



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

**TRUST WATER RIGHT
REPORT OF EXAMINATION**
Change of Purpose and Place of Use
WRTS File No.: CS4-02283CTCLsb11@2

PRIORITY DATE	COURT CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
June 30, 1871	Yakima Adjudication 02283		

NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM		
Clinton & Patricia Allen		
ADDRESS/STREET	CITY/STATE	ZIP CODE
6371 Cove Rd	Ellensburg, WA	98926-1088

TRUST WATER RIGHT ATTRIBUTES

SOURCE		
Manastash Creek		
TRIBUTARY OF (IF SURFACE WATERS)		
Yakima River		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
0.094		32

QUANTITY, TYPE OF USE, PERIOD OF USE

Primary Reach

0.094 cubic feet per second instream flow April 1 through June 30
0.048 cubic feet per second instream flow July 1 through October 31
Total annual quantity not to exceed 32 acre-feet per year.

Secondary Reach

There is no secondary reach for this trust water change.

HISTORIC POINT OF DIVERSION OR WITHDRAWAL

APPROXIMATE LOCATION OF HISTORIC DIVERSION / WITHDRAWAL

550 feet south and 650 feet east from the north quarter corner of Section 14, T. 17 N., R. 17 E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
NW¼NE¼	14	17	17 E.	39	Kittitas
PARCEL NUMBER	LATITUDE	LONGITUDE		DATUM	
	N 46.96915	W -120.67510		NAD 83	

AFFECTED REACHES -- DESCRIPTION OF PLACE OF USE
[See Attachment 1 for map of the trust water right location]

Primary Reach

The primary reach begins on Manastash Creek at the historic point of diversion (Keach-Jensen diversion) located approximately 550 feet south and 650 feet east from the north quarter corner of Section 14, T. 17 N., R. 17 E.W.M. (approximate creek mile 5.5) and ends at the confluence with the Yakima River (approximate Yakima River mile 154.5).

Secondary Reach

There is no secondary reach for this trust water change.

TRUST WATER RIGHT TERM

BEGIN DATE	END DATE
July 1, 2008	Perpetuity

**PORTION OF WATER RIGHT
NOT PLACED INTO TRUST
WRTS File No.: CS4-02283CTCLsb11@2**

PRIORITY DATE June 30, 1871	COURT CLAIM NO. Yakima Adjudication 02283	PERMIT NO.	CERTIFICATE NO.
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NAME Clinton & Patricia Allen		
ADDRESS/STREET 6371 Cove Rd	CITY/STATE Ellensburg, WA	ZIP CODE 98926-7966

WATER RIGHT ATTRIBUTES

SOURCE Manastash Creek		
TRIBUTARY OF (IF SURFACE WATERS) Yakima River		
MAXIMUM CUBIC FEET PER SECOND 0.01 cubic feet per second April 1 through June 30 0.005 cubic feet per second July 1 through October 31	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR 3.82acre-feet irrigation
QUANTITY, TYPE OF USE, PERIOD OF USE 0.01 cubic feet per second instream flow April 1 through June 30 0.005 cubic feet per second instream flow July 1 through October 31 Total annual quantity not to exceed 3.82 acre-feet per year for the irrigation of 0.49 acres		

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION—WITHDRAWAL 550 feet south and 650 feet east from the north quarter corner of Section 14, T. 17 N., R. 17 E.W.M.					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) NW¼NE¼	SECTION 14	TOWNSHIP 17	RANGE [E. or W.] W.M. 17 E.	WRIA 39	COUNTY Kittitas
PARCEL NUMBER	LATITUDE N 46.96915	LONGITUDE W -120.67510	DATUM NAD 83		

RECORDED PLATTED PROPERTY

LOT Kittitas Parcel No. 17-17-12057-0007	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
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**LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED
[See Attachment 2 for a map of the place of use and point of diversion]**

That portion of the S½NE¼SE¼ of Section 12, T. 17 N., R. 17 E.W. lying south of Manastash Creek.

DESCRIPTION OF WATER SYSTEM

An existing system consisting of an earthen ditch (Keach-Jensen) to the property and a combination of flood and sprinkler irrigation.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE Begun	COMPLETE PROJECT BY THIS DATE Completed	WATER PUT TO FULL USE BY THIS DATE October 31, 2009
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PROVISIONS

Provisions related to the portion of the water right conveyed into trust:

General

As a condition of the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan (Plan), the party proposing this change (Clinton and Patricia Allen) intends to comply with the Plan.

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

Measurements, Monitoring, Metering and Reporting

A. There shall be three points in Manastash Creek where measuring of the trust water portion shall take place:

- (1) The trust water right shall be measured at the historic point of diversion (the Keach-Jensen diversion) described as 550 feet south and 650 feet east of the north quarter corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, Township 17 N., Range 17 E.W.M. The trust water rates and quantities may be protected only at this point on Manastash Creek. A meter capable of measuring the authorized amounts (see Chapter 173-173 WAC) shall be installed at this location.
- (2) The instantaneous and annual quantities of trusted water shall be measured daily at a point on Manastash Creek immediately downstream of the Reed Diversion, described as a point 600 feet north and 700 feet east from the southwest corner of Section 12 being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 17 N., R. 17 E.W.M. on Manastash Creek. Rates and quantities measured here are for monitoring goals set forth by the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan and The Resolution of Manastash Steering Committee Regarding Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan. A meter capable of measuring the authorized amounts (see Chapter 173-173 WAC) shall be installed at this location.
- (3) Upon funding availability a measuring device shall be installed and measured daily downstream of the Barnes Road diversion at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 4, T. 17 N., R. 18 E.W.M. The exact location is not known at this time. Rates and quantities measured here are for monitoring goals set forth by the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan and The Resolution of Manastash Steering Committee Regarding Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan. The meter installed at this location shall be capable of measuring the authorized amounts (see Chapter 173-173 WAC).

B. Flow data from the three measuring points shall be compiled and recorded on a web based server that is mutually agreed upon by the Manastash Steering Committee. The data shall be made available within a reasonable time to Department of Ecology staff. The yearly data including daily instantaneous and total acre-feet shall be submitted to the Department of Ecology no later than January 31 of each year.

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

General

The remaining portion of Court Claim No. 02283 shall follow the provisions listed within the *Report of the Referee* dated May 9, 1994, *Supplemental Report of the Referee* dated April 17, 1998, *Second Supplemental Report of the Referee* dated April 23, 2001, and the *Conditional Final Order for Subbasin 11 (Manastash Creek)* within the Yakima River Adjudication, *The State Of Washington Department of Ecology vs. James J Acquavella, et al.* (Yakima Adjudication) unless superseded by a Final Decree or other such superseding document.

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

Measurements, Monitoring, Metering and Reporting

The remainder of Court Claim No. 02283 shall comply with the *Order Requiring Metering Measuring, and Reporting Requirements, All Subbasins (1-31) in Benton, Kittitas, and Yakima Counties* entered September 15, 2005, in the Yakima Adjudication. A copy of the order is included with hard copies. The order may be viewed at the following web site:

<http://www.ecy.wa.gov/programs/wr/measuring/images/pdf/order772014845.pdf>.

Fish Screening

The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). 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. Additional information is available at this web site:

<http://www.wdfw.wa.gov/reg/regions.htm>

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 impair existing rights or be detrimental to the public interest.

Therefore, I ORDER the requested change of place and purpose of use under Trust Water Right Application No. CS4-02283CTCLsb11@2, 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 6th day of April 2009.



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

BACKGROUND**Description of Proposed Change**

On June 13, 2008 Clinton and Patricia Allen (the applicants) of Ellensburg, Washington, filed a change application to add a purpose of use and change the place of use of a portion of Court Claim No. 02283 in *The State of Washington, Department of Ecology v. James J. Acquavella, et. al.* (The Yakima Adjudication). This application was accepted and assigned application number CS4-02283CTCLsb11@2. This change application is one of five that were filed as part of a reverse auction held by the Washington Department of Ecology (Ecology) and Washington Rivers Conservancy (WRC). This application addresses one land owner of Court Claim No. 02283. The applicants propose to sell a portion of their confirmed Manastash Creek water to the Washington State Trust Water Rights Program (TWRP). This application proposes to place a portion of this right, equating to an annual quantity of 32 acre-feet per year (ac-ft/yr) of water and a delivery rate of 0.094 cubic feet per second (cfs) from April 1 through June 30, and 0.048 cfs from July 1 through October 31, into the TWRP. This trust water right would be for permanent instream flow enhancement in Manastash Creek. The applicants intend to continue irrigating their property with the remainder of their Manastash Creek water and shares from the Kittitas Reclamation District (KRD).

This change application is one element of the Manastash Creek Restoration Project, and is intended to be part of the mitigation for potential impacts to Manastash Creek associated with the upstream move in point of diversion for the Reed, Hatfield, and Anderson ditch users. Landowners that divert water from these three different existing points of diversion (POD) on Manastash Creek (Reed, Hatfield, and Anderson diversions) have applied to change their PODs upstream to the existing Manastash Water Ditch Association (MWDA) POD. Mitigation for the upstream change proposal is outlined in the Manastash Creek Restoration Project, Instream Flow Enhancement Implementation Plan (described in the “**Investigation**” section of this report). Four other trust water change applications have also been filed with Ecology as part of the same mitigation.

Five separate Reports of Examination (ROEs) will be written for each of the five trust water change applications. Although many elements of the five ROEs will be similar or identical in parts, each proposed change in place and purpose of use will be evaluated individually. This ROE only addresses Ecology's conclusions and recommendations related to Water Right Change Application No. CS4-02283CTCLsb11@2.

Expedited Processing

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

This water right acquisition is part of the Manastash Water Right Reverse Auction (WRRRA) held in February 2008. The WRRRA was held to address elements prescribed in the Manastash Creek Restoration Project. This acquisition helps achieve the goals of improving instream flow conditions in order to provide fish passage during critical fish migration periods and to improve habitat availability. The Yakima River and its tributaries contain habitats that are exceptional for migration, rearing, and spawning for ESA listed species including Spring Chinook Salmon and Mid-Columbia Steelhead. Manastash Creek is one of these tributaries that have been determined by Washington State Department of Fish and Wildlife and the Yakama Nation to contain exceptional habitat.

Attributes of Court Claim No. 02283 and Proposed Change

Table 1: Summary of Existing Attributes and Proposed Changes to Court Claim No. 02283

Attributes	Documented	Proposed
Name	John Richard Matthews	Washington Rivers Conservancy
Priority Date Date of Application for Change	Priority Date June 30, 1871	Application Date June 13, 2008
Instantaneous Quantity	0.35 cfs from April 1 through June 30 0.175cfs from July 1 through March 31 0.01 cfs continuous	<p>Trust Water Portion 0.094 cfs from April 1 through June 30 0.048 cfs from July 1 through October 31 (These values calculated from Purchase and Sale Agreement submitted by the applicants)</p> <p>Applicants' Remaining Portion 0.01 cfs from April 1 through June 30 0.005 cfs from July 1 through October 31 (These values calculated from Purchase and Sale Agreement submitted by the applicants)</p> <p>CC 02283 Remaining Portion 0.24 cfs from April 1 through June 30 0.12 cfs from July 1 through October 31 0.01 cfs continuous (These values calculated from Purchase and Sale Agreement submitted by the applicants)</p>
Annual Quantity	117.1 ac-ft for irrigation 1 ac-ft for stock water	<p>Trust Water Portion 32 ac-ft/yr (This value given in Purchase and Sale Agreement submitted by the applicants)</p> <p>Applicants' Remaining Portion 3.82 ac-ft/yr for irrigation (This value given in Purchase and Sale Agreement submitted by the applicants)</p> <p>CC 02283 Remaining Portion 81.28 ac-ft/yr for irrigation 1 ac-ft for stock water</p>
Source	Manastash Creek	Manastash Creek
Point of Diversion	NW¼NE¼ of Section 14, T. 17 N., R. 17 E.W.M., Kittitas County	<p>Trust Water Portion N/A</p> <p>Remaining Portions 550 feet south and 650 feet east of the north quarter corner of Section 14, being within the NW¼NE¼ of Section 14, Township 17 N., Range 17 E.W.M.</p>
Purpose of Use	15 acres of irrigation and stock water	<p>Trust Water Portion Instream flow purposes</p> <p>Remaining Portion 0.49 acres irrigation and stock water</p>
Period of Use	April 1 through October 31 for irrigation Continuous for stock water	<p>Trust Water Portion April 1 through October 31</p> <p>Remaining Portion April 1 through October 31 for irrigation Continuous for stock water</p>
Place of Use	That portion of the S½NE¼SE¼ of Section 12, T. 17 N., R. 17 E.W. lying south of Manastash Creek	<p>Trust Water Portion Within Manastash Creek from a point of diversion described as 550 feet south and 650 feet east of the north quarter corner of Section 14, being within the NW¼ NE¼ of Section 14, Township 17 N., Range 17 E.W.M. to the confluence with the Yakima River.</p> <p>Applicants' Remaining Portion Kittitas County parcel No. 17-17-12057-0007 lying within that portion of the S½NE¼SE¼ of Section 12, T. 17 N., R. 17 E.W. lying south of Manastash Creek</p>

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:

- **Public Notice**
Notice of the applications was published in the *Daily Record* of Ellensburg, Washington, on August 1 and August 8, 2008. No letters of protest or comments were received during the 30-day protest period.
- **State Environmental Policy Act (SEPA)**
This project required a SEPA review under WAC 197-11-800(4). The Department of Ecology, acting as the SEPA lead agency for this project, determined that it will not have an unmitigated probable significant adverse impact on the environment and issued a Mitigated Determination of Nonsignificance (MDNS) on October 18, 2008. The MDNS included a proposed mitigation package (Manastash Creek Restoration Project, Instream Flow Enhancement Implementation Plan) that can be viewed at www.kccd.net/Current_Protects/Manastash/Manastash_Project.htm or a copy is available by contacting Ecology's Central Region Office in Yakima, WA, at (509) 575-2490.
- **Water Resources Statutes and Case Law**
RCW 90.03.380(4) states that this section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under Chapter 90.38 RCW or RCWs 90.42.010 through 90.42.070. This application will be processed under Chapter 90.38 RCW. A calculation of annual consumptive quantity (ACQ) is not required under Chapter 90.38 RCW for adding a purpose of use.
 - RCW 90.38.020
 - (1) The department may acquire water rights, including but not limited to storage rights, by purchase, lease, 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. A water right acquired by the state that is expressly conditioned to limit its use to instream purposes shall be administered as a trust water right in compliance with that condition.
 - (3) States that trust water rights may be acquired on a temporary or permanent basis.
 - RCW 90.38.040
 - (1) [Specific to the Yakima River Basin] all trust water rights acquired by the department shall be placed in the Yakima River basin trust water rights program to be managed by the department. The department shall issue a water right certificate in the name of the state of Washington for each trust water right it acquires.
 - (2) Trust water rights shall retain the same priority date as the water right from which they originated.
 - (3) Trust water rights may be held by the department for instream flows.
 - (5) Impairment may not occur as the result of exercising a trust water right.
 - WAC 173-152-050(3)(a)
An application for change or transfer to an existing water right may be processed prior to competing applications provided the change or transfer, if approved, would substantially enhance the quality of the natural environment.

INVESTIGATION

This water right change process included an on-site visit by the author on September 8, 2008. Additional information and supporting documentation for this investigation was obtained through the following:

- Documentation submitted with the application
- Conversations with:
 - Washington Rivers Conservancy (WRC) staff
 - Ecology staff
 - Manastash Steering Committee Members
- Washington State Water Code (WAC), relevant case law, and administrative rules and policies
- Review of recent aerial photography
- Yakima County Superior Court *Reports of Referee and Conditional Final Order (CFO) in Acquavella Subbasin No. 11 (Manastash Creek)*
- Yakima County Superior Court *Report of the Court Concerning the Water Rights for the Kittitas Reclamation District*. Vol. 14
- Manastash Creek Project Summary Memorandum (Golder 2006)
- Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan
- Resolution of the Manastash Steering Committee Regarding this plan

History of Water Use

Manastash Creek is part of the Yakima River Basin Water Rights Adjudication (*Department of Ecology v. James J. Aquavella, et al.*) (Yakima Adjudication). During the Yakima Adjudication proceedings, a Conditional Final Order (CFO) specific to Manastash Creek (Subbasin No. 11) issued on June 14, 2001. Court Claim No. 02283, the subject court claim of this Report of Examination, was part of the Yakima Adjudication proceedings and is addressed in Reports of the Referee for Subbasin No. 11 and in the CFO for Subbasin No. 11. The confirmed water quantities for Court Claim No. 02283 are listed in Table 1. For this court claim, the Court granted a water duty of 7.8 acre-feet per acre, per year, for irrigation from Manastash Creek. The Supplemental Report of the Referee for Subbasin No. 11 included a special "Limitation of Use" for Court Claim No. 02283 that states "this land may have a supplemental water right through the Kittitas Reclamation District, which is exercised when sufficient creek water is not available".

The availability of water in Manastash Creek changes throughout the year. The hydrograph for Manastash Creek typically peaks in the months of March, April, and May. It begins to descend between late April and late May to the point that not all water rights can be satisfied. Typically, by early to mid-June there is only enough water in Manastash Creek to meet the first and second class rights. As the hydrograph recedes, the water right holders of Manastash Creek begin to self regulate the diversions to meet the most senior rights first.

The Court recognized this recurring pattern and the CFO for Subbasin No. 11 (Manastash Creek) issued with a reduced instantaneous rate of water delivery later in the water year for the majority of irrigation rights. These rights are reduced by 50% on July 1. However, natural conditions typically have already reduced the flow to the point where only Class 1 and a portion of the Class 2 water is available after July 1.

The 15 acres confirmed under Court Claim No. 02283 were originally part of the J.N. Weaver homestead. The property was purchased by John Matthews in 1963. Court Claim No. 02283 is in John Matthews name in the Supplemental Report of the Referee for Subbasin No. 11. Testimony given in the Yakima Adjudication Court (the Court) showed that the property was irrigated from Manastash Creek when water was available and when water was not it was irrigated under the Kittitas Reclamation District (KRD) water right. The irrigated lands lay south of Manastash Creek and water is delivered through an earthen canal system.

The property irrigated under Court Claim No. 02283 has been divided into 5 separate parcels and each is owned by separate parties. Three other applications have been received under Court Claim No. 02283 to place a portion of their right into the TWRP. These applications have been accepted and assigned Application No's. CS4-02283CTCL sb11 (Kittitas County Parcel No. 17-17-12057-0001, James Resps her, and Holly English), CS4-02283CTCLsb11@1 (Kittitas County Parcel No. 17-17-12057-0003, John and Linda Graf), and CS4-02283CTCLsb11@3 (Kittitas County Parcel No. 17-17-12057-0004, Dale and Marti Miller). The quantities that these applicants have applied for are discussed in the "**Other Applications Appurtenant to Court Claim No. 02283**" section of this report.

Specific to this ROE, the applicants (Clinton and Patricia Allen) own a 4.99 acre parcel of which 4.59 acres are irrigated under Court Claim No. 02283 and propose to transfer a portion of their right to the TWRP. The applicants are the legal land owners where their portion of water under Court Claim No. 02283 has been put to beneficial use. Their irrigation practices have been to divert the water into an earthen ditch and flood irrigate a portion and to use sprinklers for the remaining portion.

Based on reviewing 2002, 2005, and 2006 aerial photos, it appears the entire 15 acre place of use has not been irrigated since the CFO issued. This may be due to the time of year when the pictures were taken and non-availability of water during the 2005 drought. This is discussed in the "**Sufficient Cause for Relief from Relinquishment**" section of this report.

The applicants have contracted with the WRC to sell 32 ac-ft of their portion of Court Claim No. 02283. The Purchase and Sale agreement states that the applicants have irrigated 4.59 acres, and that, post closing, they will retain 3.82 ac-ft/yr to irrigate 0.49 acres. See the "**Trust Water Right Calculations**" section of this report for more detail.

Manastash Creek Restoration Project History

The Manastash Creek Restoration Project is implemented by the Manastash Creek Steering Committee with assistance from the Kittitas County Conservation District (KCCD). The Manastash Creek Steering Committee was initiated in 2001. In 2008, membership was confirmed through a resolution of the Steering Committee. Current membership includes representatives of the water users of Manastash Water Ditch Association, Keach Ditch, Jensen Ditch, Hatfield Ditch, Reed Ditch, Anderson Diversion, and Barnes Road Diversion, as well as representatives of the Washington State Department of Ecology, Washington State Department of Fish & Wildlife, National Marine Fisheries Service, Washington Environmental Council, and the Yakama Nation.

The Steering Committee was formed in response to the Washington Environmental Council's (WEC) intention to file a lawsuit, based on possible violation of the Endangered Species Act (ESA). ESA is a federal law that attempts to protect animal and plant species threatened with extinction. ESA also attempts to protect the habitat of these species. The Washington State Department of Fish and Wildlife and Yakama Nation have determined that Manastash Creek contains habitat suitable for ESA-listed species and that artificial fish passage barriers exist in the Creek. The WEC lawsuit would address compliance issues within Manastash Creek concerning fish passage, proper screening of headwork diversions, and metering diverted water.

This Committee's main goals are to satisfy compliance issues with fish passage, headwork screening, and metering diverted water in Manastash Creek. By achieving these goals the irrigators would address ESA requirements and WAC 173-173.

The Washington State Legislature appropriated \$2.24 million in 2002 for construction of fish screens and fish passage at Manastash Creek diversions. In addition to those funds, the Bonneville Power Administration (BPA) awarded \$1.4 million to the Manastash Project through the Washington State Department of Fish & Wildlife in 2002 to construct fish screen and fish passage facilities. BPA approved an \$891,000 instream flow grant in 2007 and in 2008, BPA approved an additional \$748,000 toward fish screen construction.

In the years between 2003 and 2006, the strategy for providing fish screens and fish passage facilities underwent a number of changes. Initially, the Anderson, Reed, Hatfield, and Keach-Jensen Diversions were to be moved to the Manastash Water Ditch Association diversion site. That plan was abandoned in 2005 as agreement on specifics could not be reached within the Steering Committee.

The consolidation plan was then modified and revived in early 2006. The current plan includes consolidating only the Reed Ditch, Anderson Ditch, and Hatfield Ditch diversions to the MWDA diversion site. The Keach-Jensen and the Barnes Road diversions will be screened at their present locations. The Steering Committee members have agreed to work toward completion of the current plan.

In 2006, the KCCD assisted water right holders and Ecology to complete the applications to change the points of diversion for Hatfield Ditch, Reed Ditch, and Anderson Ditch. The change applications were received by Ecology in August and September 2006. Along with these applications, a mitigation package was submitted to address potential adverse impacts of the upstream moves in points of diversion.

Proposed Use

Under this proposed change, trust water will be used exclusively for instream flow, fish maintenance and enhancement, recreation values, and preservation of environmental and aesthetic values allowed under Chapter 90.38 RCW within Manastash Creek. This trust water is intended to satisfy a portion of the mitigation proposed, via a SEPA review, for the Mitigated Determination of Nonsignificance (MDNS).

Other Water Rights Appurtenant to the Place of Use

The applicants' property subject to this change application is also within the Kittitas Reclamation District (KRD) service area. KRD water has historically been delivered when water was unavailable from Manastash Creek. If this change application is approved, the 4.59 acres of the applicants' property historically irrigated is intended to be irrigated by a combination of the applicants' remaining portion of Court Claim No. 02283 and water provided by KRD.

Other Applications Appurtenant to Court Claim No. 02283

There are four applications for change filed under Court Claim No. 02283. Each of these applications proposes to place a portion of this right into the TWRP. Attributes of these applications are shown in Table 2.

Table 2: Applications filed under Court Claim No. 02283 and their attributes

Application No.	Irrigated acres	Proposed Trust Qi	Proposed Trust Qa	Remaining Qi/Qa/acres, if given
CS4-02283CTCLsb11 (James Repsher, and Holly English)	2.3	0.044 cfs	15 acre-feet	0.009cfs 3 acre-feet
CS4-02283CTCLsb11@1 (John and Linda Graf)	2.75	0.059 cfs	20 acre-feet	0.005 cfs 1.51 acre-feet 0.19 acres
CS4-02283CTCLsb11@2 (Clinton and Patricia Allen)	4.59	0.094 cfs	32 acre-feet	0.01 cfs 3.82acre-feet 0.49 acres
CS4-02283CTCLsb11@3 (Dale and Marti Miller).	3.53	0.08 cfs	26 acre-feet	0.005 cfs 1.6 acre-feet 0.21 acres
Court Claim No. 02283 retains	1.72			0.039 cfs 13.42 acre-feet 1.72 acres

The remaining 0.039 cfs and 13.42 ac-ft to irrigate 1.72 acres will remain appurtenant to the lands within Kittitas County Parcel No. 17-17-12051-0008 where it has been put to beneficial use.

Hydrologic/Hydrogeologic Evaluation

Ecology retained Golder Associates (Golder) (Golder 2006) to conduct an assessment of ground water in the Manastash Creek alluvial fan to characterize the geology and hydrogeology of the Manastash Creek alluvial fan and evaluate the potential for developing an associated source of ground water supply to diversions of surface water from Manastash Creek. Golder submitted their finding in two memorandums dated May 3, 2004 (Phase 1) and October 17, 2006 (Phase 2). Phase 1 contains information on aquifer properties, recharge processes, ground water flow, and ground water discharge. Phase 2 was focused toward developing a better understanding of the shallow alluvial system through data review, geophysical surveys, installation and testing of wells and ground water flow modeling.

As a part of the study, Golder noted the following with regard to ground water flow across the Manastash Creek alluvial fan:

- The general direction of ground water flow is from the high ground surrounding the Kittitas Valley toward the center of the valley and the Yakima River.
- At the head of the fan in areas close to Manastash Creek, ground water appears to flow from the creek in the direction of the adjacent areas.
- At the toe of the fan, ground water is channeled back into the creek and into a pair of subsidiary (discharge) features that are located at the southern and northern margins of the fan.

These findings are consistent with conceptual models of alluvial fans. Generally speaking, streams are expected to lose surface water to the ground in the head and mid-fan region and gain flow from ground water near the toe or distal margins of the fan (Fetter 2001). Ground water will move down gradient from the head to the toe in a radial pattern, roughly mimicking the fan deposition pattern. Depending on the locations where deep percolation of irrigation recharge occurs, some return flow may begin to reenter Manastash Creek, but it is unlikely that all return flows will re-enter the creek before they reach and discharge to the Yakima River.

A copy of the Golder report is available by contacting Ecology (509-575-2490).

Trust Water Right Primary and Secondary Reaches

If this change application is approved, the 4.59 acres of the applicants' property historically irrigated is intended to be irrigated by a combination of the applicants' remaining portion of Court Claim No. 02283 and water provided by the Kittitas Reclamation District (KRD). (KRD water source is the Yakima River.) The method of irrigation (flood and sprinkler) is not intended to change. As such, the amount of water being applied to the applicants' property would remain the same – or even less during periods of KRD proration. Return flow pathways would, therefore, remain as before. [Note: Under this change proposal, the applicants would retain 0.01 cfs and 3.82 ac-ft/yr.]

A primary reach is comprised of both consumptive and non-consumptive water. The primary reach extends from the historical diversion point to an area where most return flows would have returned to the surface water source. Under this change application, some irrigation water historically used is proposed to remain in Manastash Creek. This water is comprised of both the consumptive and non-consumptive portions that have historically been used. The water remaining in Manastash Creek would be able to be protected in the primary reach only. The primary reach is described in the “**Trust Water Place of Use**” section of this report.

A secondary reach is comprised only of the consumptive portion of water. The secondary reach begins where the primary reach ends, and extends, typically, to the Pacific Ocean. Since the source is proposed for change, an alternate would be used, and irrigation practices are intended to remain the same, return flow pathways would not change. Therefore, no secondary reach (comprised only of the consumptive portion of water formerly used for irrigation) would be protected under this change.

Trust Water Right Calculations

The applicants have proposed to convey a portion of their portion of Court Claim No. 02283 (source is Manastash Creek) to the state's TWRP. The applicants' portion proposed for trust is an annual quantity of 32 ac-ft/yr. This represents 4.1 acres and an instantaneous rate of 0.094 cfs from April 1 through June 30, and 0.048 cfs from July 1 October 31.

The conversion of the 32 acre-feet into the instantaneous quantity and irrigated acres that it represents is illustrated in the following equations:

Entire right

$$117.1 \text{ ac-ft} \div 15 \text{ acres} = 7.8 \text{ ac-ft per acre}$$

$$0.35 \text{ cfs} \div 15 \text{ acres} = 0.023 \text{ cfs per acre}$$

Trust portion

$$32 \text{ ac-ft} \div 7.8 \text{ acre-ft per acre} = 4.1 \text{ acres}$$

$$4.1 \text{ acres} * 0.023 \text{ cfs per acre} = 0.094 \text{ cfs}$$

Applicants' Retained portion

$$3.82 \text{ ac-ft} \div 7.8 \text{ ac-ft per acre} = 0.49 \text{ acres}$$

$$0.49 \text{ acres} * 0.023 \text{ cfs per acre} = 0.01 \text{ cfs}$$

Court Claim No. 02283 Retained portion

$$81.28 \text{ ac-ft} \div 7.8 \text{ ac-ft per acre} = 10.4 \text{ acres}$$

$$10.4 \text{ acres} * 0.023 \text{ cfs per acre} = 0.24 \text{ cfs}$$

Trust Water Place of Use

The trust water primary reach is described as beginning at the historic point of diversion (the Keach-Jensen diversion) located approximately 550 feet south and 650 feet east from the north quarter corner of Section 14, T. 17 N., R. 17 E.W.M. (approximate Creek Mile 5.5) and extending to the confluence with Manastash Creek and the Yakima River (approximate Yakima River Mile 154.5).

Trust Water Management

If this change application is approved, the right to be conveyed to the TWRP will be measured and monitored according to the Manastash Creek Restoration Project, Instream Flow Enhancement Implementation Plan (Kittitas County Conservation District 2007a) and the Resolution of Manastash Steering Committee Regarding Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan (Kittitas County Conservation District 2007b). These documents indicate that the object of water conveyed into the TWRP is to “provide 6 cfs (before pro-rationing) of water rights for instream flow *in addition to existing instream conveyance losses measured between MWDA and the Reed and Anderson diversions* under current irrigation practices” (Kittitas County Conservation District 2007b, emphasis added).

The Reed Diversion is described as a point 600 feet north and 700 feet east from the southwest corner of Section 12 being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 17 N., R. 17 E.W.M. on Manastash Creek. The Anderson diversion is described as a point 1200 feet north and 1200 feet east of the center of Section 7, being within the SW $\frac{1}{4}$ NE Section 7, T. 17 N., R. 18 E.W.M. The management of the trust water will be a combined effort of the members of the Steering Committee.

Impairment Considerations

Under RCW 90.38.040(5)(a), a trust water right may be exercised only if it does not impair existing rights. The applicants' water is proposed to create trust water rights specifically for instream flow purposes within Manastash Creek. By no longer diverting a portion of their water right from Manastash Creek, that portion of the right will remain instream, subject to hydrogeologic conditions. The intent is to increase flow downstream of the historic point of diversion, as outlined in the Manastash Creek Restoration Project, Instream Flow Enhancement Implementation Plan.

When considering impairment, consideration is given to the change in water sources. Historically, the applicants' land subject to this change has used irrigation water from both Manastash Creek (the Keach-Jensen Diversion) and the Yakima River (KRD's Lake Easton Diversion). When irrigation water was unavailable from Manastash Creek, the KRD would provide the balance. If this change application is approved, the 4.59 acres of the applicants' property historically irrigated is intended to be irrigated by a combination of the applicants' remaining portion of Court Claim No. 02283 and water provided by the Kittitas Reclamation District (KRD). This represents a change in the applicants' water delivery regime. Because return flow pathways would remain the same, the resulting effect on the Yakima River would be felt from the KRD's Lake Easton Diversion (approximate River Mile 203) to its confluence with Manastash Creek (approximate River Mile 154.5). This stretch of the Yakima River is the "affected reach" described in the next two paragraphs.

Potential impacts within the affected reach associated with the proposed change center on 0.094 cfs – the amount being forgone from Manastash Creek. Timing of the impact would normally only affect the early part of the irrigation season, when the applicants would have been using Manastash Creek water. Later in the season, irrigation water derived from the KRD anyway. Note that, historically, the applicants have had the flexibility to use KRD water instead of water diverted from Manastash Creek at any time during the irrigation season.

The Yakima River is regulated by the Bureau of Reclamation (Bureau) with water from artificial storage. Water released from storage serves rights under contract with the Bureau. The Bureau's regulation directly affects flows in the affected reach. The USGS hydrograph at Umptanum indicates that Yakima River levels in that area fluctuate generally between 2000 cfs and 5000 cfs from April through August (with some higher spikes) and reduce to approximately 1000 cfs in September and October. Both the Washington State Department of Fish and Wildlife and the Yakama Nation have indicated that restoring continuous flow in Manastash Creek is preferable to the maximum 0.094 cfs effect on the Yakima River in the affected reach. Note that 0.094 cfs is less than 0.01% of 2000 cfs and 0.048 cfs is less than 0.01% of 1000 cfs. The increase in diverted amount is negligible within the affected reach.

Enhancement and the KRD Right

This change proposal is unique in that the primary source of irrigation water (Keach-Jensen Diversion – Manastash Creek) would be conveyed into trust and the 4.59 acres of the applicants' property historically irrigated is intended to be irrigated by a combination of the applicants' remaining portion of Court Claim No. 02283 and water provided by the Kittitas Reclamation District (KRD), a "supplemental" right. No lands will be provisioned to be fallowed. [Note: the Court used the term "supplemental" in the description of KRD water in relation to Court Claim No. 02283 in the Supplemental Report of Referee for Subbasin No. 11.]

The Yakima Adjudication Court (Court) confirmed the KRD's right (Court Claim No. 0465) to cover 59,122.29 irrigable acres within the KRD's boundaries. The Court recognized the interaction of a portion of the Manastash creek users with the KRD in the *Report of the Court Concerning the Water Rights for the Kittitas Reclamation District*. The Court authorized the KRD to appropriate its irrigation water shares within its boundaries and within the limits of their confirmed right. This change, if approved, would not enhance that right.

Enhancement of the Remaining Portion of Court Claim No. 02283

If this change application is approved, the exact annual quantity and instantaneous rate for conveyance into trust would be deducted from the confirmed quantities in Court Claim No. 02283. The season of use would remain the same. This change, if approved, would not enhance Court Claim No. 02283.

If this change application is approved, Washington Rivers Conservancy and the applicants will file with the Adjudication Court a motion to partition the water right and join additional party.

Sufficient Cause for Relief from Relinquishment

Relinquishment of a water right occurs when any person entitled to divert or withdraw waters of the state through an authorized appropriation that abandons or voluntarily fails, without sufficient cause, to beneficially use all or part of said right for a period of five successive years shall relinquish such right or portion thereof (RCW 90.14.160).

RCW 90.14.140(1) states that sufficient cause shall be defined as the nonuse of all or a portion of the water by the owner of a water right for a period of five or more consecutive years where such nonuse occurs as a result of a drought, or other unavailability of water.

Based on reviewing 2002, 2005, and 2006 aerial photos, it appears the entire 15 acre place of use under Court Claim No. 02283 has not been irrigated since the CFO issued. This may be due to the time of year when the pictures were taken and non-availability of water during a drought in 2005. In 2005, a statewide drought declared by the Governor had an effect on the water supply to the Manastash Basin. The drought impacted the ability of the applicants to divert water under Court Claim No. 02283 earlier in the irrigation season than in an average water year. Discussions with members of the Manastash Steering Committee Members indicated that users of Court Claim No. 02283, with a June 30, 1871 priority, did divert water until stream flow decreased to a rate that water was no longer available. Other water rights with a June 30, 1871 priority were affected in a similar manner. Since drought is considered an exemption from relinquishment under RCW 90.14.140(1), there has not been a five year period of continuous non-use since the CFO issued for Subbasin 11 (June 14, 2001). Therefore, relinquishment under RCW 90.14.160 does not appear to apply.

The 2005 drought also affected the KRD's ability to divert water from the Yakima River. The KRD had prorated the amount of water that they could divert to their patrons, which includes the applicants. This proration ensured that senior water right holders in the Yakima River Basin could receive the full amount of their water right.

A Word on Foreign Return Flows

Return flows, including foreign return flows, have primarily augmented the flow in Manastash Creek only downstream of most diversions on Manastash Creek. Some return flows may be intercepted by other irrigation canals before they can return to Manastash Creek. The Yakima Adjudication Court determined that only those return flows that originate from Manastash Creek (and could demonstrate legal, historic use) could be confirmed a return flow right in Subbasin No. 11 (Manastash Creek).

The Yakima Adjudication Court ruled that no right could be confirmed to the use of foreign return flow. KRD water is diverted from Subbasin No. 8 (Thorp) and KRD return flows would be considered foreign within Subbasin No. 11 (Manastash Creek).

A Word on TWSA

TWSA stands for the Total Water Supply Available and is comprised of the entire Yakima River basin outflow. Some TWSA water comes from artificial storage, and is used to fulfill contracted rights with the Bureau of Reclamation. Each user has an assigned amount each year, which is their proportion of the available TWSA. A measuring point of TWSA is at Parker, Washington, located downstream of Union Gap, Washington.

If this change application is approved, the KRD water that the applicants intend to use would not increase the amount of water authorized to KRD under the Yakima River Basin Adjudication (Court Claim No. 0465). Though this change may decrease flow in the Yakima River through the affected reach in the early part of the irrigation season, Manastash Creek would realize an increase in flow. The TWSA at Parker, Washington, would remain the same.

Public Interest Considerations

Creation of a trust water right may not be contrary to the public interest. A trust water right for instream flow will increase flows downstream from the historic point of diversion. The Water Resources Act of 1971 (Chapter 90.54 RCW) was enacted to provide strategic means of "providing and securing sufficient water to meet the needs of people, farms and fish". Protecting stream flows in the amounts identified in this report is anticipated to improve fish habitat in Manastash Creek. Improving fish habitat is considered an interest of the public.

CONCLUSIONS

A portion of Court Claim No. 02283 is appurtenant to the subject property. Review of the evidence provided within this report and proceedings within the Yakima River Basin Adjudication Court indicate that a total of 15 acres have been historically and beneficially used when available under Court Claim No. 02283. [Note: for Manastash Creek, the 2005 drought resulted in water unavailability for some users and is considered sufficient cause for non-irrigation under RCW 90.14.140(1) for those users. Therefore, water users in this area unable to use water due to the drought are exempt from relinquishment under Chapter 90.14 RCW. The subject property falls into this category.]

In accordance with Chapter 90.38 RCW, the author makes a tentative determination that Court Claim No. 02283 represents a valid water right authorized to divert up to 0.35 cfs from April 1 through June 30, and 0.175 cfs from July 1 through October 31, up to 117.1 ac-ft/yr of water for irrigation from Manastash Creek; and 0.01 cfs continuous, up to 1 ac-ft/yr, for stock water purposes.

Approval of this change of purpose of use to instream flow will not impair existing water rights.

Creating a trust water right for instream flow purposes is allowed under Chapter 90.38 RCW is not contrary to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, the author recommends that this application for change to Court Claim No. 02283 (CS4-02283CTCLsb11@2) be approved in the amounts and within the limitations listed below and subject to the provisions listed in this Report of Examination.

Trust Water Right Attributes

Maximum of 0.094 cfs from April 1 through June 30 and maximum 0.048 cfs from July 1 through October 31, not to exceed 32 ac-ft/yr for instream flow for fish maintenance and enhancement, recreation uses, and preservation of environmental and aesthetic values in Manastash Creek.

The primary reach begins at the current head works of the Keach-Jensen Ditch system on Manastash Creek described as 550 feet south and 650 feet east of the north quarter corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14 of T. 17 N., R. 17 E.W.M. and extends to the confluence with the Yakima River.

There is no secondary reach for this trust water change.

Remaining Portion of Allen Portion of Court Claim No. 02283 Attributes

Maximum of 0.01 cfs from April 1 through June 30 and maximum 0.005 cfs from July 1 through October 31, not to exceed 3.82 ac-ft/yr for irrigation of 0.49 acres.

Remaining Portion of Court Claim No. 02283 Attributes

Maximum of 0.24 cfs from April 1 through June 30 and maximum 0.12 cfs from July 1 through October 31, not to exceed 81.28 ac-ft/yr for irrigation of 10.4 acres, and a maximum of 0.01 cfs for year round stock water, not to exceed 1.0 ac-ft/yr.

Report by: Eric A Hartwig
Eric A Hartwig, Water Resources Program

4/7/2009
Date

References

Fetter, C.W. 2001. Applied Hydrogeology Fourth Edition. Prentice Hall, New Jersey.

Golder Associates, Inc. 2006. Pub. 033-9713.200: (Manastash Creek) Project Summary Memorandum. Lake Oswego, Oregon.

Kittitas County Conservation District. 2007a. Final Draft of Manastash Creek Restoration Project, Instream Flow Enhancement Implementation Plan.

http://www.kccd.net/Current_Projects/Manastash/Manastash%20Imp%20Plan%2010-30-07.pdf

Kittitas County Conservation District. 2007b. Resolution of Manastash Steering Committee Regarding Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan.

http://www.kccd.net/Current_Projects/Manastash/Signed%20Implementation%20Plan%20Resolution.pdf

Attachment 2



