DEPARTMENT OF ECOLOGY
State of Washington

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

File NR CG4-GWC7601-A@3
WR DOC ID 4237857

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

**PRIORITY DATE**
January 2, 1958

**TRUST TERM**
Permanent

**WATER RIGHT NUMBER**
Certificate No. 7601-A

**WATER RIGHT HOLDER:**
John Goroch
PO Box 1157, Omak WA 98841-1157

**FILE NUMBER**
CG4-GWC7601-A@3

**REMARKS:** This transfer to instream flows is intended to be used as mitigation for the Crescent Bay Resort Home Owners Association in which 40 ac-ft/yr is authorized for their use under Ground Water Permit No. G3-30655.

## Purpose and Quantity

Instream flows and mitigation in the Secondary Reach between the original point of withdrawal and the downstream proposed use.

| | Secondary Reach | |
|---|---|---|
| | Qa(Acre-feet) | Qi (CFS) |
| Jan | 4.1 | 0.066 |
| Feb | 3.7 | 0.066 |
| Mar | 4.1 | 0.066 |
| April | 3.9 | 0.066 |
| May | 4.1 | 0.066 |
| June | 3.9 | 0.066 |
| July | 4.1 | 0.066 |
| Aug | 4.1 | 0.066 |
| Sep | 3.9 | 0.066 |
| Oct | 4.1 | 0.066 |
| Nov | 3.9 | 0.066 |
| Dec | 4.1 | 0.066 |
| Total | 48.0 | |

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

**Secondary Reach** – Begins at a point approximately located at Okanogan River Mile 24, Section 19, T. 33 N., R. 26 E.W.M (the approximate point where unused groundwater at the original point of withdrawal returns to the river), extending down the Okanogan River to the Columbia River, and continuing down the Columbia River to a point approximately located at Columbia River Mile 441, Section 18, T. 20 N., R. 23 E.W.M, Water Resource Inventory Area (WRIA) 41.

## Provisions: Trust Water Right

**Trust Water Conveyance Requirement**

This instream flow right will be conveyed to Ecology in the form of a Quit Claim Deed. Once conveyed to Ecology, the right will be permanently managed in the Trust Water Right Program in the quantities and location described herein.

## *PORTION OF WATER RIGHT NOT BEING CHANGED IN THIS DECISION*

**PRIORITY DATE**
January 2, 1958

**WATER RIGHT NUMBER**
Certificate No. 7601-A

**WATER RIGHT HOLDER**
John Goroch
PO Box 1157
Omak WA 98841-1157

### Purpose and Quantity

| PURPOSE | WITHDRAWAL RATE | ANNUAL QUANTITY (AC-FT/YR) | PERIOD OF USE (mm/dd) |
|---|---|---|---|
| Irrigation of 107.7 acres | 1,324 GPM | 497.6 | 05/01 - 10/31 |

### Source Location

| COUNTY | WATERBODY | WATER RESOURCE INVENTORY AREA |
|---|---|---|
| Okanogan | Well | 49 |

The point of withdrawal is located within the NW¼NW¼ of Section 11, T. 32 N., R. 26 E.W.M., NW¼NW¼ of Section 11, T. 32 N., R. 26 E.W.M.

### Place of Use

NW¼ of Section 11, T. 32 N., R. 26 E.W.M.

### Description of Water System

An 8 inch well.

### Measurement of Water Use

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

## Provisions:

**Measurements, Monitoring, Metering and Reporting**
An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

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

**Easement and Right-of-Way**
The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

**Real Estate Excise Tax**
This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions and, therefore, will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477 Internet: http://dor.wa.gov/. E-mail: REETSP@DOR.WA.GOV.

**Findings of Facts**
Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that there will be no impairment of existing rights and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Change Application No. GC4-GWC7601-A@3, subject to existing rights and the provisions specified above.

## YOUR RIGHT TO APPEAL

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

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

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

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

**ADDRESS AND LOCATION INFORMATION**

| Street Addresses | Mailing Addresses |
|---|---|
| **Department of Ecology**<br>Attn: Appeals Processing Desk<br>300 Desmond Drive SE<br>Lacey WA 98503 | **Department of Ecology**<br>Attn: Appeals Processing Desk<br>PO Box 47608<br>Olympia WA 98504-7608 |
| **Pollution Control Hearings Board**<br>1111 Israel Road SW, Ste 301<br>Tumwater WA 98501 | **Pollution Control Hearings Board**<br>PO Box 40903<br>Olympia WA 98504-0903 |

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

Signed at Yakima, Washington, this 15 day of AUGUST 2012.

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

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## INVESTIGATOR'S REPORT

### BACKGROUND

Mr. John Goroch of Omak Washington, has entered into several purchase and sale agreements and has submitted several applications to change Superseding Ground Water Certificate No. 7601-A. This report specifically addresses Water Right Change Application No. CG4-GWC7601-A@3 requesting to transfer a portion of Certificate No. 7601-A to instream flows in the Okanogan and Columbia Rivers to mitigate for a downstream use.

The intended downstream user of the mitigation is Tim Cowin of TEC Homes, Inc working on behalf of the Crescent Bay Resort Home Owners Association, a resort located west of Quincy, WA, along the Columbia River. Mr. Cowin has entered into a purchase and sale agreement to acquire a portion of the Goroch water right to mitigate for a new ground water permit for municipal water use at Crescent Bay Resort.

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

| Attributes | Existing | Proposed |
|---|---|---|
| **Name** | Parm Dickson | John Goroch |
| **Priority Date/ Change Application Date** | 01/02/1958 | 06/30/2005 |
| **Instantaneous Quantity** | 1500 gpm | 120 gpm |
| **Annual Quantity** | 564 af/yr | 48 af/yr |
| **Purpose of Use** | Irrigation of 141 acres | Instream flows |
| **Period of Use** | May 1 thru October 31 | Year-round |
| **Place of Use** | NW ¼ of Section 11, T. 32 N., R. 26 E.W.M. | Instream from Okanogan River Mile 24 downstream to Columbia River Mile 441, and then to be used for municipal use in Section 18, T. 20 N., R. 23 E.W.M. |
| **Point of Withdrawal** | NW¼NW¼ of Section 11, T. 32 N., R. 26 E.W.M. | N/A |

**Legal Requirements for Proposed Change**

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

- **Public Notice**
  - RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Daily Sun News of Sunnyside WA, of Yakima County on March 9th and 16th, 2012. Notice was also published in the Douglas County Empire Press on March 15th and 22nd, 2012.

- **Trust Water Creation Notice**
  - Ecology is required to send notice to interested parties when a trust water right is created under RCW 90.42.040(5). On February 22, 2012 Ecology issued a letter notifying interested parties of the creation of a trust water right for the Goroch Mitigation Project. Two comment letters were received; see the ***Consideration of Protest and Comments*** section below.

- **State Environmental Policy Act (SEPA)**
  - Development of the Crescent Bay Resort is not exempt from environmental review under SEPA. The lead agency, Grant County Planning, issued a *Mitigated Determination of Non-Significance (MDNS)* on September 15, 2005. Ecology determined that the existing SEPA documentation adequately describes the project.

- **Water Resources Statutes and Case Law**
  - RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.
  - The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. Based on *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp.*
  - RCW 90.14.140(2)(c) states that a water right not used for more than 5 years is not relinquished if it is claimed for a determined future development to take place within 15 years of the last beneficial use of water under the water right. In order to be valid, a determined future development plan must satisfy a series of tests established in past court cases[1] and summarized here:
    - The project must be sufficiently complex as to require more than 5 years to complete;
    - The plan must be determined and fixed within five years of the last beneficial use of the water;
    - The party exercising the plan must have equity in the water right;
    - The plan must remain fixed, and;
    - Affirmative steps must be taken to implement the plan within 15 years.
  - RCW 90.42.080(1)(a) provides that the state may acquire all or portions of existing water rights, by purchase, gift, or other appropriate means other than by condemnation, from any person or entity or combination of persons or entities. Once acquired, such rights are trust water rights.
  - RCW 90.42.040(4)(a) provides that exercise of a trust water right may be authorized only if the department first determines that neither water rights existing at the time the trust water right is established, nor the public interest will be impaired.

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

**INVESTIGATION**
**History of Water Use**

Certificate No. 7497-A was issued to Parm Dickson on January 18, 1972 for 412 ac-ft/yr for the irrigation of 103 acres. Ecology found this certificate to be in error and issued Superseding Certificate No. 7601-A, on February 16, 1972. The annual quantity and number of acres were changed to 546 ac-ft/yr for the irrigation of 141 acres, everything else remained the same.

The property to which Superseding Certificate No. 7601-A is appurtenant lies within the Colville Indian Reservation boundary. Ecology is required to identify whether the right being proposed for change is a federally reserved right or a state issued right. Any federal water right that may be appurtenant to property must be identified and distinguished from any state-issued water rights. This requirement was established in the Boyd Walton case of the 1980's which states that tribal members have federal water rights on reservation land, but as soon as property is sold to a non-member, they have a reasonable amount of time (in most cases 15 years or less) to establish water use on the property to secure federal water rights.

Mr. Goroch stated that the property was homesteaded by a non-tribal member around 1910. A certificate of water right was issued to Parm Dickson on February 16, 1972. Air photos from 1954 and 1964 showed no irrigated acres, or cultivation on this property. Therefore, it is assumed that this property did not retain federal water rights. To verify these findings, a description of this project was sent to the Colville Tribal Council on April 17, 2006, for their review. Ecology received a response from Lois Trevino on August 10, 2006 stating that the property owned by John Goroch has been in fee status (deeded to a non-tribal member).

On April 15, 1977, John Goroch purchased the property. Air photos taken in 1983 show mature, green, orchard rows. On August 7, 2001, Mr. Goroch submitted an Emergency Drought Action application to add a point of withdrawal and transfer a portion of his right to another property he owns. The proposed property is also along the Okanogan River, roughly 14 miles to the southwest of the original property. The Emergency Drought Action applications were created by Ecology to allow temporary changes during a drought year. Mr. Goroch's application was received at the end of the irrigation season, accompanied by a letter stating he wanted a permanent change and would be removing trees from his original property and buying trees for the proposed property to the south. Ecology did not process the application in 2001 as drought relief, but instead accepted it for a permanent change of his water right. John Goroch did not irrigate during the 2002 season or any season after that.

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

John Goroch entered into several purchase and sale agreements (PSA) between 2005 and 2006. These PSAs occurred prior to five years of non-use of the water right. John Goroch is relying on these PSAs to serve as evidence for a determined future development plan, which is an exemption to relinquishment under RCW 90.14.140(2)(c).

Tim Cowin of TEC Homes entered into a PSA for 48 ac-ft/yr, 125 gpm of the Goroch water right. This PSA corresponded to Application No. CG4-GWC7601-A@3. In July of 2007, Ecology posted a draft approval of application No. CG4-GWC7601-A@3 on the internet describing the transfer of a portion of Certificate 7601-A to a well at Crescent Bay Resort for its continuous municipal uses. During the 30-day posting of the draft, Ecology received protests and did not issue a final approval. See the *Consideration of Protests* section below.

John Goroch and his representatives amended Application No. CG4-GWC7601-A@3 to request that this portion of the water right be transferred to instream flows to mitigate for the use at Crescent Bay Resort.

In January of 2010 the property containing the place of use for Certificate of Ground Water Right No. 7601-A was sold. John Goroch, Chester Goroch, and Janina Goroch issued a statutory warranty deed to the Confederated Tribes of the Colville Reservation for their property. However, they retained Ground Water Certificate No. 7601-A.

**Site Visit**

Ecology permit writer, Phil Kerr, visited Mr. Goroch's property on November 7, 2005 for a preliminary site visit of the original place of use. Mr. Goroch and Phil Kerr walked the property and identified 122 acres of land that had been irrigated. A second site investigation was conducted on March 17, 2006 by Ecology employees Anna Hoselton, and Phil Kerr, accompanied by Ed Kemp, the applicant's consultant.

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

**Extent and Validity**

To quantify the extent of the right, Ecology reviewed power records from 1996 to 2000 showing that Mr. Goroch used at least his full water right of 564 ac-ft/yr during those years. Mr. Goroch then removed his orchard in early spring of 2002 and ceased irrigating up to the present. The last beneficial use of the water right took place in 2001 and five consecutive years of non-use occurred from 2002 to 2006 and no use thereafter.

According to RCW 90.14.180 a water right that has not been beneficially used for a period of five or more years may be subject to relinquishment unless a sufficient cause for non use can be identified. Mr. Goroch and Tim Cowin assert that they have a *Determined Future Development Plan* (DFD) for supplying water to the Crescent Bay Resort. Other determined future developments are also asserted for other portions of the Goroch right, the subject of the other change applications filed to transfer this water right. Under RCW 90.14.140(2)(c), a DFD plan is considered an exemption to relinquishment of a water right. Several court cases have clarified the DFD relinquishment exemption (e.g. *R.D. Merrill v. PCHB*, 1999). DFD criteria are described in Ecology's Policy 1280, summarized below for applicability to the Goroch water right:

- *The DFD must be established by an equity interest holder in the water right* and *the plan must be fixed within 5 years of the last date of nonuse of water.*
    - The applicant submitted a water right change on June 30, 2005.
    - Tim Cowin entered into a purchase and sale agreement (PSA) in 2005 to purchase 48 ac-ft/yr, 125 gpm of the Goroch water right.

- *The scope of the DFD must require more than 5 years to complete. And the water right holder must have a firm definitive plan* (the water right holder is connected to the buyer's plan via the PSA).
    - A well was drilled at Crescent Bay Resort in 2004.
    - 2005 air photos show grading had begun at Crescent Bay Resort.
    - Grant County Planning issued a *Mitigated Determination of Non-Significance (MDNS)* on September 15, 2005.
    - Crescent Bay Resort submitted a water system plan in November of 2005.

**Annual Consumptive Quantity**

Ecology has the authority to consider the request to add instream flows as a purpose of use to a water right under RCW 90.03.380(1), which states that such a change shall not increase the annual consumptive quantity of water used under the water right. Ecology is required to perform an annual consumptive quantity (ACQ) test to determine that the proposed future consumptive use will not exceed the historic use of the water right.

The consumptive quantity is estimated by subtracting all return flows from the total amount of water diverted (not to exceed the water right). This consumptive quantity is determined for the most recent five years of continuous beneficial use that predate any excused nonuse. The average of the greatest two years of use equals the *Annual Consumptive Quantity*. In this case, the 5 year period of continuous use was from 1997 to 2001.

Calculations of annual water use were based on Mr. Goroch's power records from 1997 to 2001. In the two highest years of use, Mr. Goroch exceeded his water right. Since Ecology cannot authorize the transfer of water in excess of the right, the following ACQ calculations are based on the full quantity authorized for Superseding Certificate No. 7601-A; 1500 gpm, and 564 ac-ft/yr. In these years, Mr. Goroch irrigated 122 acres of apple orchards with a cover crop. According to the Washington Irrigation Guide (WIG), this crop requires 2.64 ft/acre of water annually. Mr. Goroch stated that more water was required to keep his trees and cover crop viable due to the "course sandy soils." Solid-Set, overtree sprinklers are estimated to have a 15% evaporation rate (based on Ecology Guidance 1210). The following table provides the calculations for the total consumptive use.

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

The portion of the Goroch right being considered for transfer in this report will be used for instream flows so there will be no consumptive use considered here. Any future use of the instream flow right as mitigation will be evaluated based on consumptive use requesting to be mitigated.

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

**Hydrologic/Hydrogeologic Evaluation**

A *Technical Memorandum* was written for this project by Ecology technical staff in 2007 regarding Crescent Bay Resort's request to directly transfer a portion of the Goroch water right to their development. The application was later amended to request that the Goroch right be transferred to instream flows and be used for mitigation of downstream uses. The technical memorandum is still applicable in that it characterizes how the Goroch's historic water use affected the Okanogan River.

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

**Trust Water Calculations**

RCW 90.42.080(1)(a) provides that the State may acquire water rights and when acquired, such rights are trust water rights. The applicant proposes to supply Ecology with a quit claim deed in exchange for Ecology holding a portion of the Goroch's water right in trust.

Ecology typically manages its trust water rights by defining a primary and a secondary reach. The primary reach is the length of the river that benefits from both the former consumptive use and former return flow waters of a water right. The secondary reach is the length of river that benefits only from the former consumptive use portion of a water right. In this case, there is no primary reach since the water right proposed for trust is for ground water that discharges to the Okanogan River. It is difficult to identify a point on the Okanogan River where return flows and unpumped ground water would return to the river. According to Ecology's technical memorandum, uncaptured ground water from the original well may fully discharge to the Okanogan River by River Mile 24 based on the confining bedrock morphology. Therefore, the secondary reach for the proposed trust water right is estimated to begin at Okanogan River Mile 24 and extend down the Okanogan and Columbia Rivers to Columbia River Mile 441 (see the map in Attachment 1). The end point coincides with the project location for the Crescent Bay Resort Home Owners Association described in Application No. G3-30655.

Water available for trust in the secondary reach is quantified based on the historic effect of pumping on the Okanogan River. Because of the distance from the Goroch well to the river, the historic effect on the river can be approximated as an average rate throughout the year. The Extent and Validity Section above identifies that the 48 ac-ft/yr requested in this change application is available to be changed to instream flows. Instream flows are described by a monthly volume and instantaneous rate; which are calculated as follows:

$$48 \text{ ac-ft/year} \div 1.98^{3} \div 365 \text{ days/year} = 0.066 \text{ cfs continuous diversion}$$

The remaining water right retained by the Gorochs (summarized on page 2) is based on the full extent and validity of the right minus what is being proposed for transfer in this report. However, this right is not being used at the original place of use since the Gorochs no longer own the property and they intend to sell the water rights to downstream users. The following description provides an accounting of what is retained by the Gorochs at the time of this report. Future superseding documents issued by Ecology will provide a more accurate accounting of the remaining water right.

[3] 1 cubic foot per second(cfs) of water is equal to 1.98 ac-ft/day.

The retained annual quantity listed on page 2 was calculated by subtracting the 48 ac-ft/yr proposed for transfer from the total consumptive use of 406.3 ac-ft/yr, and then dividing that sum of 358.3 ac-ft/yr by 72% for a total of 497.6 ac-ft/yr remaining of the original right. The historic use water duty of 4.62 ac-ft/acre per year indicates that the 497.6 ac-ft/yr provides for 107.7 acres of irrigation remaining. The historic instantaneous quantity is 1500 gpm for the irrigation of 122 acres. Therefore, the per-acre rate is 12.29 gpm per acre. The remaining 107.7 acres multiplied by 12.29 gpm per acre equals 1,324 gpm.

**Impairment Considerations**
When considering the potential for impairment from the proposed change, Ecology considered intervening water users between the historic point of withdrawal to the end of the secondary reach. Changing a portion of the water right to instream flows will not reduce the availability of water to intervening water users. Ecology will manage the portion required to mitigate any future uses and any remainder will stay instream.

**Public Interest Considerations**
Ecology is required to consider whether the public interest would be adversely impacted by this transfer, according to RCW 90.42.040(4)(a). This application provides for an increase in instream flows in the Okanogan and Columbia Rivers and is therefore, not a detriment to the public interest.

**Consideration of Protests and Comments**

In 2007, when a draft ROE was posted to the internet for this application, Okanogan County Planning submitted a comment letter. After the application was amended, Ecology again requested comments in the form of a letter dated February 22, 2012 notifying interested parties of the creation of a trust water right for the Goroch Mitigation Project. Okanogan County Planning again sent a letter restating their concerns from 2007. Okanogan Conservation District Board of Supervisors and the Okanogan Watershed Planning Unit Chairman also submitted comments that echoed that of Okanogan County Planning. These letters did not identify a specific issue with creation of a new trust water right, or issuance of a new ground water right to be mitigated by a trust water right. The Okanogan Conservation District Board of Supervisors stated that "the water for mitigation is proposed to be taken from an existing water right currently used for agricultural purposes...and this irrigation water is leaving the County." The Okanogan Watershed Planning Unit Chairman also expressed concern about irrigation water rights leaving Okanogan County.

The purpose and place of use may be changed for a valid water right (RCW 90.03.380(1)). The validity of Certificate No. 7601-A is based on signed several PSA's to sell portions of the water right to downstream users in 2005 (see Extent and Validity section above). These downstream users all have detailed plans in place for what they intended to do with the purchased water. Whether these sales go through or not, the future use of this water right for irrigation at the existing place of use is no longer valid. John Goroch is relying on these PSAs to serve as evidence for a determined future development plan, which is an exemption to relinquishment under RCW 90.14.140(2)(c).

The Legislature commissioned a report on this subject of moving water out of counties or watersheds in 2008 titled "Protecting Local Economies – Legislative Options to Protect Rural Communities in NE Washington from Disproportionate Economic, Agricultural, and Environmental Impacts when Upstream Water Rights are Purchased and Transferred for Use, or Idled and Used as Mitigation, in a Downstream Watershed or County". While Ecology agrees there are valid policy considerations regarding exporting water out of the area of origin, nothing in state law prevents the applicant from transferring this water right provided there is no impairment of existing rights.

## CONCLUSIONS

In accordance with chapters 90.44 and 90.42 RCW, the author makes a tentative determination that Certificate of Water Right No. 7601-A is a valid right and is eligible for change. Approval of change Application No. CG4-GWC7601-A@3, as provisioned above, will not cause impairment of existing water rights and will not be detrimental to public interest.

## RECOMMENDATIONS

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

**Purpose of Use and Authorized Quantities**

The following quantities are to be used instream and may be used as mitigation for downstream uses:

0.066 cfs, 48 ac-ft/yr for instream flows.

**Place of Use (Secondary Reach)**

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

Kelsey J Collins 8/15/12

Kelsey Collins, Water Resources Program Report Writer Date

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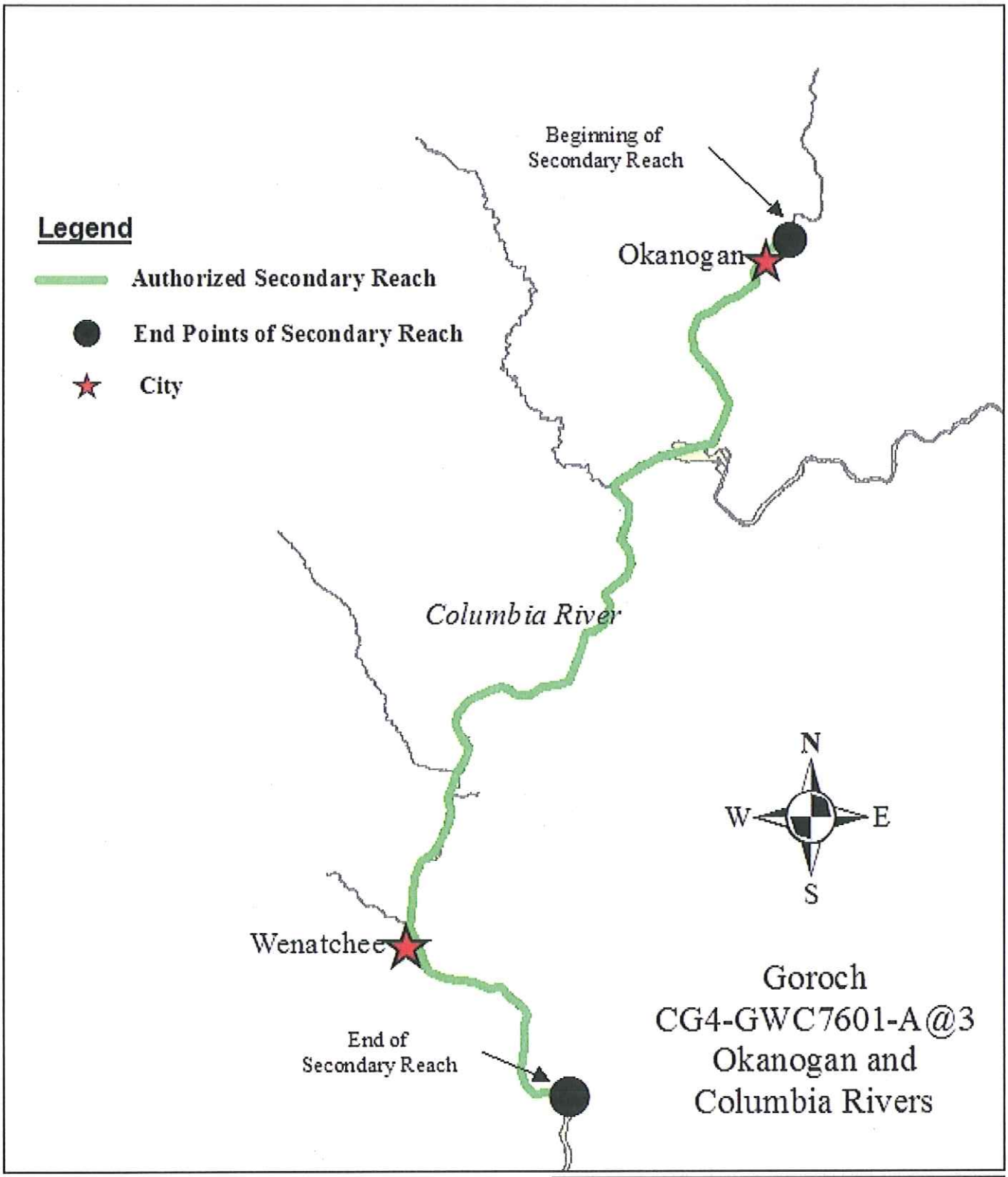
**ATTACHMENT 1**