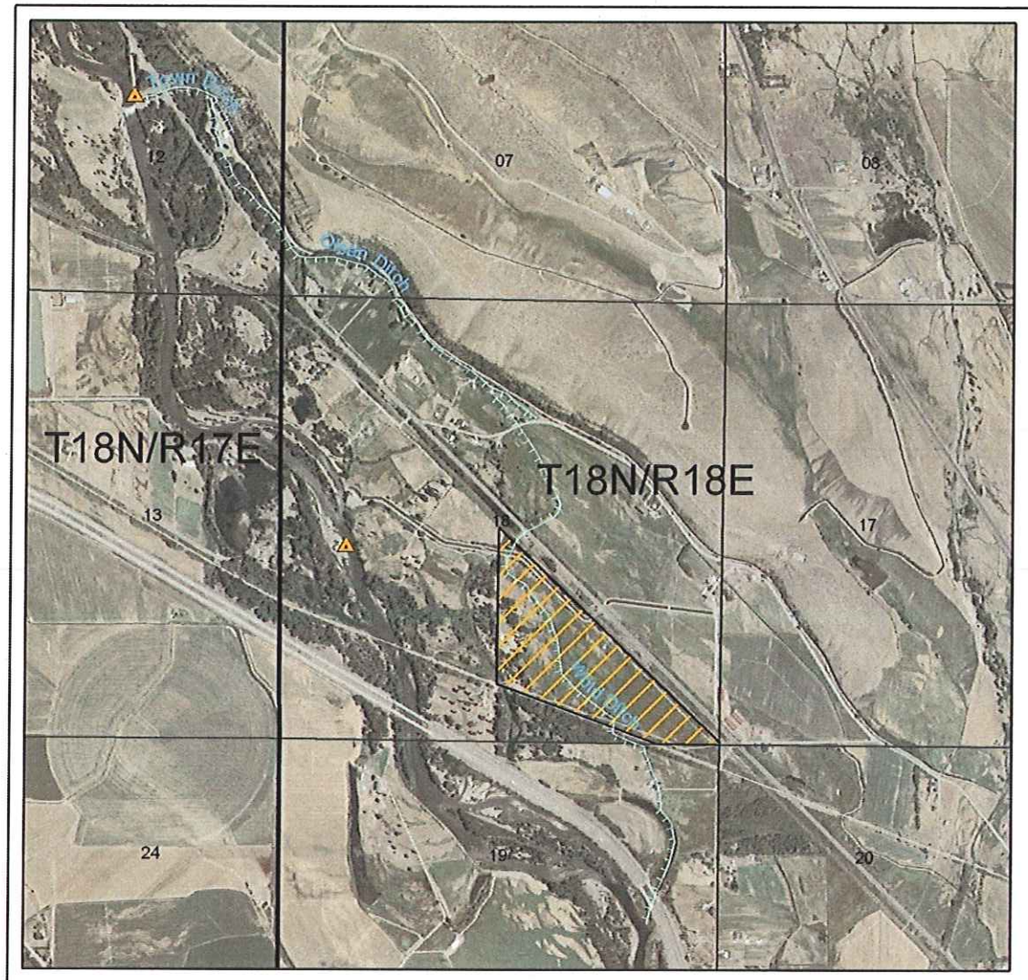
Mitigation during years when City of Roslyn's out-of-priority Domerie Creek water right is curtailed:

	April	May	June	July	August	September	October	Total
Cubic feet per second	0.04	0.23	0.48	0.62	0.50	0.31	0.07	
Acre-feet	2.21	14.08	28.50	38.24	30.94	18.56	4.53	137.1

The **Secondary Reach** begins at a point on the Yakima River approximately 2,037 feet north and 1640 feet west of the southeast corner of Section 29, being within the NE¼NW¼SE¼, T. 18 N., R. 18 E.W.M. in the county of Kittitas, Washington, and ends at a point located at the confluence of the Columbia River and Pacific Ocean at River Mile 0 in Section 18, T. 9 N., R. 11 W.W.M., Pacific Co., WA.

Report by: _____ 12-3-09
Robert F. Barwin, Water Resources Program — Date

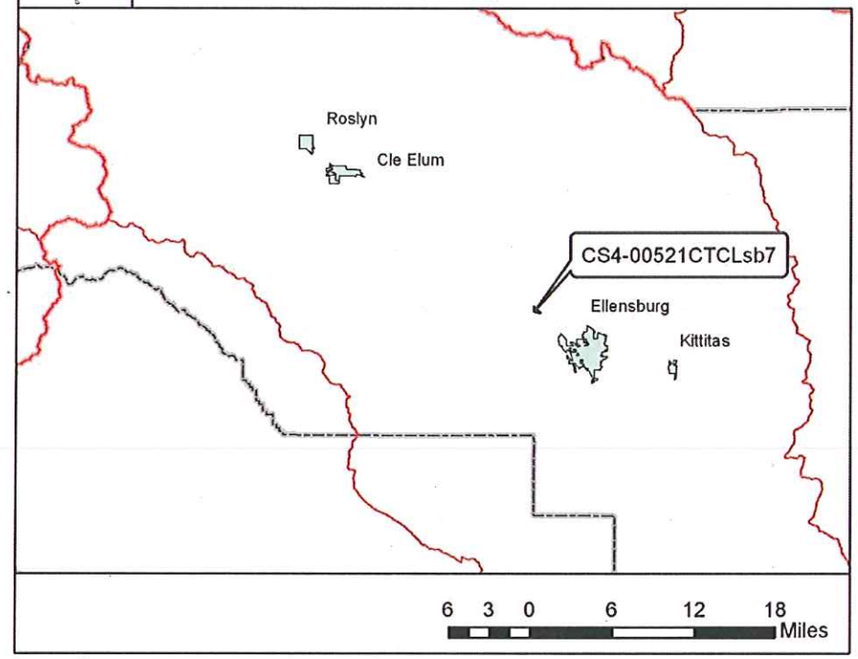
WRTS WR DOC ID No.: 4423480



750 375 0 750 1,500 2,250 Yards

City of Roslyn
CS4-00521CTCLsb7
Sect. 18, T18NR18E W.M.
WRIA 39 - Kittitas County

WASHINGTON STATE DEPARTMENT OF ECOLOGY



Legend

- County
- WRIA
- Cities
- Township
- Sections
- Major Highways
- Local Roads
- Ditches
- Historic Place of Use
- Historic Point of Diversion

Comments:
Place of Use, point diversion are as difined on the cover sheet under the heading, "LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED."

Attachment 1: Historic Use Map