



STATE OF WASHINGTON
 DEPARTMENT OF ECOLOGY
IRRIGATION EFFICIENCIES PROGRAM
TRUST WATER RIGHT
REPORT OF EXAMINATION
Change of Purpose and Place of Use

PRIORITY DATE June 30, 1885	CLAIM NO. CS4-00886CTCL@3	PERMIT NO.	CERTIFICATE NO.
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NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM
 Burris Farm, LLC

ADDRESS/STREET 4870 North 6 Road	CITY/STATE Ellensburg, WA	ZIP CODE 98926
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TRUST WATER RIGHT ATTRIBUTES

SOURCE
 Yakima River

TRIBUTARY OF (IF SURFACE WATERS)
 Columbia River

MAXIMUM CUBIC FEET PER SECOND 0.37 *	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR 86.81
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QUANTITY, TYPE OF USE, PERIOD OF USE
 0.37 cubic feet per second from April 1 through October 31 for instream flows within one or more (up to five) Yakima River tributaries including Lyle Creek, an unnamed stream, Little Naneum Creek, Naneum Creek, and Coleman Creek, beginning at the respective intersections between the creeks and Bull Canal from May 27, 2008 through May 27, 2028.

* The instantaneous quantity saved reflects historical water use and new water use on farm. The diversionary rate of trusted water spilled into the tributaries will vary each year depending upon a Management Plan developed in the spring. *See Appendix A for Management Plan.*

The default plan is to place trust water in the amount of 0.2 cubic feet per second for 214 days into Little Naneum Creek if one of the alternate creeks is not identified to receive the trust water for the year.

PLACE OF USE and AFFECTED REACHES
 [See Attachment for map of the trust water right location]

APPROXIMATE LOCATION OF HISTORIC DIVERSION

Primary Reach: Begins at the Point of Diversion for Bull Canal Company located approximately 1340 feet south and 1760 feet west from the northeast corner of Section 10, being within the SW¹/₄NE¹/₄ of Section 10, T. 17 N., R. 18 E.W.M.

GPS location in Decimal Degree: Latitude 46.98079, Longitude -120.56685 (Datum WGS84).

The trust water in this project will continue to be diverted at the original point of diversion on the Yakima River and then be delivered to one or more up to five Yakima River tributaries including Lyle Creek, an unnamed stream, Little Naneum Creek, Naneum Creek, and Coleman Creek, beginning at the respective intersections between the creeks and Bull Canal. The approximate points of intersection between Bull Canal and the five creeks are listed below:

Lyle Creek: 480 feet north and 2610 feet west of the southeast corner (SW¹/₄SE¹/₄) of Section 12, T. 17 N., R. 18 E.W.M.

Unnamed stream: 15 feet north and 740 feet west of the southeast corner (S¹/₂SE¹/₄) of Section 13, T. 17 N., R. 18 E.W.M.

Little Naneum Creek: 1250 feet north and 660 feet west of the southeast corner (E¹/₂SE¹/₄) of Section 18, T. 17 N., R. 19 E.W.M.

Naneum Creek: 540 feet north and 44 feet east of the southwest corner (SW¹/₄SW¹/₄) of Section 17, T. 17 N., R. 19 E.W.M.

Coleman Creek: 280 feet north and 2050 feet east of the southwest corner of the northwest corner (SE¹/₄NW¹/₄) of Section 20, T. 17 N., R. 19 E.W.M.

The end of the primary reach is at the confluence of these creeks with the Yakima River is located approximately 1730 feet north and 2310 feet east of the southwest corner (NE¹/₄SW¹/₄) of Section 31, T. 17 N., R. 19 E.W.M.

There is no Secondary Reach for this project.

PROJECT SUMMARY

This irrigation efficiencies project consists of the conversion of 38.3 acres of rill irrigation under Bull Canal Company on Burris Farm, LLC land. The irrigation system will be converted to a lateral move sprinkler irrigation system. The conserved non-consumptive water, estimated at 0.37 cubic feet per second and 86.81 acre-feet per year, will be placed in the Washington State Trust Water Rights Program to augment instream flow in one of five alternative creeks each year. These creeks are: Lyle Creek, Unnamed Stream, Naneum Creek, Little Naneum Creek and Coleman Creek. A Management Team will develop a plan prior to the start of the irrigation season each spring to determine which stream would receive trust water in varying instantaneous quantities and duration for the most likely benefits. *See Appendix A.*

TRUST WATER RIGHT TERM

BEGIN DATE	END DATE
February 11, 2013	May 27, 2028

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

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
June 30, 1885	CS4-00886CTCL@3		

NAME		
Bull Canal Company		
ADDRESS/STREET	CITY/STATE	ZIP CODE
1585 Tjossem Road	Ellensburg, WA	98926

WATER RIGHT CLAIM 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
44.63		9513.19

QUANTITY, TYPE OF USE, PERIOD OF USE
 44.63 cubic feet per second and 9513.19 acre-feet per year for the irrigation of 946 acres from April 1 through October 31 each year through May 27, 2028.

This quantity does not include the water savings from the three previous irrigation efficiencies projects for Bull Canal Company Inc. This quantity does not reflect an extent and validity for the remaining water use under the claim.

LOCATION OF DIVERSION

APPROXIMATE LOCATION OF DIVERSION					
Bull Canal Company Point of Diversion: 1340 feet south and 1760 feet west from the northeast corner of Section 10, being within the SW ¹ / ₄ NE ¹ / ₄ of Section 10, T. 17 N., R. 18 E.W.M.					
GPS location in Decimal Degree: Latitude 46.98079, Longitude -120.56685 (Datum WGS84).					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE.	WRIA	COUNTY
SW ¹ / ₄ NE ¹ / ₄	10	17 N.	18 E.W.M.	39	Kittitas

PARCEL NUMBER
 N/A

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
N/A	N/A	N/A

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

[See Attachment for map of the place of use and point of diversion]

Place of Use: That portion of the S¹/₂NW¹/₄SW¹/₄ of Section 12, lying northeast of the I-90 exit, except the west 293.5 feet thereof, and that portion of the SE¹/₄SW¹/₄ of Section 12 lying south of I-90; that portion of the NW¹/₄NW¹/₄ lying east of the Canyon Road, the NE¹/₄NW¹/₄, that portion of the NE¹/₄SW¹/₄NW¹/₄ lying east of the Canyon Road, that portion SE¹/₄NW¹/₄ lying east of Wilson Creek and that portion of the E¹/₂ lying east and north of Wilson Creek all in Section 13; ALL in T. 17 N., R. 18 E.W.M. Also that portion of the W³/₄ lying west of I-82 and southwest of Bull Canal; that portion of the S¹/₂SE¹/₄ lying east of I-82, south of Tjossem Road and northwest of Little Naneum Creek, and that portion of the S¹/₂SE¹/₄SE¹/₄ lying south of Naneum Creek, all in Section 18; that portion of the NW¹/₄ lying east of Wilson Creek and west of I-82, that portion of the NE¹/₄ and N¹/₂SE¹/₄ lying east of I-82 in Section 19; the west 2172 feet of the S¹/₂NW¹/₄ and of the N¹/₂SW¹/₄ and the SW¹/₄SW¹/₄ in Section 20, ALL in T. 17 N., R. 19 E.W.M.

Limitations of Use: The delivery system for this right includes discharging Yakima River water into Wilson Creek and then diverting that water at a point on Wilson Creek approximately 500 feet north and 100 feet east from the center of Section 11, within the SW¹/₄NE¹/₄ of Section 11, T. 17 N., R. 18 E.W.M. Use of that point is also authorized as long as the diversion does not exceed that quantity diverted from the Yakima River, less conveyance loss.

DESCRIPTION OF WATER SYSTEM

Bull Canal Company diverts their water right into an irrigation canal from the Yakima River delivering water to all the shareholders within the place of use described in the court claim to be used for irrigation purposes.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Begun	Complete	NA

PROVISIONS

TRUST WATER RIGHT provisionsINSTREAM FLOW

Consistent with RCW 90.38.040(3) and 90.42.080(1)(a), this trust water right shall be managed by Ecology as an instream flow right for the Yakima River and/or one of five alternate creeks tributary to the Yakima River as chosen each spring by a Management Team and as described in this trust water report.

Provisions related to PORTION OF WATER RIGHT NOT PLACED INTO TRUST

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

WATER AVAILABILITY

Water is limited to the authorized quantities of the Bull Canal Company's water right court claim less the amounts placed into the trust program over the duration of the project contract.

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", chapter 173-173 WAC. <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

RECORD WEEKLY, REPORT ANNUAL TOTALS

Water use data shall be recorded weekly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to Ecology by January 31st of each calendar year.

FISH SCREENING CRITERIA

This authorization is subject to Washington Department of Fish and Wildlife fish screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Fish screening criteria are attached to this Report of Examination. Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://wdfw.wa.gov/hab/engineer/habeng.htm>

AUTHORITY TO ACCESS DATA AND MEASURING DEVICE

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

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 wells or diversions and associated distribution systems for compliance with water law.

CONSERVATION

Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.

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 for a portion of Surface Water Court Claim No. 00886 under Trust Water Application No. CS4-00886CTCL@3 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.

Signed at Yakima, Washington, this 11 day of FEBRUARY 2013.



Mark Kemner, LHG, Section Manager
Water Resources Program/CRO
Department of Ecology

INVESTIGATOR'S REPORT

BACKGROUND

Applications: A Trust Water Application through the Irrigation Efficiencies Grant Program (IEGP) for Surface Water Court Claim No. 00886 was submitted by Mark Crowley of the Kittitas County Conservation District on behalf of Burris Farm, LLC (Steve Burris), Bull Canal Company ditch water user, to the Department of Ecology on December 22, 2008. The application was assigned number CS4-00886CTCL@3 in the Water Right Tracking System. The applicant proposes to temporarily place a portion of the water right claim into the state's Trust Water Rights Program (TWRP) for the purpose of instream flow to be used for instream flows within one of five creeks tributary to the Yakima River.

A Management Team will designate on an annual basis where the water would be placed based on the greatest habitat benefit. Creeks to receive trust water are Lyle Creek, Unnamed Creek, Naneum Creek, Little Naneum Creek, or Coleman Creek. The management team will also decide alternative spill amounts equaling either 0.2 cubic feet per second (cfs) for 214 days, 0.41 cfs for 107 days, or 0.84 cfs for 52 days. The default place of use is into Little Naneum Creek at 0.2 cfs for 214 days. Saved water from this project will increase flows within the designated creek resulting in increased benefits for fish habitat.

Water Right Change Applications may be processed prior to applications submitted at an earlier date when the proposed water use, if approved, would substantially enhance or protect the quality of the natural environment (WAC 173-152-050(3)(a)). This application has been determined to meet WAC 173-152-050(3)(a) criteria and has, therefore, been afforded priority processing.

Description and Purpose of Proposed Change for the Irrigation Efficiencies Project

The project site is located approximately two miles southeast of Ellensburg, along No. 6 Road within Section 20, Township 17 N., Range 19 E.W.M. within Water Resource Inventory Area (WRIA) 39. Burris Farm, LLC uses Bull Canal water to irrigate 43 acres of pasture within this irrigation efficiencies project area. The project area is currently irrigated with wheel lines/handlines (21.4 acres) and rill irrigation (21.6 acres) with concrete ditch and siphon tubes. The irrigation on 38.3 acres will be converted to a more efficient lateral move sprinkler with the remaining acres irrigated with handlines.

This is the fourth IEGP project for Bull Canal Company under Court Claim No. 00886. The water savings from this project and a previous project for property owner Jeff Brunson (Application No. CS4-00886CTCL@2) are cumulative quantities of trust water placed into one of five creeks under the alternate creek management plan during the terms of the trust water contract. Water savings from the other two projects (Application Nos. CS4-00886CTCL and CS4-00886CTCL@1) are conveyed to Wilson Creek and to Unnamed Creek.

One hundred percent of the saved water from this project will be placed into trust to increase flows and habitat restoration within the chosen creek annually. Tributaries to the Yakima River near this project site are identified as low priority for instream flow and the Yakima River is identified as a medium priority for instream flow restoration.

Attributes of the Certificate and Proposed Change for the Irrigation Efficiencies Project

The following table summarizes the attributes of Court Claim No. 00886 and the proposed quantities to place into the Trust Water Right Program.

Table 1 Summary of Attributes and Proposed Changes to Bull Canal Company Court Claim No. 00886.

	Existing Attributes of Court Claim	Proposed Changes
Name	Bull Canal Company	Burris Farm, LLC (Steve Burris)
Priority Date Trust Application Date	June 30, 1885	December 22, 2008
Instantaneous Quantity	45 cfs	0.37 cfs
Annual Quantity	9600 acre-feet	86.81 acre-feet
Period of Use	April 1 through October 31	Varying from April 1 through October 31 according to annual management plan
Source	Yakima River	Yakima River
Point of Diversion	1340 feet south and 1760 feet west from the northeast corner of Section 10, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T. 17 N., R. 18 E.W.M.	N/A
Purpose of Use	Irrigation of 946 acres and stock water	Instream flow
Place of Use	<i>See court claim and page three of this report</i>	Lyle Creek, Unnamed Stream, Naneum Creek, Little Naneum Creek or Coleman Creek

Statement of Authorities

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.

Trust water rights are governed state-wide by RCW 90.42 and in the Yakima River Basin, by RCW 90.38. The statutes¹ limit the portion of a water right eligible for transfer to the TWRP to the extent the water right was exercised in the five years prior to application. A water right accepted into the TWRP may not be enlarged. Any trust water right found to impair an existing water right must be modified to prevent impairment.

Legal Requirements for Proposed Change for the Irrigation Efficiencies Project

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

- **Public Notice**
A notice of application was duly published in accordance with RCW 90.42.040(5) in the Ellensburg Daily Record on March 20 and 27, 2009. No protests or objections were received.
- **State Environmental Policy Act (SEPA)**
This application is not exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21C RCW, due to the fact that the cumulative quantities of water for this project under all water rights, including those proposed for trust water herein, constitute a diversion of more than one (1) cubic foot per second. The Department of Ecology (Ecology), acting as lead agency, determined that 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 March 18, 2009.

¹ RCW 90.38.020(4), 90.38.020(6), 90.42.080(4) and 90.42.080(8)

- **Water Resources Statutes and Case Law**

- Tentative Determination/Extent and Validity

- Ecology cannot adjudicate a claim to a water right; only the Superior Courts have this authority. However, 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*.

INVESTIGATION

In considering this application, the investigation included, but was not limited to, research and/or review of:

- The State Water Code, administrative rules, and policies
- Other recorded water rights in the vicinity
- A site visit conducted by Department of Ecology staff Jim Lyerla and Laurie Dahmen on March 11, 2008
- Correspondence and conversations with Mark Crowley of the Kitittas County Conservation District
- Correspondence and conversations with Jack Myrick of the Conservation Commission
- Conversations with Ecology staff
- Correspondence with Paul LaRiviere of the Washington Department of Fish and Wildlife (WDFW)
- Correspondence with Jon Culp of the Conservation Commission
- Topographic and local area maps
- Aerial photographs of the site

History of Water Use

A water right (as described in Table 1 above) was awarded to Bull Canal Company under Court Claim No. 00886 in the *Ecology vs. Acquavella* Yakima River Water Rights Adjudication for Subbasin No. 9, the Wilson-Naneum drainage. The Conditional Final Order for subbasin 9 issued on April 17, 2006.

A review of water use under Court Claim No. 00886, including aerial photograph review, was conducted by Jim Lyerla. Water right and project review was conducted by Jim Lyerla and Laurie Dahmen. The result of this review is documented in letters from Jim Lyerla to Mark Crowley dated February 26, 2003, and to Jon Culp dated May 20, 2008. Historic use data was calculated by Mark Crowley. Water diverted from Bull Canal to irrigate 38.3 acres in the project area was calculated using the Washington Irrigation Guide and power records. The documented water use was 0.94 cfs and 210.54 acre-feet per year.

If the portion of the water right being placed into the trust water right program for the assistance of achieving established instream flows remains with the water right holder, under RCW 90.42.040(9) Ecology cannot evaluate the extent and validity of the portion remaining with the water right holder. The balance of the water right not being placed into trust will remain with the original water right holder.

Proposed Use

The purpose of instream flow is to enhance instream flows for fish maintenance and enhancement within Lyle Creek, Unnamed Creek, Naneum Creek, Little Naneum Creek, or Coleman Creek, depending on the yearly trust water management decision.

Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing surface and ground water rights in the surrounding area.

In order to evaluate the pending trust water applications, it is necessary to review all water rights appurtenant to the place of use (POU) described under Court Claim No. 00886. No overlapping water rights for the acres in this irrigation efficiency project were found.

Department of Fish and Wildlife Project Evaluation

The Upper Yakima River Basin suffers from low flows to the extent that the salmonid production potential of the streams is significantly depressed. The Yakima River is classified as medium priority and the creek alternatives to receive trust water through this project are classified as low priority based on the number of salmonid species listed as endangered or threatened under the Endangered Species Act (ESA), the status of various salmonids, existing habitat conditions and the period when seasonal low flows occur.

Paul LaRiviere (WDFW) assessed the project for benefits to the alternative creeks proposed to receive trust water. In a letter to Laurie Dahmen (Department of Ecology) dated April 4, 2008, Mr. LaRiviere states that water savings from this project proposal is a good example of how to link up with previous instream flow restoration efforts to produce further gains in habitat restoration. As more trust water is added to the Bull Canal Management Agreement there is greater opportunity and flexibility in managing for biological benefits.

Washington Department of Fish and Wildlife reports that fish stock and habitat restoration efforts in the Wilson-Naneum Creek drainage need to continue. Local efforts, including these types of efficiency projects, improve instream flows and habitat conditions for juvenile salmon rearing and passage functions. ESA threatened steelhead, coho and resident stocks will utilize the smaller streams for spawning and rearing.

Trust Water Right Calculations

Mark Crowley and Jack Myrick provided water use information and calculated projected water use from the new irrigation system as requested by Steve Burris (Burris Farm LLC). There are 38.3 acres out of approximately 46.5 acres within the place of use for this irrigation efficiencies project. The remaining 8.2 acres will continue to be irrigated by handlines. Water use for these acres is not included in the calculations for this project.

A high efficiency sprinkler irrigation system will replace wheel line and hand line application, reducing the instantaneous quantity to a maximum of 0.57 cfs and annual quantity to 123.72 acre-feet. Historic use under the court claim is 0.94 cfs and 210.54 acre-feet. Consequently, the net on-farm water savings up to 0.37 cfs and 86.81 acre-feet from April 1 to October 31. Burris Farm LLC has agreed to place 100 percent of saved water into the trust water. These calculations exclude the remaining portion of the water right and are not included in this irrigation efficiencies project. Trust water savings are on-farm savings. However, a Management Team will decide annually which Yakima River tributary at varying amounts and duration will receive the trust water to total the saved annual quantity.

Table 2 Quantities in trust and remaining for use in this IEGP project for Burris Farm LLC through contract expiration on May 27, 2028.

In Trust	Remaining for Use for Burris Farm LLC
0.37 cfs	0.57 cfs
86.81 acre-feet	123.72 acre-feet
(No acres)	38.3 acres
April 1 to October 31	April 1 to October 31

Trust Water Place of Use

The place of use of an instream flow water right is described by primary and secondary reaches in order to distinguish the contribution of return flows from a water use and the benefits of any reduction in consumptive water use. The annual quantity placed into Trust is calculated differently for the primary reach and secondary reach due to the effects of return flows. The primary reach of a stream is the portion that benefits from both the reintroduction of return flows and any reduced consumptive water use. It is considered to be the reach starting at the point of diversion for the subject right/claim, and extending downstream to a point on the stream where return flows from the irrigated lands have rejoined the stream. The secondary reach is that portion of the stream that benefits by the reintroduction of water that would otherwise be lost to consumptive use and extends from the end of the primary reach to such point downstream as it is practical and feasible to regulate for the subject right. Because this irrigation efficiency project did not reduce consumptive use for this water right claim, there is no benefited secondary reach of the stream.

Primary Reach

The primary reach begins at the point water has been historically diverted and ends at the point where return flows are estimated to have returned to the river. The trust water in this project will continue to be diverted at the original point of diversion and then be delivered to one or more (up to five) Yakima River tributaries including Lyle Creek, an unnamed stream, Little Naneum Creek, Naneum Creek and Coleman Creek beginning at the respective intersections between the creeks and Bull Canal. The approximate points of intersection between Bull Canal and the five creeks are listed below:

- Lyle Creek:** 480 feet north and 2610 feet west of the southeast corner (SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 12, T. 17 N., R. 18 E.W.M.
- Unnamed stream:** 15 feet north and 740 feet west of the southeast corner (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 13, T. 17 N., R. 18 E.W.M.
- Little Naneum Creek:** 1250 feet north and 660 feet west of the southeast corner (E $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 18, T. 17 N., R. 19 E.W.M.
- Naneum Creek:** 540 feet north and 44 feet east of the southwest corner (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 17, T. 17 N., R. 19 E.W.M.
- Coleman Creek:** 280 feet north and 2050 feet east of the southwest corner of the northwest corner (SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 20, T. 17 N., R. 19 E.W.M.

The end of the primary reach is at the confluence of these creeks with the Yakima River is located approximately 1730 feet north and 2310 feet east of the southwest corner (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 31, T. 17 N., R. 19 E.W.M.

Secondary Reach

There is no secondary reach for this trust water right.

Trust Water Management

Consistent with RCW 90.42.080(1)(a), this Trust Water Right shall be managed by Ecology as an instream flow right for the Upper Yakima Basin Yakima River tributaries, as described in this Trust Water Report.

A Management Team will develop a plan each spring, at least 30 days prior to irrigation start up (April 1). This plan will determine the Trust Water savings to be put in which creek, at what volume, and at what time period to provide the most likely biological benefits. The volume of transferred water will equal either 0.2 cfs for 214 days, 0.41 cfs for 107 days, or 0.84 cfs for 52 days. The default plan if the Management Team does not meet and develop a plan for the year will be 0.2 cfs for 214 days into Little Naneum Creek. If the plan deviates from the default, Ecology will publish the change on the Ecology website at least 30 days prior to irrigation start up. See *Appendix A*.

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) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flows levels established by rule (POL-1200), and/or
- 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (Chapter 173-150 WAC).

The proposed trust water has been evaluated as to the potential for impairment to existing water rights in the area.

Consideration of Protests and Comments

No protests or comments were received.

CONCLUSIONS

It is the conclusion of this examiner that the change of purpose of use from irrigation to instream flow through an irrigation efficiencies project under Court Claim No. 00886 (CS4-00886CTCL@3) will not impair existing rights.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change in purpose of use and place of use for transfer of water to the TWRP under Surface Water Court Claim No. 00886 be approved within the limitations listed below and subject to the Provisions Section of this report.

Portion of Water Right Claim Placed into Trust

For instream flow during the irrigation season April 1 through October 31 in the primary reach of one of the alternative tributaries as decided each year by the management team each year through May 27, 2028:

0.37 cfs, 86.81 acre-feet per year for instream flow in the Lyle Creek, Unnamed Creek, Naneum Creek, Little Naneum Creek or Coleman Creek.

The primary reach begins at begins at the Point of Diversion for Bull Canal Company located approximately 1340 feet south and 1760 feet west from the northeast corner of Section 10, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T. 17 N., R. 18 E.W.M. and then delivered to one or more (up to five) Yakima River tributaries ending at the confluence with the Yakima River located approximately 1730 feet north and 2310 feet east of the southwest corner (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 31, T. 17 N., R. 19 E.W.M.

There is no secondary reach in this project for this water right.

The alternative trust water quantities, dates and duration as described in the attached Appendix A as decided on a yearly basis by the Management Team are recommended.

Portion of Water Right Claim Not Placed into Trust

This is the remaining quantity listed under Court Claim No. 00886 after subtracting out this irrigation efficiencies project trust water savings from application CS4-00886CTCL@3. When the period of trust ends, the water right/claim will revert back to the water right/claim holder or landowner in the full quantity accepted into the trust water program and for the original purposes.

Point of Diversion

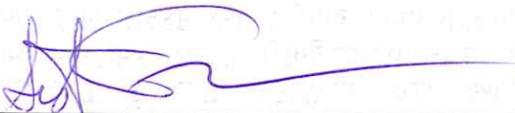
Bull Canal Company: approximately 1340 feet south and 1760 feet west from the northeast corner of Section 10, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T. 17 N., R. 18 E.W.M.

Place of Use

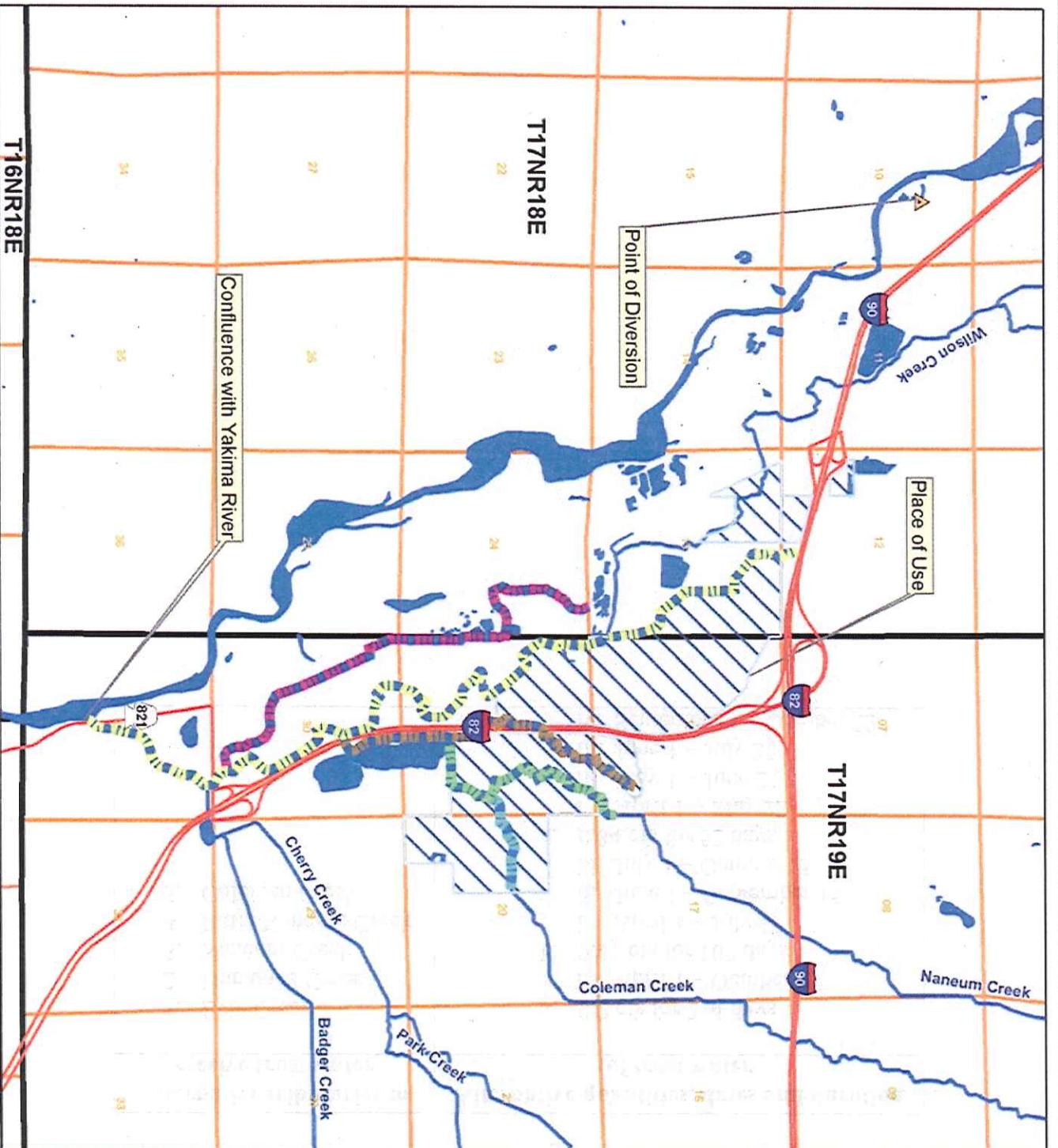
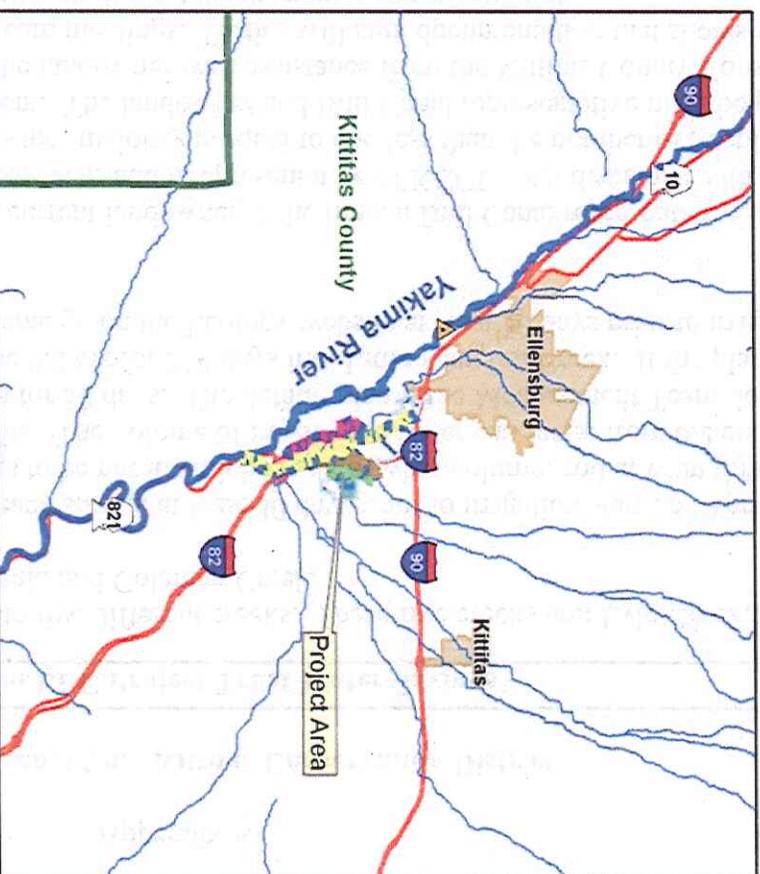
That portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, lying northeast of the I-90 exit, except the west 293.5 feet thereof, and that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12 lying south of I-90; that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ lying east of the Canyon Road, the NE $\frac{1}{4}$ NW $\frac{1}{4}$, that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ lying east of the Canyon Road, that portion SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying east of Wilson Creek and that portion of the E $\frac{1}{2}$ lying east and north of Wilson Creek all in Section 13; ALL in T. 17 N., R. 18 E.W.M. Also that portion of the W $\frac{3}{4}$ lying west of I-82 and southwest of Bull Canal; that portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ lying east of I-82, south of Tjossem Road and northwest of Little Naneum Creek, and that portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ lying south of Naneum Creek, all in Section 18; that portion of the NW $\frac{1}{4}$ lying east of Wilson Creek and west of I-82, that portion of the NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ lying east of I-82 in Section 19; the west 2172 feet of the S $\frac{1}{2}$ NW $\frac{1}{4}$ and of the N $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ in Section 20, ALL in T. 17 N., R. 19 E.W.M.

Limitations of Use

The delivery system for this right includes discharging Yakima River water into Wilson Creek and then diverting that water at a point on Wilson Creek approximately 500 feet north and 100 feet east from the center of Section 11, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M. Use of that point is also authorized as long as the diversion does not exceed that quantity diverted from the Yakima River, less conveyance loss.

Report by: 
Scott Turner, Water Resources Program

2-11-2013
Date



- Legend**
- County
 - Cities
 - Highways
 - Townships
 - Sections
 - Authorized Point of Diversion
 - Authorized Place of Use
 - Alternative_1_LyleCreek
 - Alternative_2_UnammedCreek
 - Alternative_3_LittleNaneumCreek
 - Alternative_4_NaneumCreek
 - Alternative_5_ColemanCreek

Comments:
 Place of use, points of withdrawal/diversions and primary reaches are as defined within the report.



Appendix A

WDFW / Bull Canal Co. / Kittitas Conservation District

Burris Farm LLC Project Trust Water Savings

Bull Canal has the ability to place water into five different creeks. These five creeks are: Lyle Creek, Unnamed Stream, Naneum Creek, Little Naneum Creek, and Coleman Creek.

A Management Team will develop a plan each spring, at least 30 days prior to irrigation start up (April 1). This plan will determine the Trust Water savings to be put in which creek, at what volume, and at what time period to provide the most likely biological benefits. The volume of transferred water can range from 0.2 cfs for 214 days, 0.41 cfs for 107 days, or 0.84 cfs for 52 days. The default plan if the Management Team does not meet and develop a plan for the year will be 0.2 cfs for 214 days into Little Naneum Creek. If the plan deviates from the default, Ecology will publish the change on the Ecology website at least 30 days prior to irrigation start up.

The Management Team will consist of the current landowner at the time, a Bull Canal representative, a representative of WDFW, a representative of DOE and a representative of KCCD. All decisions with regard to volume will be made by a super majority (super majority is equal to one less than the number of people present) of the Management Team being in agreement. The landowner and Bull Canal representative must be present at the meeting for the decision to be valid. The landowner with assistance from the Kittitas County Conservation District will coordinate the Management Team meetings. Parties will sign documentation that shows which alternative will be implemented at the conclusion of the Management Team meeting(s).

Alternative tributaries to receive trust water	Alternative quantities, dates and duration of trust water
<ol style="list-style-type: none">1. Lyle Creek2. Unnamed Creek3. Naneum Creek4. Little Naneum Creek5. Coleman Creek	<ol style="list-style-type: none">a. 0.2 cfs for 214 days<ol style="list-style-type: none">i. April 1 – October 31b. 0.41 cfs for 107 days<ol style="list-style-type: none">i. April 1 – July 15ii. June 1 – September 15iii. July 1 – October 15c. 0.84 cfs for 52 days<ol style="list-style-type: none">i. April 1 – May 22ii. May 1 – June 21iii. June 1 – July 22iv. September 1 – October 22