STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

TRUST WATER RIGHT
REPORT OF EXAMINATION
Change of Purpose and Place of Use
WRTS File No.: CS4-00366CTCLsb9@1

PRIORITY DATE	WATER RIGHT NO.
May 24, 1884	Yakima Superior Court Claim No. 00366

NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM

Washington State Department of Transportation – South Central Region

ADDRESS/STREET	CITY/STATE	ZIP CODE
P.O. Box 12560	Yakima, WA	98909-2560

TRUST WATER RIGHT ATTRIBUTES

SOURCE

Wilson Creek

TRIBUTARY OF (IF SURFACE WATERS)

Yakima River/Columbia River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
1.75	N/A	350 Total: 113 Consumptive 237 Non-Consumptive

QUANTITY, TYPE OF USE, PERIOD OF USE

For Instream Flow in the Primary Reach:
1.75 cubic feet per second and 350 acre-feet per year from April 1 to October 31.

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

	Cubic Feet Per Second	Acre-Feet Per Year
May	0.37	11.1
June	0.47	24.4
July	0.58	33.4
August	0.49	26.7
September	0.33	15.1
October	0.18	2.3
Total		**113.0**

HISTORIC POINT OF DIVERSION OR WITHDRAWAL

APPROXIMATE LOCATION OF HISTORIC DIVERSION / WITHDRAWAL

840 feet south and 800 feet west from the center of Section 2, T. 17 N., R. 18 E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
NE¼SW¼	2	17 N.	18 E.	39	Kittitas
PARCEL NUMBER	LATITUDE		LONGITUDE		DATUM

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

The **Primary Reach** begins at the historical point of diversion on Wilson Creek located 840 feet south and 800 feet west of the center of Section 2, being within the NE¼SW¼ of Section 2, T. 17 N., R. 18 E.W.M. and ends at a point on Wilson Creek approximately 810 feet south and 760 feet east of the center of Section 11, being within the NW¼SE¼ of Section 11, T. 17 N., R. 18 E.W.M. in the County of Kittitas, Washington.

If this instream flow right is being used as mitigation, there is no secondary reach. When this right is not being used as mitigation or other authorized uses, the surplus water is assumed to be available in the Secondary Reach as described below:

The **Secondary Reach** begins at a point on Wilson Creek approximately 810 feet south and 760 feet east of the center of Section 11, being within the NW¼SE¼ of Section 11, T. 17 N., R. 18 E.W.M. and continues past the confluence of Wilson Creek and the Yakima River, and continues past the confluence of the Yakima River and the Columbia River and ending at a point located at the confluence of the Columbia River and Pacific Ocean at River Mile 0 in Section 18, T. 9 N., R. 11 W.W.M., Pacific County, Washington.

TRUST WATER RIGHT TERM

BEGIN DATE	END DATE
October 29, 2009	October 31, 2019

PROVISIONS

The Department of Ecology must manage this trust water right effectively to mitigate for impacts to the Total Water Supply Available and flow reductions that adversely affect fish. Any portion of this trust water right that is assigned to the 2009 Exchange Contract No. 09XX101700 between the Department of Ecology and the U.S. Bureau of Reclamation will be managed in accordance with that contract and its associated review procedures.

FINDINGS OF FACT AND ORDER

Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not be detrimental to existing rights or detrimental to the public interest.

Therefore, I ORDER the requested change of place and purpose of use under Trust Water Right Application No. CS4-00366CTCLsb9@1, 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 2nd day of November 2010.

Mark Schuppe, Section Manager
Water Resources Program
Central Region Office

BACKGROUND

Description and Purpose of Proposed Change

Washington State Department of Transportation (WSDOT) filed Application No. CS4-00366CTCLsb9@1 on October 29, 2009. The intent of the application is to transfer a water right into the State of Washington's Trust Water Right Program to mitigate for the WSDOT's water use on the I-90 Snoqualmie Pass East Construction Project. The water right proposed for trust is Yakima Superior Court Claim No. 00366 (Table 1).

WSDOT filed two applications for temporary water rights that would be mitigated by Court Claim No. 00366. Application No. S4-35264 requests the right to divert water from Keechelus Lake, a water body adjacent to I-90 for construction purposes on the I-90 Snoqualmie Pass East Project. The I-90 Project is further described in detail at: http://www.wsdot.wa.gov/projects/i90/snoqualmiepasseast/hyaktokeechelusdam/.

Application No. S4-35263 requests the right to divert water from Wilson Creek to provide the water needed to establish wetland plantings at the original place of use. To mitigate for impacts associated with these new uses, WSDOT purchased Court Claim No. 00366 and intends to place the right into the State's Trust Water Program for a period of 10 years. WSDOT proposes to consumptively use water up to the amount that was used historically used under Court Claim No. 00366 and can be transferred to trust under this authorization. Only that which has been consumptively used in the last five years is available to be placed in trust for the purposes of instream flows and mitigation. Any portion of the right not needed for mitigation will be available to benefit instream flows within the Yakima Basin.

Based on the provisions of RCW 43.21A.690 and RCW 90.03.265, Pacific Groundwater Group (PGG) and Anchor QEA LLC, prepared this report under contract to Washington's Department of Ecology (Ecology). PGG reviewed all available documents pertaining to this and other related applications, including site conditions, hydrogeological considerations, historical water use, and standing of existing rights.

Table 1
Summary of Existing Attributes and Proposed Changes to Court Claim No. 00366

Attributes	Documented	Proposed
Name	Lakeside Town Center Associates, LLC (formerly Richard A. Snowden)	WA State Dept. of Transportation
Priority Date | Date of Application for Change	May 24, 1884	October 29, 2009
Instantaneous Quantity	1.75 Cubic feet per second	Same
Annual Quantity	350	Same
Source	Wilson Creek	Same
Point of Diversion/ Withdrawal	840 feet south and 800 feet west of the center of Section 2, within the NE¼SW¼ of Section 2, T. 17 N., R. 18 E.W.M.	N/A
Purpose of Use	Irrigation of 35 acres	Instream Flow and Mitigation
Period of Use	April 1 through October 31	Same
Place of Use	That portion of the NE¼ of Section 11, T. 17 N., R. 18 E.W.M, known as Tax Lot 27 and a portion of the N½SE¼ of Section 11, T. 17 N. R. 18 E.W.M. both tracts west of the right-of-way of the Burlington Northern Railroad	Instream flows in Wilson Creek and the Yakima and Columbia Rivers.

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 proposed transfer of this right into the Trust Water Program, as well as the request for Temporary Use Permit was published in the Northern Kittitas Country Tribune and the Daily Record of Ellensburg on January 28th and February 4th, 2010. No protests were received as a result of the publication.

State Environmental Policy Act (SEPA)

- Environmental review is required under the National Environmental Policy Act (NEPA), which was signed in January 1970, as the "national charter for protection of the environment". Washington's State Environmental Policy Act (SEPA), adopted in 1971, directs state and local decision makers to consider the environmental consequences of their actions.

- NEPA and SEPA both require preparation of an environmental impact statement (EIS) when a project could have a significant effect on the environment. Both allow review of possible project alternatives or mitigation measures that will reduce a project's environmental impact.

- The I-90 Snoqualmie Pass East Project must comply with both NEPA and SEPA. Review under NEPA is required since the project will require federal permits and approvals, use of federal lands, and possibly federal funding. Review under SEPA is required since the project is an action by a state agency, and will require permits from both state and local agencies. The scoping document is a combined NEPA and SEPA Final Environmental Impact Statement (Final EIS) and Section 4(f) Evaluation (Final EIS), which issued in August of 2008.

Water Resources Statutes and Case Law

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

- RCW 90.42.100 authorizes Ecology to use the trust water rights program for water banking purposes like mitigation.

- This application 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 if the project is water budget neutral and will enhance or protect the quality of the natural environment. In November of 2009, Ecology received letters of support for this project from Washington State Department of Fish and Wildlife, Cascade Land Conservancy, National Oceanic and Atmospheric Administration, Kittitas County Community Development Services, and the United States Fish and Wildlife Service. The I-90 Project will result in significant environmental benefits and enhancements due to major modification to the landscape, with an emphasis on improving watershed connectivity objectives into the design of the project. Seven drainages will undergo channel modification that are intended to restore and enhance stream and floodplain functions, including improved fish passage and access to habitat. Other environmental benefits of the project include:

    - Acquiring and preserving 263 acres in the Gold Creek Watershed
    - Preserving approximately 93 acres of riparian or wetland buffer areas
    - Restoring channel migration and surface and subsurface flow paths
    - Restoring some five acres of stream channel, riparian zones and upland connectivity areas
    - Restoring or creating approximately 11 acres of wetland
    - Building stream crossings – including replacing or upgrading culverts to improve fish passage
    - Building bridges for wildlife undercrossing
    - Improving stormwater management to improve water quality

INVESTIGATION

History of Water Use

Water use began on the property sometime in the early 1900's. The claimant's land is riparian to Wilson Creek and rights established under the riparian doctrine have a priority date of when steps were first taken to sever the land from Federal ownership. This land was originally conveyed by the Federal government to the railroad company for construction of the railroad – any land not used was then sold. The priority date of former railroad lands in Subbasin No. 9 is May 24, 1884.

The Report of Referee stated that Surface Water Claim No. 043215 did not match what Mr. Snowden was asserting in the Court proceedings. The Court directed him to amend his claim with Ecology. Mr. Snowden's filing with the Water Rights Claims Registry resulted in Ecology issuing *Order No. 03WRHQ-5621,* that accepted Mr. Snowden's changes to the annual quantity of water and place of use.

On October 28, 2003, Mr. Snowden filed an application with the Kittitas County Conservancy Board to change the point of diversion (POD). The application proposed the POD be changed from its original location to a POD 3,000 feet downstream along Wilson Creek. The change would replace the unscreened gravity diversion and unlined ditch with a screened pump and associated piping. This change was approved by the Kittitas County Water Conservancy Board in July 2004, but reversed by Ecology in September 2004, because the location of the original POD had not been settled by Yakima County Superior Court. The Court recognized and confirmed Ecology's amendments in its *Memorandum Opinion and Order* signed June 15, 2005. In April of 2006, the change application was cancelled and Court Claim No. 00366, in Subbasin No. 9 (Wilson-Naneum), was confirmed to Richard Snowden by Conditional Final Order in April of 2006, for the attributes listed in Table 1.

The Supplemental Report of the Referee stated that the Snowden property had been irrigated continuously for 90+ years. The method of delivering the water and land use had changed over the years, resulting in modifications to the conveyance system.

In 2008, the property was purchased by Lakeside Town Center Associates, LLC. WSDOT purchased 100 acre-feet of consumptive use water from Lakeside, as evidenced by a Special Warranty Deed signed on October 28, 2009. A separate agreement between Lakeside and WSDOT states that final payment will be made when Ecology has determined the amount available for transfer.

Site Visit

In February of 2010, Adam Hill of Anchor QEA LLC performed a site visit on the Snowden property along Wilson Creek. A pump was found at the proposed location described in the cancelled change application. Aerial photographs were used to determine the new pump station was constructed sometime between October 2003 and August 2005. Aerial photographs also appear to show that the unlined ditch used in the original claim was in use in 2000 and 2003, and not in use in 2005 and 2006 when the new POD was utilized. The original POD is located 840 feet south and 800 feet west of the center of Section 2, within the NE¼SW¼ of Section 2, T. 17 N., R. 18 E.W.M., and marks the beginning of the primary reach for the proposed trust water right.

Available aerial photography from 2000, 2001, 2003, 2004, 2005, and 2006, confirmed that Court Claim No. 00366 was exercised during each of these years. In 2005 approximately 44 acres were being irrigated.

Proposed Use

WSDOT proposes to change the purpose of use from irrigation to instream flow to be made available to mitigate for out-of-stream uses. WSDOT requests that Ecology maintain the right in the State of Washington Trust Water Right Program (TWRP) until 2019 as outlined and conditioned in a Trust Water Right Agreement between Ecology and WSDOT.

WSDOT intends to use the above mentioned trust water right to mitigate for water use for construction related purposes – primarily dust control (see Temporary Permit No. S4-35264 for additional discussion). WSDOT intends to use Keechelus Lake as a source of supply. Construction activities would produce fugitive dust due to wind erosion and by operating construction equipment on exposed earth surfaces. WSDOT has also arranged for one acre-foot of water to be used for riparian restoration along Wilson Creek (see Temporary Permit No. S4-35263 for additional discussion).

Other Rights Appurtenant to the Place of Use

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

Quantities Eligible for Transfer
The Conditional Final Order was issued for Court Claim No. 00366 on December 4, 2006. Since the CFO was issued within the last five years, the 350 acre-feet per year (ac-ft/yr) cited by the Court were used for the tentative determination of the extent and validity of the right. However, Ecology has identified the consumptively used portion of the right as reference for what may be available for mitigation.

Trust Water Right Calculations
Transferring water rights to trust does not protect rights that have not been fully exercised. Water right quantities transferred to the Trust Water Program shall not exceed the extent to which the water right was exercised during the five years preceding the application, nor may the transferred portion plus the remaining portion exceed the extent to which the water right was exercised during the previous five years (RCW 90.42.080).

In 2006, the Court confirmed a maximum flow rate of 1.75 cubic feet per second (cfs) and an annual quantity of 350 ac-f/yr at the historic POD. These quantities identified for the total use are available to be placed into trust in the primary reach. However, the quantities available for trust in the secondary reach intended to be used for mitigation are based on historic consumptive water use.

A preliminary consumptive use assessment for the Snowden site was provided by Lisa Pelly of the Washington River Conservancy,[1] and verified by PGG. The calculations are based on the Washington Irrigation Guide (WIG). Ms. Pelly did not visit the site and the consumptive use calculations in her memo were based on crop assumptions for clover, as indicated to the owner's representative.

Water use is further supported by aerial images taken in 2000, 2001, 2003, 2004, and 2006. These photos show the irrigation of at least 35 acres within a place of use that encompasses approximately 48 total acres, non-irrigated areas include structures on the site as well as access roads.

No metering records were available for this water right; therefore, water use was estimated using the WIG for the Ellensburg area. The Crop Irrigation Requirement (CIR) for the cultivation of clover at the project site amounts to 33.14 inches per irrigated acre. For 35 acres the CIR is 96.66 acre-feet. Table 4 shows the approximate monthly distribution of that water duty over the irrigation season.

According to Ms. Pelly, the irrigation system is a "reel-type sprinkler system," also referred to as a "Big Gun". Ecology's GUID-1210[2] indicates the efficiencies for a system of this nature ranges from 60 to 85 percent. Since the original irrigators of this property assert a significant factor of water loss due to both high winds and poor soil holding capacity, we have used 60 percent efficiency. We note that the Court awarded a total water duty of 350 ac-ft/yr, which would indicate that the majority of this water became return flow and was non-consumptively used. This is consistent with the referee's report that indicates the ground being coarse and cobbled and needing frequent watering due to low holding capacity.

Table 3
Total Crop Requirement Assuming Average Application Efficiency

Crop Irrigation Requirement (af)	Application Efficiency (%)	Total Irrigation Requirement (af) (CIR/Eff.)	Total Evaporated (%)	Total Consumed (af) (TIR*%Evap)
96.66	60	**161.1**	10	**113**

Table 4
Crop Irrigation Requirement and Consumptive Use in the Secondary Reach

	May	June	July	August	September	October	Total
Inches per acre (WIG)	3.24	7.16	9.81	7.83	4.46	0.64	33.14
Crop Irrigation Requirement (ac-ft/yr for 35 acres)	9.45	20.89	28.62	22.84	13.00	1.86	96.66
Estimated Crop Consumptive Flow Rate (cfs)	0.37	0.47	0.58	0.49	0.33	0.18	
Total Consumptive Use (ac-ft/yr)	11.1	24.4	33.4	26.7	15.1	2.3	113*

* Proposed temporary water use is assumed to be fully consumptive. See Temporary Authorizations S4-35263 and S4-35264 for more information.

[1] Lisa Pelly and Dale Bennett. 2008. WSDOT Internal Memorandum; Subject: Preliminary consumptive use assessment of Wilson Creek/Snowden water rights. December 16, 2008. Contained in Attachment 5 of WSDOT I-90 Snoqualmie Pass East Project Trust Water Right Application.
[2] GUID 1210 is Ecology's Water Resources Program Guidance on *Determining Irrigation Efficiency and Consumptive Use*. This section is specifically referring to Table 1: Summary of Application Efficiency Ranges, Consumptive Use, and Return Flows. http://www.ecy.wa.gov/programs/wr/rules/images/pdf/guid1210.pdf

Since diversion records are not available Ecology looked to the Yakima Adjudication for a reasonable instantaneous quantity to assign to Court Claim No. 00366, that is available to be transferred. Unfortunately the Court did not specifically identify a per-acre duty, but in the Report of Referee the Court calculated a maximum water duty of 0.02 cfs for "domestic supply and large lawn and garden up to ½ acre". Using this as a guide, an acre of irrigation would require up to 0.04 cfs. The 35 acres associated with Court Claim No. 00366 require a maximum instantaneous diversion rate of approximately 1.40 cfs, thus 1.75 is within a reasonable range for this system.

Trust Water Place of Use
The proposed place of use for the trust water right is instream in the primary and secondary reaches. Water that was historically diverted from Wilson Creek is proposed to remain in stream until October 31, 2019.

This trust water right will remain instream from the historic point of diversion on Wilson Creek and continuing seven miles to the confluence of the Yakima River, remaining instream in the Yakima River for approximately 147 miles to the confluence of the Columbia River, and remaining instream approximately 650 miles to the mouth of the Columbia River at the Pacific Ocean. During the irrigation season, when WSDOT uses this right for mitigation, the secondary reach will end at Parker Dam to ensure the Total Water Supply Available (TWSA) is not impaired.

Impairment Considerations
Only a water right which has been beneficially used may be transferred to trust. Additionally, any future uses by WSDOT that would be mitigated by this right are limited to the quantity that was consumptively used under the original right.

Impacts to other water right holders in the Yakima Basin must be considered as part of this change in the event that WSDOT uses Court Claim No. 00366 to mitigate for new uses from Lake Keechelus. Flow targets set by the System Operation Advisory Committee (SOAC) were created to protect the adjudicated instream flow water rights held by the Yakama Nation in association with their treaty fishing rights (which have a priority date of "time immemorial"). Potential impacts to the Total Water Supply Available and other water rights in the intervening 67.5 mile reach (between Keechelus Lake and the confluence of Wilson Creek and the Yakima River) were considered.

The largest diversions within the intervening reach are the Kittitas Reclamation District (KRD), West Side Irrigating Company (WSIC), Cascade Irrigation District (CID), and Ellensburg Water Company (EWC). The diversion for KRD is at Easton Diversion Dam and the diversions for the other three districts are located on the Yakima River between where the Teanaway River and Wilson Creek enter. During an average water year when the districts are not prorated the combined water rights for the districts are as shown in Table 6. For comparison, Tables 7 and 8 depict Yakima River flows in both drought years (2001 and 2005) and non-drought years (2006) at Easton and below the Teanaway River, respectively. These tables show that users in the intervening reach between Lake Keechelus and Wilson Creek have had water available even during the droughts of 2001 and 2005.

Table 6
Combined diversions for the KRD, WSIC, CID, and EWC when not prorated

Time period	KRD Qi (cfs)	WSIC, CID, EWC Combined Qi (cfs)
Apr 1-20	1,297	355
Apr 20-Aug 31	1,297	380
Sep 1-30	1,297	355
Oct 1-15	1,297	247
Oct 15-31	0	97

Note: Water rights for KRD are fully proratable; a portion of WSIC's water rights are proratable.

Table 7
Average Monthly Yakima River Flows at Easton (Calculated from EASW Station)

	Combined Average Flow (cfs)		
Month	2001	2005	2006
April	420	283	383
May	233	243	320
June	336	261	291
July	899	324	259
August	1258	1350	230
September	209	325	208
October	205	183	209

Table 8
Average Monthly Yakima River Flows below the Teanaway River (Calculated from YUMW and TEAW Stations)

	Combined Average Flow (cfs)		
Month	2001	2005	2006
April	1214	1512	no data
May	1369	1441	1270
June	1990	2765	2072
July	2989	3234	3432
August	2701	2986	3506
September	748	885	962
October	534	463	514

Trust Water Management

In the event that Court Claim No. 00366 is accepted into the Trust Water Right Program, Ecology and WSDOT will enter into a Trust Water Right Agreement. This document will outline water use and the conditions of acceptance of the water right into trust. Management of the trust water right will include use of the water for mitigation for WSDOT's proposed temporary water rights.

Reclamation and Ecology cooperate in the management of trust water rights acquired for the purposes of instream flows, primarily under chapter 90.38 RCW and the Yakima River Basin Water Enhancement Program[3]. Ecology is primarily responsible for management of the tributary acquisitions, and Reclamation is responsible for management of the mainstem diversions and target flows at selected locations. Cooperation between Reclamation and Ecology is required to manage trust water rights created in basin tributaries and on the mainstem. Reclamation manages the Yakima Project to meet its contractual obligations to water users and to meet environmental and fisheries targets identified in federal legislation.

During "flip flop", a project operating mode designed to comply with a 1980 Federal Court Order (the Quackenbush Order), Yakima project operations are significantly altered from normal operations. The river reaches below Keechelus, Kachees, and Cle Elum reservoirs are set to lower flows to improve the survival of spawning Chinook salmon species, incubation of their eggs, and to retain manageable amounts of water in the project reservoirs over the winter. Winter fish targets are designed to maintain flows after September 1 over spawning locations below Easton Lake and Cle Elum Lake dams and extending downstream to the Yakima River's confluence with the Teanaway River. Further reductions in flow during this time period would adversely impact fisheries.

In 2009, Ecology and Reclamation entered into a water exchange contract No. 09XX101700 that allows Ecology to request assignment of trust water rights to the contract. The contract is limited to 1000 acre-feet and has a term of 40 years. If Reclamation accepts assignment of a trust water right, it will hold the water in any empty reservoir space available and then deliver the stored water at a later time to the location(s) Ecology identifies. Ecology anticipates using the contract to store portions of the DOT trust water rights, when reservoir space is available for release to offset impacts to mainstem flows in the Easton to Thorp reach of the Yakima River after the onset of flip-flop. In addition to any statutory public notice required by the water code for new permits, each contract assignment will be subject to the ESA consultation protocols and the notice procedures contained in the contract and its appendices.

Public Interest Considerations

No protests were received as a result of the public notice or SEPA Environmental Review. The proposed change is not a detriment to the public interest. Exercising the trust water right for instream flows in the affected reaches from the historic point of diversion on Wilson Creek continuing downstream. In addition, the I-90 project will provide significant environmental and traffic benefits to the public.

CONCLUSIONS

The author finds that the water right confirmed under Court Claim No. 00366 is a valid right and is eligible for change in accordance with RCW 90.03.380, 90.38 and 90.42. Approval of Change Application No. CS4-00366CTCLsb9@1, as provisioned above, will not cause impairment of existing water rights, will not enlarge the original water right, and will not be detrimental to public interest.

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

RECOMMENDATIONS

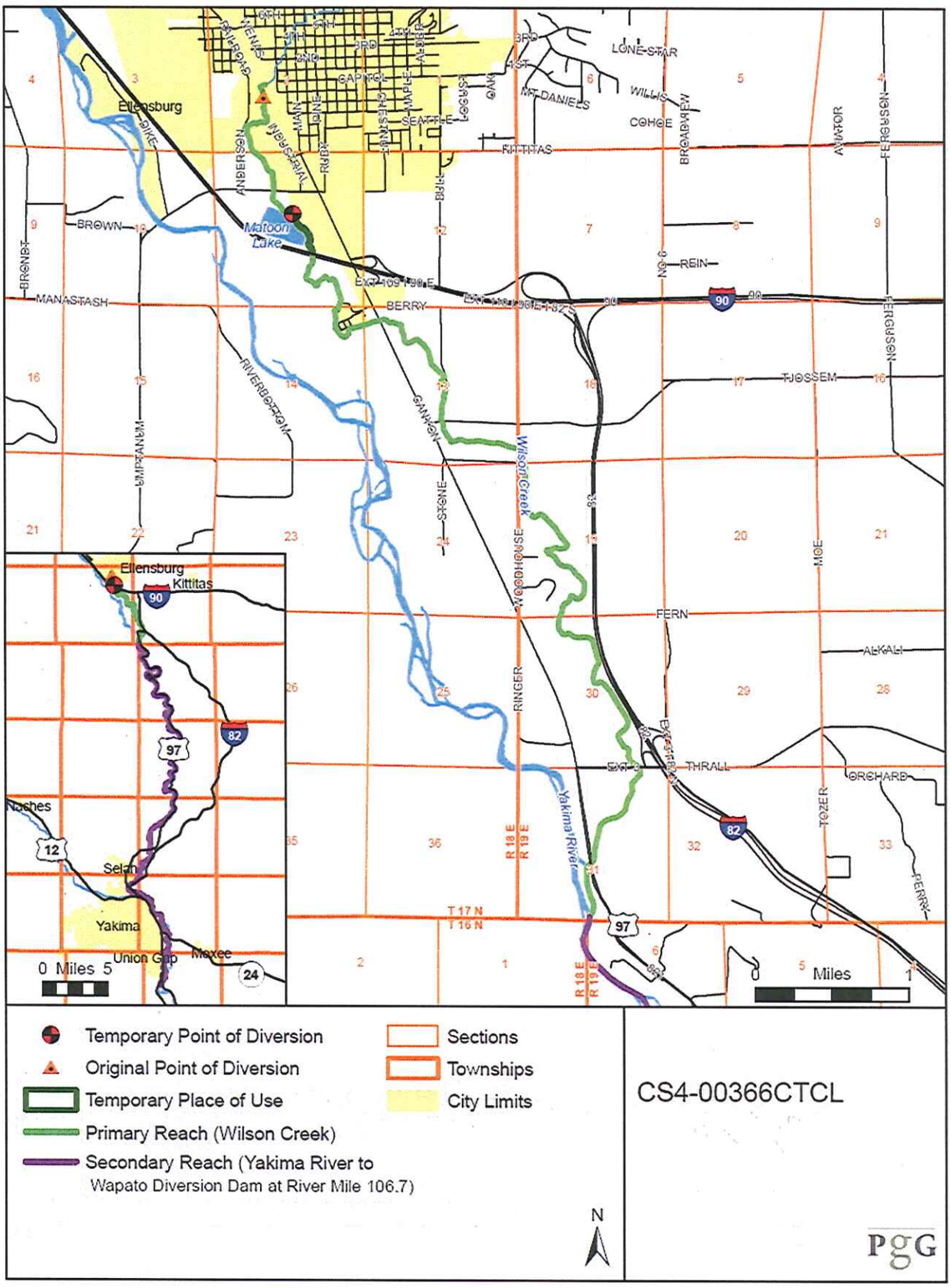
Based on the above investigation and conclusions, I recommend the request for change to purpose and place of use be approved in the amounts and within the limitations listed below.

Trust Water Right Attributes
The maximum volume of 1.75 cubic feet per second, 350 acre-feet per year, shall be held in the Trust Water Right Program until 2019 for the purposes of instream flow and mitigation from April 1 to October 31, within the limitations described on page 1, and subject to the provisions beginning on page 2 of this Report of Examination.

Report by: Jill E Van Hulle
Jill Van Hulle, Pacific Groundwater Group — November 2, 2010 Date

Reviewed by: Kelsey J Collins
Kelsey Collins, Water Resources Program — 11/1/10 Date

ATTACHMENT


Ellensburg
Matoon Lake
Wilson Creek
Yakima River
Kittitas
Naches
Selah
Yakima
Union Gap
Moxee
0 Miles 5
0 Miles 1
Temporary Point of Diversion
Original Point of Diversion
Temporary Place of Use
Primary Reach (Wilson Creek)
Secondary Reach (Yakima River to Wapato Diversion Dam at River Mile 106.7)
Sections
Townships
City Limits
N
CS4-00366CTCL
PgG