



State of Washington  
Department of Ecology  
Office of Columbia River  
**SUPERSEDING REPORT OF EXAMINATION  
FOR WATER RIGHT APPLICATION**

*This report supersedes Ecology's September 26, 2013, Report of Examination (ROE) and its resulting permit issued January 3, 2014, which are being rescinded upon request of the applicant. The ROE and permit revisions address issues presented in the appeal of the prior permit approval decision to the Pollution Control Hearings Board (PCHB) in Okanogan Wilderness League and Center for Environmental Law and Policy v. Department of Ecology and Kennewick General Hospital, PCHB No. 13-146.*

<b>PRIORITY DATE</b> June 24, 1980	<b>WATER RIGHT NUMBER</b> G4-30584
<b>MAILING ADDRESS</b> KENNEWICK GENERAL HOSPITAL 900 S AUBURN ST PO BOX 6128 KENNEWICK WA 99336	<b>SITE ADDRESS (IF DIFFERENT)</b>

**Quantity Authorized for Withdrawal**

<b>WITHDRAWAL OR DIVERSION RATE</b> 7,990	<b>UNITS</b> GPM	<b>ANNUAL QUANTITY (AF/YR)</b> 4,000
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**Purpose**

PURPOSE	WITHDRAWAL RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Irrigation	7,990		GPM	4,000		03/01 - 10/31

ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
	NON-ADDITIVE		WATER SYSTEM ID	CONNECTIONS
2,780	0			

**Source Location**

<b>COUNTY</b> BENTON	<b>WATERBODY</b> GROUNDWATER	<b>TRIBUTARY TO</b>	<b>WATER RESOURCE INVENTORY AREA</b> 31-ROCK-GLADE
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SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
WELL FIELD	120711000002000		07N.	31E.W.M.	20	E1/2	See Below	

Datum: NAD83

**Place of Use (See Attached Map)**

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

In T. 7N., R 30E.W.M.: that portion of the SW¼ of Section 1 lying southwest of the Kennewick Irrigation District Main Canal; Section 11; that portion of Section 12 lying south of the Kennewick Irrigation District Main Canal; the W½ of Section 13; Section 14; Section 23; the N½ and SW¼ of Section 24; Section 25; the N½, N½SW¼, SW¼SW¼, and NW¼SE¼ of Section 26.

In T. 7N., R. 31E.W.M.: that portion of Section 8 lying south of the Columbia Irrigation District Canal; that portion of the S½ and S½N½ Section 7 lying west of the Columbia Irrigation District Canal; that portion of the W½NW¼ of Section 17 lying west of the Columbia Irrigation District Canal; Section 18; Section 19; the NW¼, N½SW¼, W½E½, SW¼SE¼NE¼, W½E½SE¼, S½SW¼ of Section 20, excepting that portion of the N½NW¼ lying northeasterly of Ayers Road and the NW¼NE¼; the W½ of Section 29; Section 30.

**Proposed Works**

The applicant plans to continue operation of groundwater pumps and distribution infrastructure which will convey water to lands within the place of use through lined steel mainlines, secondary distribution mainlines, and any necessary submains, laterals and in-field piping. The applicant proposes to use water for agricultural irrigation of various crops, to include row and cover crops, vineyards, and orchards. The irrigation system will be comprised of center pivots and other modern irrigation components necessary to irrigate the various agricultural plots.

**Development Schedule**

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Begun	May 1, 2019	May 1, 2021

**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 Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm or cfs)

**Provisions**

**Compliance with Chapter 173-563 WAC**

This Superseding Report of Examination (Superseding ROE) supersedes and replaces the ROE issued to Kennewick General Hospital on September 26, 2013. The previously issued ROE was appealed to the PCHB in *Okanogan Wilderness League and Center for Environmental Law and Policy v. Department of Ecology and Kennewick General Hospital*, PCHB No. 13-146. As a result of the appeal, and with due consideration of a request by the applicant, Ecology is rescinding the existing ROE and permit. The applicant has proposed the addition of a condition that the permit shall be subject to the instream flow provisions under WAC 173-563-040 and WAC 173-563-050. Accordingly, water use under this authorization is subject to curtailment when the instream flows are not met.

This authorization is subject to the following minimum flows as specified in WAC 173-563-040 and WAC 173-563-050 and the following table. It is subject to regulation by the Department of Ecology for protection of instream resources whenever the March 1 forecast of April-September runoff at The Dalles is 60 MAF or less, and when gauged flows are predicted by the BPA 30-Day Power Operation Plan to violate the following minimum flow provisions at:

Primary Control Station(s): McNary  
River Mile(s): 292.0

Minimum Average Weekly Flows  
Columbia River Projects  
(1,000 cubic feet/second)

PRIMARY CONTROL STATION:	Chief Joseph*	Wells/Rocky Reach*	Rock Island & Wanapum *	Priest Rapids	McNary	John Day	The Dalles
RIVER MILE:	(545.1)	(515.6) (473.7)	(453.4) (415.8)	(397.1)	(292.0)	(215.6)	(191.5)
Jan	30	30	30	70	60	60	60
Feb	30	30	30	70	60	60	60
Mar	30	30	30	70	60	60	60
Apr 1-15	50	50	60	70	100	100	120
Apr 16-25	60	60	60	70	150	150	160
Apr 26-30	90	100	110	110	200	200	200
May	100	115	130	130	220	220	220
Jun 1-15	80	110	110	110	200	200	200
Jun 16-30	60	80	80	80	120	120	120
Jul 1-15	60	80	80	80	120	120	120
Jul 16-31	90	100	110	110	140	140	140
Aug	85	90	95	95	120	120	120
Sep	40	40	40	40	60	85	90
Oct 1-15	30	35	40	40	60	85	90
Oct 16-31	30	35	40	70	60	85	90
Nov	30	30	30	70	60	60	60
Dec	30	30	30	70	60	60	60

\*For the reach from Grand Coulee through Wanapum, minimum average weekly flows shall be as shown above, or as necessary to maintain minimum flows (subject to low runoff and adjustment) at Priest Rapids, whichever is higher. As provided in WAC 173-563-050(1), the minimum average weekly flows set forth in this subsection are subject to a reduction of up to 25 percent during low flow years, except that in no case shall the outflow from Priest Rapids Dam be less than 36,000 cfs.

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

Use of water under this authorization can be expected to be curtailed at least once in every 20 years.

Water available under this authorization will not provide a firm supply throughout each irrigation season.

#### **Out-of Kind Mitigation Requirements and Associated Cost Recovery Agreement**

In addition to the instream flow conditions specified above, mitigation measures are required under this permit or certificate. In reliance upon the applicant's execution in September 2013 of a cost recovery agreement with Ecology for reimbursement of funds associated with funding of a mitigation package, Ecology determined to proceed with a package of out-of-kind mitigation projects, the elements of which are described in Appendix A to this Superseding ROE. The applicant has already made the first annual payment under that cost recovery agreement, and use of water under this permit or certificate is contingent upon the applicant's continued compliance with a cost recovery agreement. Failure to comply with the terms of the water service contract will result in cancellation of the permit or revocation of the certificate, as outlined in the agreement.

Ecology has already funded and commenced the Appendix A projects, and all cost recovery funds that are received by Ecology from KGH will be reinvested into direct instream flow augmentation through Ecology's purchase of water rights and transfer of them into the state water rights trust program for instream flow purposes to provide further mitigation that will offset water use under this water right. Any consumptive portions of water rights acquired for the purpose of instream flow augmentation will be subtracted from the quantity of water authorized under this permit that is subject to curtailment under WAC 173-563-040. This will be accomplished through a future split of the permit to account for: (A) – the portion which remains subject to curtailment and, (B) – the portion that has been mitigated through water right acquisition that will not be subject to curtailment. The relationship of acquired consumptive water to the mitigated portion of the subject water right will be 1:1.

#### **Wells, Well Logs and Well Construction Standards**

All wells constructed in the state shall meet the construction requirements of WAC 173-160 titled "Minimum Standards for the Construction and Maintenance of Wells" and RCW 18.104 titled "Water Well Construction". Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard shall be decommissioned.

All wells shall be tagged with a Department of Ecology unique well identification number. If you have an existing well and it does not have a tag, please contact the well-drilling coordinator at the regional Department of Ecology office issuing this decision. This tag shall remain attached to the well. If you are required to submit water measuring reports, reference this tag number.

Installation and maintenance of an access port as described in WAC 173-160- 291(3) is required.

#### **Measurements, Monitoring, Metering and Reporting**

An approved measuring device shall 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.

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.

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

#### **Family Farm Act**

This authorization to use public waters of the state is classified as Family Farm Permit in accordance with chapter 90.66 RCW. This means the land being irrigated under this authorization shall comply with the following definition: Family Farm - a geographic area including not more than 6,000 acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than 6,000 acres of irrigated agricultural lands in the state of Washington which are irrigated under water rights acquired after December 8, 1977.

Furthermore, the land being irrigated under this authorization must continue to conform to the definition of a family farm.

#### **Water Use Efficiency**

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

#### **John Day/McNary Reservation**

The annual quantity herein allocated is a portion of the amount reserved by the adoption of the John Day/McNary Reservation under WAC 173-531A-040. The priority date of this filing, as against other uses, is June 24, 1980.

#### **Proof of Appropriation**

The water right holder shall file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the permit. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

#### **Schedule and Inspections**

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

**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 water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER that:

1. Application No. G4-30584 be approved and a superseding permit be issued, subject to existing rights and the provisions specified above.
2. Permit No. G4-30584P dated January 3, 2014, and the associated September 26, 2013, Report of Examination for G4-30584, shall both be rescinded at such time that the superseding permit is issued.

**Your Right To Appeal**

You have a right to appeal this Order to the Pollution Control Hearings 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).

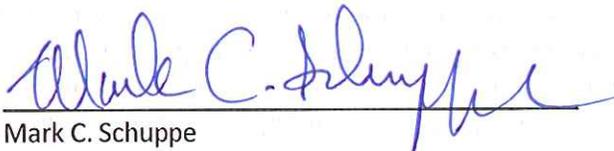
To appeal you must do the following within 30 days of the date of receipt of the Order.

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.

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

Signed at Yakima, Washington, this 20<sup>th</sup> day of February 2015.



Mark C. Schuppe  
Operations Manager

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://www1.leg.wa.gov/CodeReviser>

## INVESTIGATOR'S REPORT

Application for Water Right -- Kennewick General Hospital

Water Right Control Number G4-30584

Trevor Hutton, Department of Ecology

This report shall supersede and replace Ecology's September 26, 2013, ROE and decision which was appealed to the PCHB in *Okanogan Wilderness League and Center for Environmental Law and Policy v. Department of Ecology and Kennewick General Hospital*, PCHB No. 13-146. Based upon objections lodged in that appeal, and at the applicant's request, Ecology has decided to rescind the existing ROE and permit and issue this Superseding ROE to address issues raised in the appeal.

### **BACKGROUND**

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On February 28, 1991, Kennewick Public Hospital District, now Kennewick General Hospital (KGH), applied for a water right to irrigate up to 5,592 acres using 99.7 cubic feet per second (cfs) and 22,368 acre-feet per year on property south of Kennewick. The land had been previously donated to the Hospital with the stipulation that proceeds from the sale of the land be dedicated to funding hospital improvements. The application was amended in 1994 to reduce the quantities requested. A water right permit for the irrigation of 2,780 acres, in the amounts of 13,559 acre-feet per year and 49.5 cfs, was issued in January of 2003 and the Report of Examination (ROE) included mitigation measures proposed by KGH, including an annual payment of \$10 per acre-foot for water diverted under the right. The Yakama Nation, Nez Perce Tribe, Confederated Tribes of the Umatilla Indian Reservation appealed this decision and other ROEs that were issued contemporaneously and contained a similar mitigation condition to the PCHB. The PCHB overturned Ecology's decision to approve the permit application and the Washington Court of Appeals affirmed<sup>1</sup> and concluded that Ecology had not properly consulted with interested Indian tribes. As a result, the Court of Appeals remanded the file back to Ecology where the file was reverted to application status.

The application was amended again by KGH on September 27, 2012, to reflect the current proposal. This amendment further reduced the scope of the project to 4,000 acre-feet per year, 7,990 gallons per minute (gpm) for irrigation of 2,780 acres. A new mitigation package was developed to allow processing of this application to proceed. The specific mitigation measures are outlined below. While the original application requested surface water from the Columbia River, it was decided by the applicant that constructing a well field to withdraw groundwater in direct continuity with the Columbia River would be more feasible and cause fewer impacts than constructing a new surface water pumping station.

Unless otherwise noted, the attributes of the subject application referenced in this investigator's report are for the application as amended in September 2012 and not any previous versions thereof. For procedural steps such as public notice and consultation which were duplicated to reflect the current proposal, only the most recent iteration is included in this report and analysis, unless noted otherwise. Information regarding all previous processing actions for this application may be found in the voluminous water right file.

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<sup>1</sup> *Kennewick Public Hospital District v. Pollution Control Hearings Board*, Washington Court of Appeals Nos. 22741-III, 22742-III & 22758-III (March 17, 2005).

**Table 1 Summary of Requested Water Right (as amended September 27, 2012)**

<b>Applicant Name:</b>	Kennewick General Hospital
<b>Date of Application:</b>	2/28/1991
<b>Place of Use</b>	In T. 7N., R 30E.W.M.: that portion of the SW¼ of Section 1 lying southwest of the Kennewick Irrigation District Main Canal; Section 11; that portion of Section 12 lying south of the Kennewick Irrigation District Main Canal; the W½ of Section 13; Section 14; Section 23; the N½ and SW¼ of Section 24; Section 25; the N½, N½SW¼, SW¼SW¼, and NW¼SE¼ of Section 26. In T. 7N., R. 31E.W.M.: that portion of Section 8 lying south of the Columbia Irrigation District Canal; that portion of the S½ and S½N½ Section 7 lying west of the Columbia Irrigation District Canal; that portion of the W½NW¼ of Section 17 lying west of the Columbia Irrigation District Canal; Section 18; Section 19; the NW¼, N½SW¼, W½E½, SW¼SE¼NE¼, W½E½SE¼, S½SW¼ of Section 20, excepting that portion of the N½NW¼ lying northeasterly of Ayers Road and the NW¼NE¼; the W½ of Section 29; Section 30.

County	Waterbody	Tributary To	WRIA
Benton	Groundwater	Columbia River	31-Rock-Glade

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Irrigation	7,990	GPM	4,000	03/01	10/31

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Well Field	120711000002000		07N.	31E.W.M.	20	E 1/2	See Below	

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum: NAD83.

**Tentative Well Locations:**

Identification	Latitude	Longitude
Well #1	46.07523	-118.95478
Well #2	46.07285	-118.95538
Well #3	46.07142	-118.95502
Well #4	46.07025	-118.95505
Well #5	46.06905	-118.95507

**Legal Requirements for Approval of Appropriation of Water**

Chapters 90.03 and 90.44 RCW authorize the appropriation of public water for beneficial use and describe the process for obtaining water rights. Laws governing the water right permitting process are contained in RCW 90.03.250 through 90.03.340 and RCW 90.44.050. In accordance with RCW 90.03.290, determinations must be made on the following four criteria in order for an application for a water right permit to be approved:

- Water must be available
- The water use must be beneficial
- There must be no impairment of existing rights
- The water use must not be detrimental to the public interest

### **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 Tri-City Herald on January 20, and January 27, 2013. No new protests were received.

### **Consultation with the Department of Fish and Wildlife**

Ecology must give notice to the Department of Fish and Wildlife (WDFW) of applications to divert, withdraw or store water. Notice of this application was provided to WDFW as a part of the consultation under WAC 173-563-020. Comments received from WDFW are captured below within the consultation section.

### **Consultation under WAC 173-563-020**

Under WAC 173-563-020(4), consultation with "appropriate local, state, and federal agencies and Indian tribes" is required before new Columbia River water right permits may be issued:

*The instream flows established and implemented by this chapter for instream and out-of-stream uses, and the average weekly flows applied by this chapter to out-of-stream uses do not apply to any application for water from the main stem Columbia River on which a decision is made by the department of ecology on or after July 27, 1997. Any water right application considered for approval or denial after that date will be evaluated for possible impacts on fish and existing water rights. The department will consult with appropriate local, state, and federal agencies and Indian tribes in making this evaluation. Any permit which is then approved for the use of such waters will be, if deemed necessary, subjected to instream flow protection or mitigation conditions determined on a case-by-case basis through the evaluation conducted with the agencies and tribes.*

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

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met:

- It is a surface water right application for more than 1 cubic foot per second (cfs). If the project is for agricultural irrigation, the threshold is increased to 50 cfs, so long as the project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gallons per minute (gpm);
- It is an application combined with other water right applications for the same project and exceeds the amounts above;
- It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- It is part of a series of exempt actions that, considered together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Ecology issued a Determination of Nonsignificance (DNS) on February 20, 2013. An addendum to the February 20, 2013, DNS was issued on July 19, 2013.

## INVESTIGATION

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### Proposed Use and Basis of Water Demand

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The applicant or its assignee plans to continue operation of groundwater pumps and distribution infrastructure which convey water to lands within the place of use through lined steel mainlines, secondary distribution mainlines, and any necessary submains, laterals, and in-field piping. The applicant proposes to continue to use water for agricultural irrigation of various crops, to include row and cover crops, vineyards, and orchards. The irrigation system will be comprised of center pivots and other modern irrigation components necessary to irrigate the various agricultural plots. The request for 4,000 acre-feet per year for the irrigation of up to 2,780 acres equates to an average water duty of 1.44 acre-feet per acre. This quantity is lower than would normally be associated with most row, cover, and orchard crops. However, seasonal cropping patterns (including non-irrigated or fallowed acreage and short season crops) and low water duty crops such as vineyards must be considered. The actual water duty per acre may be higher for those crops which require water in excess of 1.44 acre-feet per acre during certain stages of growth. The amount of water required for vigorous vegetative growth rises and falls as crops grow, mature, and senesce throughout the growing season. Through careful and efficient irrigation water management, it is possible to minimize deep percolation and field runoff, thus keeping water in the root zone for use through evapotranspiration. Prudent monitoring of field conditions and water consumption may allow KGH to irrigate more acreage than would traditionally be associated with a less efficiently managed water allocation of similar quantities.

### Other Rights Appurtenant to the Place of Use

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One state issued water right overlaps the proposed place of use for the subject application. Permit G4-30254P, issued to Mark Bauder, authorizes 2,250 gpm, 508 acre-feet per year for the irrigation of 120 acres. However, review of property records indicates that the property is owned by KGH, and aerial imagery shows that the overlapping place of use is not currently irrigated or developed. It is likely that this portion of property was never developed under Permit G4-30254P, and there is no relationship between the existing permit and the subject application.

In the SEPA checklist submitted to Ecology, the applicant indicated that approximately 150 acres within the proposed place of use are currently irrigated within lands owned by KGH located in Section 7, T. 7N., R. 31E.W.M. These lands are served by the Kennewick Irrigation District (KID). It is unclear at this time if those lands will continue to be served by KID, or if KGH will reconfigure the distribution system to use water acquired under this application.

#### Water Availability

For Ecology to issue a permit, water must be available for appropriation.

The water resource management program for the John Day/McNary Pools reach of the Columbia River, from which the applicant's proposed sources will withdraw water, is described in WAC 173-531A. This program reserves 1,320,000 acre-feet annually for irrigation purposes and specifies that the priority date of filings under the chapter is the effective date of regulation (June 24, 1980). The well field to be used penetrates an aquifer hydraulically continuous with the Columbia River. Currently, it is estimated that approximately 450,000 acre-feet per year have been allocated under the reservation.

Concerns have been raised about the cumulative impact of ongoing agricultural withdrawals from the Columbia River. Ecology retains discretion to evaluate the impact of future applications for withdrawals in future reports of examination, and the priority system embodied in Washington water law is not

consistent with limiting an applicant's rights based on the possible impact of future permit decisions for applications that have junior priority dates.

### ***Beneficial Use***

For a proposed water use to be beneficial, it must qualify as a type of use that qualifies as a beneficial purpose of use, and must request a quantity of water that is reasonably needed to carry out the project proposed in the permit application. The proposed use of water for irrigation is defined in statute as a beneficial use (RCW 90.54.020(1)). As amended, this application proposes to use up to 7,990 gpm, 4,000 acre-feet per year for the irrigation of 2,780 acres. As explained in the "Proposed Use and Basis of Water Demand" section, above, based on the proposed water duty to irrigate the 2,780 acres, the quantity of water being requested under this application is reasonably needed. RCW 90.54.020(2) declares irrigation to be a beneficial use of water.

### **Impairment Considerations**

Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection. A water right application may not be approved if it would:

- Interrupt or interfere with the availability of water to an adequately constructed groundwater withdrawal facility of an existing right. An adequately constructed groundwater withdrawal facility is one that (a) is constructed in compliance with well construction requirements and (b) fully penetrates the saturated zone of an aquifer or withdraws water from a reasonable and feasible pumping lift.
- Interrupt or interfere with the availability of water at the authorized point of diversion of a surface water right. A surface water right conditioned with instream flows may be impaired if a proposed use or change would cause the flow of the stream to fall to or below the instream flow more frequently or for a longer duration than was previously the case.
- Interrupt or interfere with the flow of water allocated by rule, water rights, or court decree to instream flows.
- Degrade the water quality of the source to the point that the water is unsuitable for beneficial use by existing users (e.g., via sea water intrusion).

A hydrogeologic report and was produced by a licensed Ecology staff Hydrogeologist. A copy can be found in the file. The following hydrogeologic information is excerpted from the Hydrogeologist's report:

A search of well information on file with Ecology indicates that there are only three other wells located in the vicinity of the proposed\existing project wells (subject wells). Two of the wells are located approximately 4,650 feet north of the subject wells and one well is located approximately 3,235 feet south of the subject wells. Based on the information reported on the well logs and surficial geologic maps, the two wells to the north appear to be completed in the Saddle Mountain Formation and the well to the south appears to be completed in the Wanapum Formation which underlies the Saddle Mountain Formation. The geologic map of the area also indicates that there is a fault between the subject wells and the well to the south. There is also a mapped anticline between the subject wells and the two northern wells. Both of these geologic structures would likely act as barriers to groundwater flow and would serve to hydrologically isolate the subject wells from the wells to the north and south.

Based on the geologic environment and the distance between wells, any groundwater drawdown that might occur as a result of the permitting action is not expected to interfere with the ability of nearby well owners to fully utilize their well(s).

Pumping from wells to irrigate the planned acreage will draw water from the aquifer in communication with the Columbia River. The pumping effects to the river are expected to be delayed as a result of the distance of the wells from the river and the transmissivity of the aquifer. Given the sheer magnitude of the Columbia River and the daily fluctuations in river flow within the affected area, the withdrawal of water is not expected to physically impair other users' ability to use existing groundwater wells or surface water pumps within the McNary Pool.

As this water right permit will be subject to the instream flow limitations in WAC 173-563-040 and WAC 173-563-050, existing water rights subject to curtailment will experience no deleterious effects as a result of this proposal because instream flows will not be further reduced by this appropriation during periods when flow targets are not met.

### Agency and Tribal Consultation and Proposed Mitigation

Under WAC 173-563-020(4), any water right application considered for approval or denial must be evaluated for possible impacts on fish and existing water rights. Any permit which is then approved which would impact the Columbia River will be, if deemed necessary, subjected to instream flow protection or mitigation conditions determined on a case-by-case basis through the evaluation conducted by the agencies and tribes that were part of the consultation process outlined below.

Consultation was initiated in November of 2011, for a previous mitigation proposal. Subsequent communication indicated that the mitigation as proposed at that time would not be sufficient to address impacts to the Columbia River. After discussions among several involved parties and the development of new mitigation packages, additional rounds of consultation were initiated on February 6, 2013, and July 1, 2013. Parties were contacted by letter informing them of the proposed allocation of water and revised out-of-kind mitigation plan, and requesting comments on possible impacts to fish and existing water rights. A detailed list of the parties contacted can be found in the application file.

The consultation process for the subject application addressed possible impacts on fish and existing water rights. The mitigation plan detailed in the narrative below was generated through several iterations of collaborative work between Ecology and the interested parties responding to Ecology's consultation notices.

WDFW responded to the third iteration of consultation on July 29, 2013, with support for the issuance of a water right pursuant to this application. WDFW noted concerns regarding the use of only out-of-kind mitigation as well as impacts to shrub-steppe habitats and asked that Ecology include language in the ROE that links the issuance of the water right to the mitigation package.

The Confederated Tribes of the Umatilla Reservation cited a lack of in-kind mitigation and requested further information in their letter, stating that they could not support the issuance of this permit under these circumstances. The Nez Perce Tribe similarly indicated concerns regarding the lack of replacement water for mitigation. They also expressed concern regarding the potential impacts to Snake River Fall Chinook salmon and harm to existing senior users. These consultations resulted in a decision that Ecology will direct all cost recovery payments made by KGH (and any successors) toward funding projects that result in direct instream flow augmentation within the McNary Pool of the Columbia River

and within the Walla Walla, Yakima, and Snake River Basins. These projects and any subsequent acquisitions of water will allow for increased stream flows in habitats utilized by many aquatic species, including ESA-listed salmonids.

This ROE supersedes and replaces the ROE issued to Kennewick General Hospital on September 26, 2013. The previously issued ROE was appealed to the PCHB in *Okanogan Wilderness League and Center for Environmental Law and Policy v. Department of Ecology and Kennewick General Hospital*, PCHB No. 13-146. A primary point of contention in the appeal dealt with potential impairment of the instream flows under Chapter 173-563 WAC. After due consideration of a request by the applicant, Ecology is rescinding the existing ROE and permit, and the applicant has agreed to the addition of a condition that the permit shall be subject to all the provisions of Chapter 173-563 WAC, including the instream flow provisions under WAC 173-563-040 and WAC 173-563-050. Accordingly, water use under this authorization is subject to curtailment when the instream flows are not met. Any consumptive portions of water rights acquired for the purpose of instream flow augmentation will be subtracted from the quantity of water authorized under this permit that is subject to curtailment under WAC 173-563-040. This will be accomplished through a future split of the permit to account for: (A) – the portion which remains subject to curtailment and, (B) – the portion that has been mitigated through water right acquisition that will not be subject to curtailment. The relationship of acquired consumptive water to the mitigated portion of the subject water right will be 1:1.

As detailed in Ecology Policy 2035, mitigation may be provided in two forms, in-kind and out-of-kind. In-kind mitigation refers to offsetting the adverse effects of a new diversion or withdrawal with an equal quantity of suitable replacement water. Out-of-kind mitigation refers to mitigating a new use by making water quality or habitat improvements without physically replacing water lost through the new proposed use. The subject application has several benefits to the public interest that create a unique situation allowing the use of out-of-kind mitigation which is not intended to set a precedent for any future projects. Mitigation plans are highly case specific, and it is necessary to evaluate each based on its merits with regard to the proposal and surrounding environmental factors. In this case, Ecology is imposing both instream flow protection and mitigation conditions under WAC 173-563-020(4).

The Office of Columbia River (OCR) has chosen to provide a mitigation package including out-of-kind mitigation to offset any temporal impacts associated with the proposal while flow enhancement water is being acquired. The applicant, KGH, has executed a cost recovery agreement with OCR that provides for recovery of costs incurred by OCR in funding the elements of the mitigation plan. The applicant (and any successors) are required by this agreement to repay Ecology \$35 per acre-foot per year, based on the full permitted quantity of 4,000 acre-feet per year, until the cumulative sum reaches \$6,000,000. This equates to an annual payment of \$140,000 for 43 years (final payment reduced to \$120,000). The first payment has already been made. Capital funds already available for OCR allowed OCR to begin making expenditures upon issuance of the prior permit on January 3, 2014. Out-of-kind projects described in the mitigation plan are expected to be implemented by the end of the 2013-2015 biennium. Ecology is funding the mitigation elements identified below in collaboration with WDFW. Should any part of the proposed mitigation fail to be implemented, a suitable replacement project will be identified and completed in its place. KGH's agreement with OCR provides that the use of water is contingent upon continuing compliance with the terms of the agreement.

After consulting with WDFW, both agencies concluded that the benefits of the proposed mitigation, including species and habitat protection, provide compelling benefits that balance the impacts associated with the proposed new water use, even without conditioning the permit based on the

instream flows under Chapter 173-563 WAC. With the conditioning of the permit, thereby restricting water use at times when impacts would be presumptively the greatest, OCR has proposed and funded an out-of-kind mitigation package to provide offsite benefits for fish stocks and habitat conditions that will significantly outweigh any temporal effects of the new use on fish and habitat in the mainstem of the Columbia River. The proposed out-of-kind mitigation package includes over a dozen projects that will aid in preservation, enhancement, and restoration within aquatic, riparian, and upland habitats throughout the Columbia River Basin.

These projects will address known limiting factors to salmonid survival and recruitments such as barriers to upstream habitat and off-channel rearing habitat, compromised water quality and temperatures, compromised spawning and rearing habitat, false attraction and entrainment of salmonids into irrigation systems, areas of increased avian and piscivorous predation, compromised floodplains, flow regime shifts due to land use practices, and limited restoration opportunity due to private land ownership. Even before the permit was conditioned based upon instream flows under Chapter 173-563 WAC, information from WDFW indicated that the benefits from the projects, taken as a whole, significantly outweigh any adverse impact caused by the proposed withdrawals. There will be no net loss of habitat functions or values, or fish and wildlife populations, as a result of the proposed withdrawal, and the inclusion of instream flow provisions in the superseding permit ensures that flows cannot be reduced beyond the levels deemed to be adequately protective of aquatic resources under Chapter 173-563 WAC. The combination of instream flow protection, out-of-kind mitigation, and in-kind flow restoration acquisitions provides a robust mitigation package that ensures no detrimental effects on, and indeed significant benefits to fish, with no impairment of other water rights.

Please refer to Appendix A for project descriptions of the identified mitigation elements.

### Public Interest Considerations

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The mitigation requirements, and the addition of the instream flow limitations under WAC 173-563, will prevent potential detrimental effects and allow for multiple benefits to public resources through flow preservation as well as habitat enhancement and protection. Ecology has collaborated with WDFW to ensure that any impacts to fish stocks that would be incurred by approval of this application will be addressed and remedied through the mitigation plan. Additionally, the forthcoming sale of irrigated lands from KGH to Easterday Farms will benefit KGH and allow them to expand and improve hospital services to the public in the Kennewick area, as well as provide for additional agricultural production which supports the local and state economy through increased revenue and job creation. Consequently, approval of KGH's permit application will not be detrimental to the public interest.

### *Consideration of Protests and Comments*

In response to the public notice of this application, the Department of Ecology received protests from the following parties:

Protestant	Date of Protest
Lower Columbia Basin Audubon Society	5-23-1991

The specific nature of the protest involved concerns over native habitat disturbances arising from agricultural activities and surface water pump site installation. The issue of pump installation is no longer a consideration as there will be no work in or around the immediate vicinity of the Columbia River. Habitat concerns, especially relating to sensitive shrub-steppe habitats, have been adequately

addressed though the proposed mitigation package and consultation process associated with this project.

**Conclusions**

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In conclusion, water is available for the proposed beneficial use, no impairment to other water rights will result from that appropriation of water, nor will the proposal be detrimental to the public interest.

**RECOMMENDATIONS**

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Based on the above investigation and conclusions, I recommend that this request for a water right be approved and a permit be issued in the amounts and within the limitations listed below and subject to the provisions listed above

**Purpose of Use and Authorized Quantities**

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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:

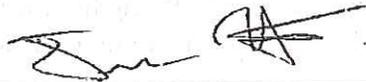
- 7,990 gpm
- 4,000 acre-feet per year
- Irrigation

**Points of Withdrawal:**

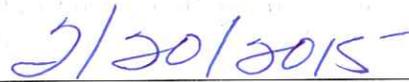
A well field located in the E½, Section 20, Township 7 North, Range 31 E.W.M.

**Place of Use**

As listed on Page 2 of this Report of Examination



Report Writer



Date

*If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*

## APPENDIX A – Planned Out-of-kind Mitigation Elements

The Department of Ecology (Ecology) plans to invest \$6,000,000 to fully or partially fund the mitigation elements identified below with collaboration from the Department of Fish and Wildlife (WDFW). Ecology will execute a cost recovery agreement with Kennewick General Hospital which will establish yearly payments to be made to Ecology as a condition of receiving water under application G4-30584. Should any part of the proposed mitigation fail to be implemented, a suitable replacement project will be identified and evaluated, and the replacement project will be funded as part of the \$6,000,000 agreed to in the cost recovery agreement with Kennewick General Hospital.

Ecology will direct all cost recovery payments made by Kennewick General Hospital (and any successors) toward funding projects that result in direct instream flow augmentation within the McNary Pool of the Columbia River and within the Walla Walla, Yakima, and Snake River Basins. These projects and any subsequent acquisitions of water will allow for increased stream flows in habitats utilized by many aquatic species, including ESA-listed salmonids. In addition, Ecology has proposed and funded the following out-of-kind projects to offset temporal impacts associated with the proposal while flow enhancement water is being acquired.

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**Project Name:** Tucannon Ranch Project

**Proponent:** Columbia Conservation District

**Description/Benefits:** Project is located in the lower Tucannon River, a priority restoration reach in the Salmon Recovery Plan for South East Washington. The project will restore channel complexity, side channel habitat, and floodplain connectivity by the removal of remnant levees and dredge spoils and installation of a new setback levee. Removal of channel constrictions restoring accessibility of the floodplain would provide for energy dissipation during high water flow events, thus reducing scour of redds and flushing of juvenile salmonids including Snake River Fall Chinook.

**Project Name:** Indian Creek Conservation Easement and Floodplain Enhancement

**Proponent:** WDFW/DNR

**Description/Benefits:** This project is in the Teanaway River basin and would allow for stream enhancements such as placement of large woody debris that would improve storage and late season flow. This project is scalable and may include lease, conservation easement, or possibly acquisition of the geomorphic floodplain (approximately 87 acres) or may include the purchase or lease of the entire section, including the upland habitat surrounding the project site. This would result in long term habitat protection with many restoration opportunities that would have positive impacts on native fish stocks and adjacent riparian and upland habitat.

**Project Name:** Upper Wapato Riparian Restoration

**Proponent:** Yakima County

**Description/Benefits:** Project would supplement riparian areas and install vertical roughness structures in the Wapato Reach of the Yakima River near Buena resulting in enhancement of natural river processes including channel migration, floodplain interaction and habitat formation. These processes would improve spawning, migratory, and wintering habitat for anadromous salmonids in a priority reach of the Yakima River.

**Project Name:** Lower Drainage Improvement District #1 Levee Setback

**Proponent:** Yakima County

**Description/Benefits:** Project would open almost 900 acres of floodplain lands to active connection with the Yakima River through removal of a 3,000 foot long existing levee and construction of a 3,500 foot long setback levee. Accessibility of floodplain lands will result in increased ecosystem function benefitting priority species and habitat necessary to support them.

**Project Name:** Cle Elum River Side-Channel Restoration Project – Phase 2

**Proponent:** Kittitas Conservation Trust

**Description/Benefits:** Project would install engineered log jams, gravel bars, and snags on a two mile reach of the Cle Elum River and improve flow in five miles of side channels, creating 20-60 new pools and allowing for recruitment of 240 acres of floodplain and side channel habitat. These components would enhance habitat availability for spawning and juvenile salmonids.

**Project Name:** Little Rattlesnake Road Decommissioning

**Proponent:** Mid-Columbia Fisheries Enhancement Group

**Description/Benefits:** Project would decommission and rehabilitate 5 miles of Forest Service Road 1501 allowing for increased floodplain connectivity while reducing channel scouring. Increased riparian vegetation would provide cover and shade over the stream, improving stream temperatures for anadromous and resident species.

**Project Name:** Taneum Creek MP 4.4 Repair and Enhancement

**Proponent:** USFS

**Description/Benefits:** Project would repair a washed out section of Taneum Road and identify habitat enhancements to construct contemporaneously which would benefit aquatic and riparian species, including steelhead.

**Project Name:** Ellensburg Water Company/Coleman Creek Restoration

**Proponent:** Kittitas County Conservation District

**Description/Benefits:** Project would replace Ellensburg Water Company's existing upstream diversion with a new structure that includes fish screens and passage as well as constructing a siphon at the intersection with Colman Creek. This project is a part of a series of projects aimed at improving fish passage in the lower 5 miles of Coleman Creek.

**Project Name:** Reed Diversion Barrier Removal

**Proponent:** Kittitas County Conservation District

**Description/Benefits:** Project would remove the last existing fish passage barrier on Manastash Creek, allowing access to more than 20 miles of stream habitat.

**Project Name:** Trout Meadows Acquisition and Enhancement

**Proponent:** Yakima County

**Description/Benefits:** Project would acquire a majority of land ownership of Trout Meadows on the Naches River and construct new side channels, connecting the river to floodplain lands and improving mainstem channel. Decreased confinement of the main channel will likely improve habitat conditions on the adjacent reach as well as upstream and downstream reaches.

**Project Name:** Plum Creek/Little Naches/Manastash Land Acquisition

**Proponent:** WDFW/TNC

**Description/Benefits:** Project would purchase and protect forest land, riparian zones, and floodplain areas that are currently privately owned. Undisturbed upper and middle elevation conifer forest areas serve to protect water quality and maintain late season flows of cool water temperatures crucial for the protection and restoration of resident bull trout as well as spawning anadromous species.

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OCR is also pursuing the following two proposals provided subsequent to the consultation process. Further correspondence and analysis is being conducted to ascertain the scope and extent of potential OCR involvement.

**Project Name:** Mill Creek Bennington Ladder Replacement

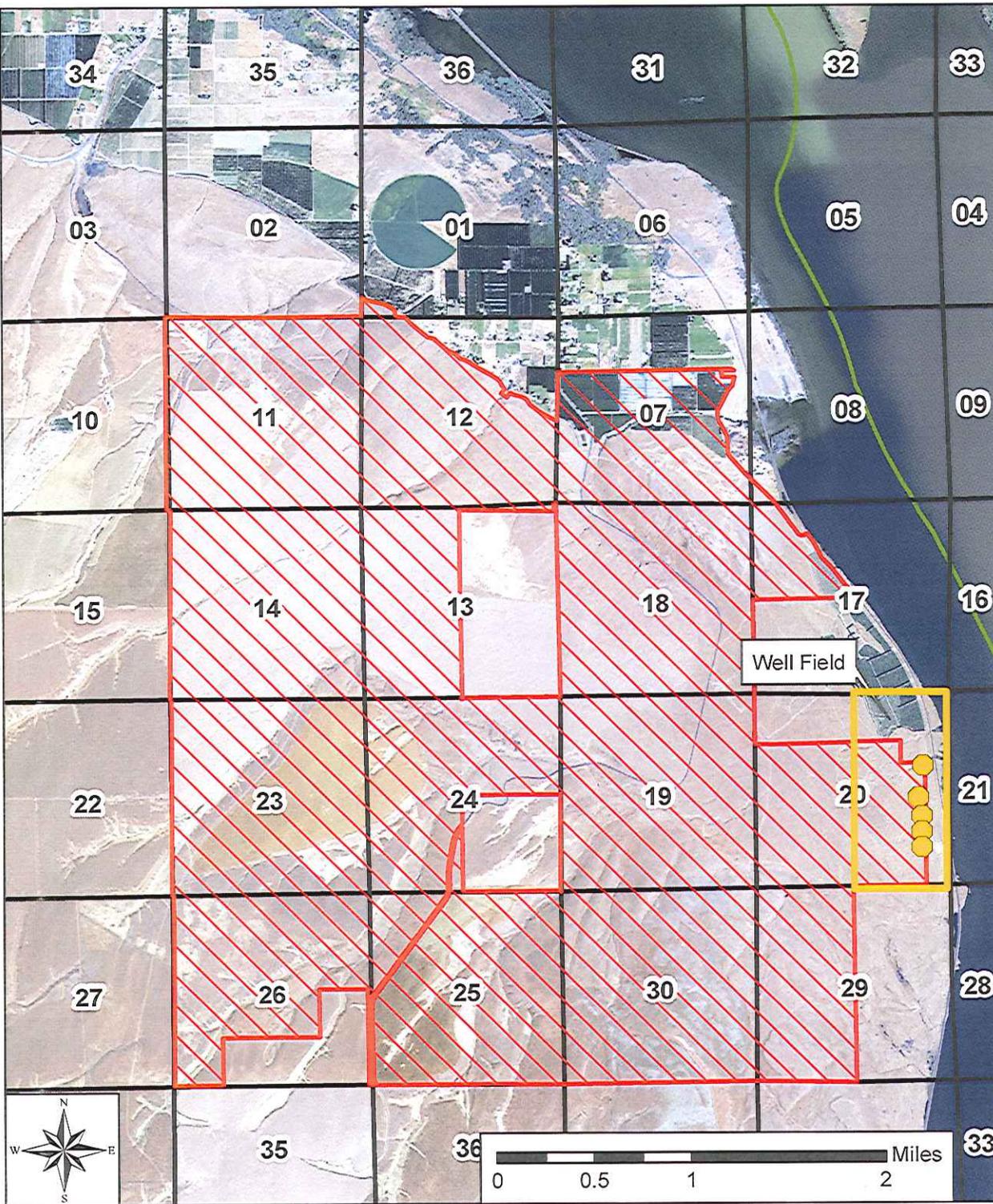
**Proponent:** Confederated Tribes of the Umatilla Indian Reservation

**Description/Benefits:** Project would design and replace an unsuitable existing fish ladder which will allow for improved upstream passage to 36 miles of pristine habitats for ESA-listed steelhead and bull trout as well as other salmonid species.

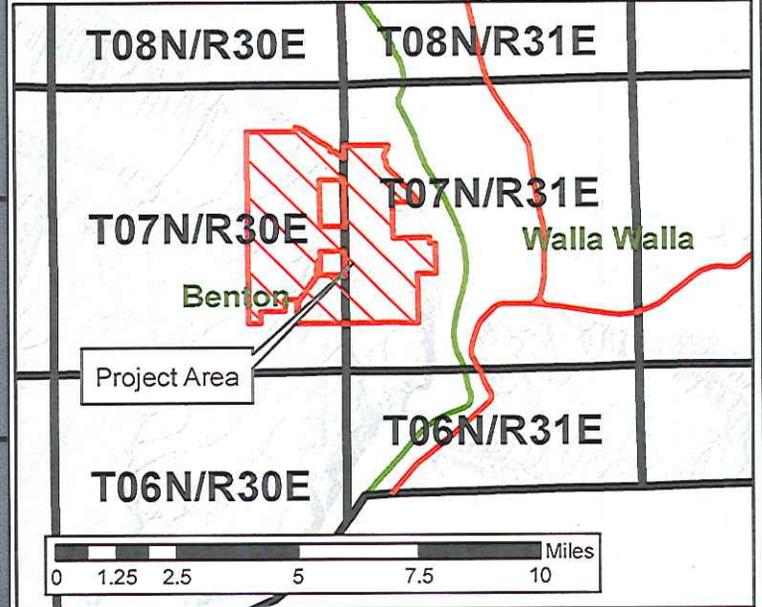
**Project Name:** Lostine River Water Conservation Project

**Proponent:** Nez Perce Tribe

**Description/Benefits:** Project would convert over ten miles of open conveyance to pressurized pipeline and convert up to 850 acres of flood irrigation to sprinkler irrigation. These efficiency upgrades would reduce diversion rates from the Lostine River, which is an important spawning stream for ESA-listed Chinook and Steelhead, during low flow conditions in August and September. OCR would provide substantial assistance in completing the design of the Lostine River project to facilitate the project proponent's request for congressional authorization and funding.



Kennewick General Hospital  
 Application # G4-30584  
 T. 7 N., R. 30 & 31 E.W.M.  
 WRIA 31 - Benton County



- Point of Withdrawal
- Place of Use
- Roads
- Sections
- City
- County

Comments:  
 Map is for reference only. Place of use, points of withdrawal/diversion are as defined on the cover sheet of the Report of Examination.  
 Image is 2011 NAIP airphoto.

Attachment 1