



## State of Washington Report of Examination for Water Right Change

<b>PRIORITY DATE</b>	<b>WATER RIGHT NUMBER</b>
November 4, 1886	S4-83811-J (Court Claim No. 01603)

<b>MAILING ADDRESS</b>
U.S. Bureau of Reclamation 1917 Marsh Road Yakima, WA 98901-2058

### Purpose and Quantity

**Primary Reach**

0.20 cubic foot per second (cfs) from April 1 through October 31, 60.00 acre-feet per year (ac-ft/yr), to be used for the purpose of instream flow trust water use, in the primary reach of Blue Slough.

**Secondary Reach**

The following quantities are to be used for the purpose of instream flow trust water use in the secondary reach:

Purpose	Unit	April	May	Jun	Jul	Aug	Sept	Oct	Total
Instream Flow	ac-ft/yr	1.038	5.377	6.404	8.285	6.710	4.421	1.827	34.062
Average Qi	cfs	0.017	0.087	0.108	0.135	0.109	0.074	0.030	-

### Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Yakima	1. Yakima River 2. Blue Slough	1. Columbia River 2. Yakima River	37 – Lower Yakima

### Trust Water Right Place of Use (See Attached Map)

**PRIMARY REACH** – Begins at the Blue Slough diversion point from the Yakima River side channel within Yakima Sportsman State Park, located 400 feet south and 1,000 feet west from the north quarter corner of Section 28, being within the NE¼NW¼ of Section 28, T. 13 N., R. 19 E.W.M.; continues down Blue Slough past the historic McCormack diversion point (now abandoned) from Blue Slough, located 300 feet south and 500 feet east of the northwest corner of Section 4, being within Government Lot 4 (the approximate NW¼NW¼) of Section 4, T. 12 N., R. 19 E.W.M.; and ends at the point on Blue Slough that was the last point where historic return flows from the former McCormack irrigated fields (now owned by the U.S. Bureau of Reclamation (USBR)) rejoined Blue Slough, located approximately 1,600 feet south and 500 feet east of the NW corner of Section 4, being within the SW¼NW¼ of Section 4, T. 12 N., R. 19 E.W.M.

SECONDARY REACH – The secondary reach begins at the end of the primary reach, on Blue Slough, located approximately 1,600 feet south and 500 feet east of the NW corner of Section 4, being within the SW¼NW¼ of Section 4, T. 12 N., R. 19 E.W.M.; continues down Blue Slough to Blue Slough’s confluence with a Yakima River side channel and the Yakima River mainstem, located approximately 550 feet north and 1,250 feet west of the southeast corner of Section 8, being within the S½SE¼ of Section 8, T. 12 N., R. 19 E.W.M.; and continues down the Yakima River to the secondary reach’s termination at the confluence of the Yakima River with the Columbia River, located within Section 19, T. 9 N., R. 29 E.W.M. [Yakima River Mile (RM) 0.0, Columbia RM 335.0.]

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE							
REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LONGITUDE	LATITUDE
Begin Primary Reach	Yakima River/Blue Slough point of diversion	Yakima RM 112.0	13 N.	19 E.	28	-120.46042 W	46.59083 N
End Primary Reach	On Blue Slough	(~Yakima RM 110.3)	12 N.	19 E.	4	-120.45702 W	46.55840 N
Begin Secondary Reach	Blue Slough (then Yakima River, to Columbia River)	(~Yakima RM 110.3)	12 N.	19 E.	4	-120.45702 W	46.55840 N
End Secondary Reach	Yakima River Confluence with Columbia River	Columbia RM 335.0	9 N.	29 E.	19	-119.23116 W	46.25271 N

Datum: WGS84

### Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Complete	Complete	Complete

### Provisions

#### **July 9, 2008 MOU Regarding Trust Water Rights Management**

The USBR and the Washington State Department of Ecology (Ecology), on July 9, 2008, entered a “Memorandum of Understanding No. 1425-08MU1U7121 Between the United States Department of the Interior Bureau of Reclamation and the State of Washington Department of Ecology for Water Marketing and for Management of Trust Water Rights in the Yakima River Basin” (Trust Water MOU). This Trust Water MOU documents ongoing cooperation between USBR and Ecology in implementing the Federal Yakima River Basin Water Enhancement Project, Title XII of Public Law 103-434 (YRBWEP). The subject Trust Water Right, No. S4-83811-J, as changed under this Trust Water Right Change Application No. CS4-01603CTCL, will be managed under the provisions of the July 9, 2008 Trust Water MOU between USBR and Ecology.

The Trust Water MOU provides, in part, that:

- USBR will place water rights it acquires for the United States to facilitate the purposes of YRBWEP in the Washington State Trust Water Rights Program (Trust);
- While in Trust, the water will remain in the United States’ ownership;
- USBR will retain full ownership title to the water rights jointly acquired by USBR and Ecology, with Ecology’s cost-share reaping the benefit of long-term placement of the jointly-acquired water rights in Trust;
- Trust water will be used for instream flow enhancement or for other purposes of use consistent with the intent of YRBWEP and Trust; and,

- the water will be placed in Trust on a long-term renewable basis, each term being for a period of ten (10) years, with automatic renewals, unless terminated earlier by USBR.

**Federal Ownership Is Maintained while Water Is in Trust**

The following provision clarifies the ownership of this Federal water right No. S4-83811-J during its placement in Trust:

“This transfer is not a conveyance of the water right, but merely an assignment of USBR’s interest into Trust. The United States in no way conveys any property interest in this right to the State or back to the State as trustee or otherwise. USBR maintains ownership of, and title to, the water right throughout its term in Trust. No new third party property rights are created, authorized, or derived from this transfer unless provided in writing by USBR. The use of the term “acquires” in this document has no meaning beyond programmatic inclusion in Trust with the conditions contained in the application.”

**Schedule and Inspections**

Department of Ecology personnel, upon presentation of proper credentials, will 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.

**Real Estate Excise Tax**

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project.

Department of Revenue	Phone: (360) 570-3265
Real Estate Excise Tax	Internet: <a href="http://dor.wa.gov/">http://dor.wa.gov/</a>
PO Box 47477	E-mail: <a href="mailto:REETSP@DOR.WA.GOV">REETSP@DOR.WA.GOV</a>
Olympia, WA 98504-7477	

**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 find the change of water right as recommended will not be detrimental to existing rights or detrimental to the public interest.

Therefore, I ORDER approval of Trust Water Right Change Application No. CS4-01603CTCL, subject to existing rights and the provisions specified above. This approval ORDER applies to Water Right No. S4-83811-J.

**Your Right To Appeal**

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 Union Gap, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**Please send a copy of your appeal to:**

Trevor Hutton, Section Manager  
Water Resources Program  
Ecology Central Regional Office  
1250 West Alder Street  
Union Gap, WA 98903

\_\_\_\_\_  
Trevor Hutton, Section Manager  
Water Resources Program  
Central Regional Office

*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

Stan Isley, Department of Ecology  
Water Right Control Number CS4-01603CTCL  
S4-83811-J

### BACKGROUND

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#### *Description and Purpose of Requested Change*

The Yakima County Superior Court, in *The State of Washington, Department of Ecology v. James J. Acquavella, et al. (Acquavella)*, in its May 9, 2002 Conditional Final Order for Subbasin No. 24 (Moxee), originally confirmed a water right under Court Claim No. 01603 to Eldon H. and Erliss L. McCormack with a November 4, 1886 priority date. This water right confirmed the McCormacks' right to divert up to 0.20 cubic feet per second (cfs), 60.00 acre-feet per year (ac-ft/yr), of water from the Yakima River and Blue Slough, from April 1 through October 31 each year, for irrigation of 10.00 acres and stock water. The authorized place of use was described as "(t)hat portion of the north 1,400 feet of the W½NW¼ of Section 4, T. 12 N., R. 19 E.W.M. lying west of Blue Slough and east of an unnamed slough".

The U.S. Bureau of Reclamation (USBR) purchased the McCormack property and water right on April 2, 2001, for wetland enhancement on the former irrigated lands, and for instream flow augmentation in Blue Slough and downstream in the Yakima River to the Columbia River. USBR permanently retired the historic off-stream irrigation and stock water use upon its 2001 purchase of the water right, and instead has used the water right for USBR's intended wetlands enhancement and instream flow augmentation purposes of use since April 2001.

USBR filed a Motion to Substitute Parties for Court Claim 01603 with the *Acquavella* Court on June 5, 2002. The *Acquavella* Court entered an "Order Granting Motion to Substitute Parties, Claim No. 01603, Subbasin No. 24 (Moxee)" on June 7, 2002. This Order recognized the McCormacks' transfer of this water right claim, and substituted USBR for the original claimants, Eldon H. and Erliss L. McCormack, for Court Claim No. 01603.

On March 31, 2006, USBR filed the subject water right change application with the Washington State Department of Ecology (Ecology). Ecology accepted the application and assigned it Control No. CS4-01603CTCL. This application requests authorization to change the purpose of use of USBR's former McCormack water right, confirmed under Court Claim No. 01603, from irrigation and stock water use, to instream flow use in Blue Slough and downstream in the Yakima River to the Columbia River. This application also requests this water be managed as a trust water right in the Washington State Trust Water Rights Program (Trust).

#### *Yakima River Basin Water Enhancement Project*

The Yakima River Basin Water Enhancement Project (YRBWEP) is an ongoing, comprehensive, multi-phase project, being implemented in the Yakima River Basin, to improve instream flows and fish passage conditions, restore Yakima River Basin anadromous fishery resources, improve water management and off-stream water use efficiency, improve the reliability of irrigation water supply, enhance fish and wildlife, enhance wetlands and water quality, and encourage water conservation and voluntary water

transactions, among other purposes. Congress authorized the second major phase of YRBWEP on October 31, 1994, by its enactment of Title XII of Public Law 103-434 (Title XII).

Title XII authorizes (in Section 1203) development of a Yakima River Basin Water Conservation Program (BCP), which provides Federal and State cost-share grant funding to implement water conservation projects with participating irrigation districts and water user entities in the Yakima River Basin. The BCP authorizes 65% Federal, 17.5% State, and 17.5% local (i.e., participating water user entity) cost-share grant funding for water conservation project implementation (Title XII Subsection 1203(d)). The BCP provides that two-thirds ( $2/3^{\text{rds}}$ ) of the total conserved water generated by the YRBWEP-funded water conservation project be assigned to instream flow enhancement use, and that normally one-third ( $1/3^{\text{rd}}$ ) of the conserved water be allocated to augment drought year irrigation water supply for the participating water user entity or to generally benefit Yakima basin irrigators (Subsection 1205(a)(4)(B)(i)). BCP conserved water may not be used to expand irrigated acreage in the Yakima River Basin (Subsection 1203(a)(2)).

Title XII (Subsection 1203(i)(3)) also authorizes USBR to use Federal YRBWEP funds to purchase or lease water from willing sellers for instream flow enhancement use in the Yakima River Basin. USBR has purchased several water rights, including the former McCormack water right, the subject of this Trust water right change application, with Federal YRBWEP funds under this authority, for instream flow Trust water right use in the Yakima River Basin.

Title XII (Subsection 1203(i)(2)) provides that “The Secretary shall, to the maximum extent possible under applicable Federal, State, and tribal law, cooperate with the State of Washington to facilitate water and water right transfers, water banking, dry year options, the sale and leasing of water, and other innovative allocation tools used to maximize the utility of existing Yakima River basin water supplies.” In this spirit, USBR and Ecology continue to work collaboratively as partners in jointly implementing the YRBWEP.

#### *Yakima River Basin Trust Water Rights Program*

In the 1989 legislative session, the Washington State Legislature enacted chapter 90.38 of the Revised Code of Washington (RCW), the State’s first trust water rights statute, which established the Yakima River Basin Trust Water Rights Program. The State enacted chapter 90.38 RCW to establish a clear State statutory mechanism to place water rights, or portions of water rights, into Trust for instream flow use and other uses, while preserving the priority date of the original water right. The State established the Yakima River Basin Trust Water Rights Program to facilitate Congress’s eventual enactment of the Federal YRBWEP Phase 2 Act in 1994, reflecting Ecology and USBR’s cooperation in developing and implementing the YRBWEP.

RCW 90.38.030(3) provides that, “The department shall cooperate fully with the United States in the implementation of this chapter. Trust water rights may be acquired through expenditure of funds by the United States and shall be treated in the same manner as trust water rights resulting from the expenditure of state funds.”

#### *Expedited Application Processing*

Subsection 173-152-050(2)(c) of the Washington Administrative Code (WAC) allows Ecology to prioritize processing of applications that are nonconsumptive and if approved would substantially enhance or

protect the quality of the natural environment, such as transfers or changes of water into Trust that provide a substantial environmental benefit. The YRBWEP is an ongoing cooperative Federal/State/Local program that is generating instream flow Trust water rights, like the subject water right, that provide substantial environmental benefit. Therefore, Ecology may priority process this application, and other associated YRBWEP Trust water right change applications, ahead of other competing applications.

Table 1: Existing Water Right Attributes

<b>Water Right Owner:</b>	U.S. Bureau of Reclamation
<b>Priority Date:</b>	November 4, 1886
<b>Place of Use</b>	That portion of the north 1,400 feet of the W½NW¼ of Section 4, T. 12 N., R. 19 E.W.M. lying west of Blue Slough and east of an unnamed slough. (Three Tax Parcels (north to south): Nos. 191204-22007, 191204-23001, and 191204-23002).

County	Waterbody	Tributary To	WRIA
Yakima	1. Yakima River 2. Blue Slough	1. Columbia River 2. Yakima River	37 - Lower Yakima

Purpose	Rate	Unit	Ac-Ft/Yr	Begin Season	End Season
Irrigation of 10.0 acres & stock water	0.20	cfs	60.00	April 1	October 31

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Longitude	Latitude
1) Yakima River	191328-21001	13 N.	19 E.	28	NENW	-120.46042 W	46.59083 N
2) Blue Slough	191204-22007	12 N.	19 E.	4	G.L. 4 ~NWNW	-120.45698 W	46.56198 N

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 in NAD83/WGS84.

Table 2: Requested Trust Water Right Attributes

<b>Water Right Owner:</b>	U.S. Bureau of Reclamation
<b>Priority Date:</b>	November 4, 1886
<b>Place of Use</b>	<p><b>PRIMARY REACH</b> – Begins at the Blue Slough diversion point from the Yakima River side channel within Yakima Sportsman State Park, located 400 feet south and 1,000 feet west from the north quarter corner of Section 28, being within the NE¼NW¼ of Section 28, T. 13 N., R. 19 E.W.M.; continues down Blue Slough past the historic McCormack diversion point (now abandoned) from Blue Slough, located 300 feet south and 500 feet east of the northwest corner of Section 4, being within Government Lot 4 (the approximate NW¼NW¼) of Section 4, T. 12 N., R. 19 E.W.M.; and ends at the point on Blue Slough that was the last point where historic return flows from the former McCormack irrigated fields (now owned by the USBR) rejoined Blue Slough, located approximately 1,600 feet south and 500 feet east of the NW corner of Section 4, being within the SW¼NW¼ of Section 4, T. 12 N., R. 19 E.W.M.</p> <p><b>SECONDARY REACH</b> – The secondary reach begins at the end of the primary reach, on Blue Slough, located approximately 1,600 feet south and 500 feet east of the NW corner of Section 4, being within the SW¼NW¼ of Section 4, T. 12 N., R. 19 E.W.M.; continues down Blue Slough to Blue Slough’s confluence with a Yakima River side channel and the Yakima River mainstem, located approximately 550 feet north and 1,250 feet west of the southeast corner of Section 8, being within the S½SE¼ of Section 8, T. 12 N., R. 19 E.W.M.; and continues down the Yakima River to the secondary reach’s termination at the confluence of the Yakima River with the Columbia River, located within Section 19, T. 9 N., R. 29 E.W.M. (Yakima River Mile (RM) 0.0, Columbia RM 335.0.).</p>

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE							
REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LONGITUDE	LATITUDE
Begin Primary Reach	Yakima River/Blue Slough point of diversion	Yakima RM 112.0	13 N.	19 E.	28	-120.46042 W	46.59083 N
End Primary Reach	On Blue Slough	(Yakima RM ~110.3)	12 N.	19 E.	4	-120.45702 W	46.55840 N
Begin Secondary Reach	Blue Slough (then Yakima River, to Columbia River)	(Yakima RM ~110.3)	12 N.	19 E.	4	-120.45702 W	46.55840 N
End Secondary Reach	Yakima River Confluence with Columbia River	Yakima RM 0.0, Columbia RM 335.0	9 N.	29 E.	19	-119.23116 W	46.25271 N

County	Waterbody	Tributary To	WRIA
Yakima	1. Yakima River 2. Blue Slough	1. Columbia River 2. Yakima River	37 - Lower Yakima

Purpose	Rate	Unit	Ac-Ft/Yr	Begin Season	End Season
<b>PRIMARY REACH:</b> Instream flow Trust water use in the primary reach of Blue Slough.	0.20	cfs	60.00	April 1	October 31

### SECONDARY REACH

The following quantities are to be used for the purpose of instream flow trust water use in the secondary reach of lower Blue Slough, and downstream in the Yakima River to the Columbia River:

Purpose	Unit	April	May	Jun	Jul	Aug	Sept	Oct	Total
Instream Flow	ac-ft/yr	1.038	5.377	6.404	8.285	6.710	4.421	1.827	34.062
Average Qi	cfs	0.017	0.087	0.108	0.135	0.109	0.074	0.030	-

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 in NAD83/WGS84.

### Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the proposed change to instream flow Trust water use:

#### *Public Notice*

Public Notice of the application was given in the Yakima Herald Republic newspaper on March 23, 2007 and March 30, 2007. No letters of protest or comments were received during the 30-day protest period, which expired April 30, 2007.

#### *Consultation with the Department of Fish and Wildlife and the Water Transfer Working Group*

This USBR (former McCormack) Trust water right change application was presented to the Yakima River Basin Water Transfer Working Group (WTWG) on two occasions: first during the May 15, 2006 monthly meeting as WTWG Proposal 2006-13, and again during the May 21, 2007 monthly meeting as WTWG Proposal 2007-32 (presented to WTWG in a group with other related USBR Trust water right change applications). The Department of Fish and Wildlife participates in the WTWG, as does the Yakama Nation, irrigation district representatives, U.S. Bureau of Reclamation (USBR), other agency staff, and interested parties. At both the May 15, 2006 and the May 21, 2007 meetings, the WTWG gave this USBR Trust water right change application its 'thumbs up' approval recommendation.

#### *State Environmental Policy Act*

A water right application is subject to a State Environmental Policy Act (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 cfs, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cfs, so long as that irrigation project will not receive public subsidies.
- It is a groundwater right application for more than 2,250 gallons per minute.

- It is an application that, in combination with other water right applications for the same project, collectively 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, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

#### *National Environmental Policy Act*

USBR prepared a Final Programmatic Environmental Impact Statement (PEIS) for the YRBWEP, required under the National Environmental Policy Act (NEPA), and signed the Record of Decision adopting that PEIS on March 5, 1999. This PEIS evaluated the environmental impacts of implementing the YRBWEP, and it provides “umbrella” coverage for implementing the general provisions of the YRBWEP. The PEIS did not discuss site-specific impacts, noting that additional NEPA compliance for specific actions will be developed in the future as appropriate, and that those subsequent NEPA documents will refer to information in the PEIS in a process called tiering. The PEIS analyzed generally the impact of water acquisition from willing sellers, as is the case for this subject Trust water right change application, for instream flow enhancement, and did not identify any negative impacts that would preclude USBR from continuing with implementation of YRBWEP water acquisitions.

#### *Water Resources Statutes and Case Law*

RCW 90.03.360 requires metering of all water users within fish critical basins. The Yakima River has been designated a fish critical basin. RCW 77.55.320, RCW 77.55.040, and RCW 77.55.070 require all diversions from surface waters of the state to be screened to protect fish.

RCW 90.03.380(1) and chapter 90.38 RCW provide that a water right that has been put to beneficial use may be changed. The point of diversion (POD), place of use (POU), and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change or transfer of a water right, is required to make a tentative determination of the extent and validity of the right. This is necessary to establish whether a water right is eligible for change (*R.D. Merrill Co. v. PCHB*, 137 Wn.2d 118, 969 P.2d 458 (1999); *Okanogan Wilderness League v. Town of Twisp*, 133 Wn.2d 769, 947 P.2d 732 (1997)). It is not within Ecology’s authority to adjudicate or make a final determination of the extent and validity of any water right or claim to a water right, only the Superior Court has such authority.

## INVESTIGATION

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

- The State Water Code.
- Report of Referee (dated February 13, 2001), and Report of the Court (dated October 23, 2001), Concerning the Water Rights for Subbasin No. 24 (Moxee), and the Court's May 9, 2002 Conditional Final Order (CFO) for Subbasin No. 24 (Moxee).
- Stream flow and diversion data.
- Existing water rights on file for the subject USBR water acquisition and wetland and floodplain restoration project area and other recorded water rights in the project vicinity.
- The following *Acquavella* Court documents: June 5, 2002 Motion to Substitute Parties, Court Claim No. 01603; June 7, 2002 Order Granting Motion to Substitute Parties, Claim No. 01603, Subbasin No. 24 (Moxee); and April 7, 2007 Affidavit of Stan Isley Re: Petitions for Orders Pendente Lite for Instream Flow Enhancement.
- Water Transfer Working Group proposal descriptions for WTWG 2006-13 and WTWG 2007-32; and review of meeting minutes and proposal recommendations for the WTWG May 15, 2006 meeting, and the WTWG May 21, 2007 meeting.
- Review of file information and USBR and Ecology staff communications regarding the subject Trust water right change application from 2001 to the present.
- Notes from many site visits conducted by Ecology staff, including the author, and USBR staff and others, from 2001 to the present date.
- Topographic and local area maps.
- Aerial photographs of the site.
- Yakima County Assessor's Office records.

### Yakima River Basin Water Enhancement Project

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The Yakima River Basin Water Enhancement Project (YRBWEP) is a long-term, multi-phase program initiated in the wake of the serious water supply shortage and environmental and economic impacts caused by the 1977 drought in the Yakima River Basin.

#### Yakima River Basin Water Enhancement Project Phase 1:

- The U.S. Congress, on December 28, 1979, enacted Public Law 96-162, 93 Stat. 1241, which authorized the Secretary of the Department of the Interior to conduct a feasibility study for the YRBWEP.
- Congress, on August 17, 1984, enacted Public Law 98-381 (98 Stat. 1340), which in Section 109 authorized the Secretary of the Interior to design, construct, operate, and maintain fish passage facilities within the Yakima River Basin, and to accept funds from any entity, public or private, to design, construct, operate, and maintain such facilities.
- Under YRBWEP Phase 1, USBR and its cooperators have constructed improved fish ladders and fish passage facilities at Yakima Project diversion dams, and have constructed improved fish screen facilities at most of the irrigation diversions throughout the Yakima River Basin.

### Yakima River Basin Water Enhancement Project Phase 2:

- Congress, on October 31, 1994, enacted Public Law 103-434, which in Title XII authorized Phase 2 of the YRBWEP (Title XII or YRBWEP Phase 2).
- Congress amended Title XII on October 13, 1997, by enacting Section 507 of Public Law 105-62, 111 Stat. 1320, which increased the funding authorization for Section 1208(a)(2) of Title XII (Chandler pumps electrification funding).
- Congress again amended Title XII on October 27, 2000, by enacting Public Law 106-372, 114 Stat. 1425, which further amended Section 1208 of Title XII. This amendment authorized the Secretary of the Interior to conduct a feasibility study for a water exchange alternative for Kennewick Irrigation District, as an alternative to electrification of the hydraulic pumps at the Chandler power plant.
- Under YRBWEP Phase 2, USBR and Ecology and Yakima River Basin irrigation and fisheries stakeholders continue to implement water conservation projects that improve instream flows for fish and wildlife and improve the reliability of water supply for irrigation. Additional Phase 2 benefits include water quality, wetlands, and habitat enhancement; improved water management and fish passage; water supply and habitat enhancement projects on the Yakama Reservation; and stimulation of voluntary transactions among public and private entities that result in implementation of water conservation and water transfers/marketing.

### Yakima River Basin Water Enhancement Project Phase 3:

- YRBWEP 3, the Yakima Basin Integrated Water Resources Management Plan (Integrated Plan), is the emerging next phase of the YRBWEP. Congress is currently considering legislation to authorize new Federal funding for proposed YRBWEP 3 projects. YRBWEP 3 goals include implementing additional water conservation projects, developing new water storage facilities, improving fish passage at the Federal dams, and improving fish habitat and instream flows throughout the Yakima River Basin.
- The State of Washington has already spent a substantial amount of State funds in 2013 to acquire the Teanaway Community Forest as an initial State investment in the implementation of YRBWEP 3, Integrated Plan, reflecting the State's commitment to its continuing partnership with USBR and other entities in implementation of the overarching, multi-phase, YRBWEP in the Yakima River Basin.

### *Yakima River Basin Water Enhancement Project Water Acquisitions*

USBR has purchased several former irrigation water rights in the Yakima River Basin for permanent instream flow use in Trust, under the authority of Subsection 1203(i)(3) of Title XII. The subject USBR (former McCormack) water right is one of those water rights acquired for instream flow use and wetland enhancement. USBR purchased the former McCormack property and water right on April 2, 2001.

Some of the several YRBWEP water acquisitions that have been made are water right purchases made by USBR solely with Federal YRBWEP funds. USBR has made seven such sole Federal purchases of water rights, including the subject USBR (former McCormack) water right. Some of the YRBWEP water acquisitions have been joint purchases by USBR and Ecology, with each agency providing a cost-share. The three joint purchases to date have been: 1) USBR's Taneum Creek water right (former Rocky Mountain Elk Foundation Heart K Ranch), 2) USBR's Wenas Creek water right (former

Schultz/Johnson/Buchanan Ranch), and 3) USBR's Wapatox power water right in Subbasin 19 (Lower Naches River, former Pacific Power & Light).

On July 9, 2008, USBR and Ecology executed a "Memorandum of Understanding No. 1425-08MU1U7121 Between the United States Department of the Interior Bureau of Reclamation and the State of Washington Department of Ecology for Water Marketing and for Management of Trust Water Rights in the Yakima River Basin" (Trust Water MOU). This Trust Water MOU documents ongoing cooperation between USBR and Ecology in implementing the Federal Yakima River Basin Water Enhancement Project, Title XII of Public Law 103-434 (Title XII or YRBWEP Phase 2). The subject USBR (former McCormack) Trust water right, and the other YRBWEP water acquisitions described in the paragraph above, will all be managed under the provisions of the July 9, 2008 Trust Water MOU between USBR and Ecology.

The Trust Water MOU provides, in part, that:

- USBR will place water rights it acquires for the United States to facilitate the purposes of YRBWEP in Trust;
- while in Trust, the water will remain in the United States' ownership;
- USBR will retain full ownership title to the water rights jointly acquired by USBR and Ecology, with Ecology's cost-share reaping the benefit of long-term placement of the jointly-acquired water rights in Trust;
- Trust water will be used for instream flow enhancement or for other purposes of use consistent with the intent of YRBWEP and Trust; and,
- the water will be placed in Trust on a long-term renewable basis, each term being for a period of ten (10) years, with automatic renewals, unless terminated earlier by USBR.

William Ferry, Water Rights and Adjudication Manager for USBR's Columbia-Cascades Area Office in Yakima, sent Ecology a letter on February 19, 2016, asking that Ecology add a provision to each report of examination approving placement of these YRBWEP water acquisitions in Trust, that clarifies that Federal ownership is maintained while the water is in Trust.

The following provision offered by Mr. Ferry clarifies the ownership of these Federal water rights during their placement in Trust, and will be a provision of each report of examination Ecology issues for this specific set of Federal water rights:

"This transfer is not a conveyance of the water right, but merely an assignment of USBR's interest into the Trust Water Rights Program (Trust). The United States, in no way conveys any property interest in this right to the State or back to the State as trustee or otherwise. USBR maintains ownership of, and title to, the water right throughout its term in Trust. No new third party property rights are created, authorized, or derived from this transfer unless provided in writing by USBR. The use of the term "acquires" in this document has no meaning beyond programmatic inclusion in Trust with the conditions contained in the application."

*State of Washington Department of Ecology v. James J. Acquavella, et al.*

The *State of Washington Department of Ecology v. James J. Acquavella, et al. (Acquavella)* adjudication began in 1977 and is still in progress at the time of this writing. *Acquavella* is an adjudication of all surface water rights and claims within the entire Yakima River drainage basin, which includes four adjudication pathways: 31 Subbasins, Major Claimants, Federal Reserved Water Rights, and Federal Non-Reserved Water Rights. The subject water right was confirmed in the Court proceedings for Subbasin No. 24 (Moxee). The Court's Conditional Final Order (CFO) for Subbasin No. 24 (Moxee) was entered on May 9, 2002. A final decree for *Acquavella* has not yet been issued by the Superior Court.

The Court's Subbasin No. 24 (Moxee) CFO confirmed a schedule of Moxee Subbasin surface water rights with priorities that range from 1869 through 1974.

Additionally, the Court confirmed the Yakama Nation's Treaty Reserved Minimum Instream Flow Water Right for Fish and Other Aquatic Life, with a priority dating from time immemorial. This 'oldest-in-the-basin' Yakama Nation minimum instream flow water right exists throughout the Yakima Basin in streams that produce fish that the Yakamas catch at their Usual and Accustomed Fishing Sites within the Yakima River basin and the Columbia River basin. The Court did not quantify this minimum instream flow water right, noting simply that it is that minimum amount of water necessary to maintain fish and other aquatic life. The Court further provided that the USBR would determine the amount of water necessary to satisfy this water right based on annual prevailing conditions. The Yakama Nation Treaty Reserved Minimum Instream Flow Water Right for Fish and Other Aquatic Life may be appurtenant to Blue Slough and would therefore be the oldest water right in Subbasin No. 24 (Moxee).

The subset of Subbasin No. 24 (Moxee) water rights that were confirmed to the Yakima River/Blue Slough include 14 water rights with priority dates ranging from 1869 through 1964. The subject USBR (former McCormack) 1886-priority water right is one of these 'Blue Slough water rights'.

*Blue Slough Description*

Blue Slough has had varying amounts of water flow over recent geologic time. It has been either a main channel of the Yakima River, or alternatively a side channel, over time, as the Yakima River has moved around within its floodplain. Currently, Blue Slough has a headgate-controlled diversion structure on a Yakima River side channel in Yakima Sportsman State Park that feeds water immediately into a pipe that runs through the flood control levee operated by the Yakima County Flood Control Zone District. This pipe is equipped with a valve that can be closed and is operated as Flood Gate (FG) #30 through the levee. This is currently the only source of inflow to upper Blue Slough. Completely closing FG #30 causes upper Blue Slough to dry up.

Sediment aggradation in recent years at the head end of the side channel that feeds Yakima River water to the Blue Slough POD at FG #30 has made it difficult for water users to maintain flow into upper Blue Slough during low flow periods in the Yakima River during the summer.

Lower Blue Slough receives input from ground water discharge and flow inputs from irrigation return flows from upgradient irrigated lands. Lower Blue Slough also collects smaller spring-fed drainages and side channels hydraulically connected to the east bank of the Yakima River. As a result, lower Blue

Slough enjoys perennial flow, beginning immediately below (southerly of) Lester Road, where Blue Slough enters the SE¼ of Section 33, T. 13 N., R. 19 E.W.M. This point is located just under one mile upstream on Blue Slough from the historic POD for the former McCormack property now owned by USBR. Blue Slough exhibits perennial flow at the former McCormack POD, in adequate quantity to satisfy the USBR (former McCormack) water right. This is true even during periods when FG #30 is closed and upper Blue Slough is completely dry.

Blue Slough traverses approximately 4.5 miles of Yakima River floodplain situated easterly of the Yakima River, from its current Yakima River diversion in Yakima Sportsman State Park, to its discharge back to the Yakima River immediately upstream of the 'Union Gap' between Rattlesnake Ridge on the east and Ahtanum Ridge on the west. Blue Slough traverses a mix of rural lands with irrigated pastures and floodplain forest and shrub lands. USBR owns over 600 acres of land in this area and is managing these lands for wetland enhancement and floodplain restoration. Central Pre-Mix Concrete Company owns some of these lands traversed by Blue Slough, and is managing its land for floodplain restoration as mitigation for its proposed East Valley Gravel Mine, located easterly and upgradient of Blue Slough. The Yakima County Flood Control Zone District is leading a local stakeholder group that is working with the U.S. Army Corps of Engineers on a project to move the existing east bank Yakima River levee to a setback location to the east and farther away from the river. This project will restore Yakima River connectivity to a major portion of its historic floodplain, thus reducing flood hazard to the Yakima and Union Gap urban area and infrastructure, and allowing restoration of floodplain habitats and side channel flows, including Blue Slough flow. Attendant benefits will include enhancement of fish and wildlife habitat in the affected area. This levee setback project will restore upper Blue Slough instream flows and connection to the Yakima River, and will restore Blue Slough for side channel fish rearing and refuge habitat.

#### *Actual Water Use of USBR's (former McCormack) Water Right*

The McCormacks, the previous owners of this property that USBR purchased on April 2, 2001, diverted the full amount of their confirmed water right from Blue Slough, irrigated their 10 acres of pasture and utilized stock water from Blue Slough, through the end of the 2000 irrigation season. Upon USBR's purchase of the former McCormack property on April 2, 2001, USBR terminated the irrigation water diversion from Blue Slough and fallowed the 10-acres of irrigated pasture.

Since April 2001, USBR has applied the full amount of the former McCormack water right to instream flow use in Blue Slough below the historic McCormack diversion point and then downstream in the Yakima River. USBR staff has monitored Blue Slough flows through this property since 2001 to ensure the right has been fully exercised for instream flow use. Flow monitoring documents that lower Blue Slough flows have been adequate even in low flow periods of the summer to fully satisfy this water right since 2001. USBR staff has added the fallowed consumptive use portion of this water right to the instream target flows that USBR manages in the lower Yakima River past the Parker and Prosser stream flow gauges.

#### *No Relinquishment of USBR's (former McCormack) Water Right Has Occurred*

USBR purchased the former McCormack property and permanently fallowed the historic off-stream irrigation and stock water use on April 2, 2001. USBR has utilized the full quantity of the confirmed irrigation and stock water right for instream flow use in the primary reach of Blue Slough, and has utilized the full quantity of the fallowed consumptive use portion of the water right for instream flow

use in the secondary reach of lower Blue Slough and downstream in the Yakima River to the Columbia River, since April 2001.

USBR purchased this property and water right under authority of Subsection 1203(i)(3) of Title XII, to enhance wetland acreage on the property and augment instream flows in Blue Slough and downstream in the Yakima River. The *Acquavella* Court entered its CFO for Subbasin No. 24 (Moxee) on May 9, 2002, confirming this water right in the McCormacks' names. USBR filed a "Motion to Substitute Parties for Court Claim No. 01603" with the *Acquavella* Court on June 5, 2002, and the Court entered its "Order Granting Motion to Substitute Parties, Claim No. 01603, Subbasin No. 24 (Moxee)" on June 7, 2002. On March 31, 2006, USBR filed the subject application for change of Water Right No. CS4-01603CTCL with Ecology.

A number of statutory provisions shield USBR's water right from relinquishment:

- 1) Washington State's Relinquishment statute, chapter 90.14 RCW, at subsection 90.14.140(2)(c), provides, "Notwithstanding any other provisions of RCW 90.14.130 through 90.14.180, there shall be no relinquishment of any water right:...(c) If such right is claimed for a determined future development to take place either within fifteen years of July 1, 1967, or the most recent beneficial use of the water right, whichever date is later..." USBR's future use of this water for instream flow use was fixed and determined when USBR purchased the property, and has been documented by USBR's subsequent management of lower Yakima River target flows at the Parker and Prosser gauges that include the fallowed consumptive use portion of this water right. Additionally, USBR documented its clear determined future development of this water in the subject Water Right Change Application No. CS4-01603CTCL it filed with Ecology on March 31, 2006.
- 2) Washington State's Yakima River Basin Trust Water Rights statute, chapter 90.38 RCW, at subsection 90.38.020(1)(a), provides, "The department may acquire water rights...once acquired, such rights are trust water rights."

RCW 90.38.030(3) provides, "The department shall cooperate fully with the United States in the implementation of this chapter. Trust water rights may be acquired through expenditure of funds provided by the United States and shall be treated in the same manner as trust water rights resulting from the expenditure of state funds."

RCW 90.38.040(6) says, "RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no applicability to trust water rights..." So therefore, once USBR purchased and acquired this water right with Federal YRBWEP funds in April 2001, for the clear purpose of applying this water to instream flow trust water use, this water right became a trust water right. And trust water rights are exempt from statutory relinquishment.

This combination of statutory language outlined above leads the author to conclude that the subject USBR (former McCormack) water right has not suffered any statutory relinquishment.

## Proposed Uses

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The applicant is proposing to change the purpose of use and place of use of this water right confirmed by the Court's May 9, 2002 CFO to instream flow Trust water use in Blue Slough and downstream in the Yakima River to the Yakima River's confluence with the Columbia River.

## Other Water Rights Appurtenant to the Proposed Place of Use

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The only other water right that was historically appurtenant to the POU for this water right was a permit-exempt domestic well water right that was abandoned two years after USBR purchased this property from the McCormacks. Mrs. McCormack retained a life tenancy on this property in USBR's 2001 purchase and sale agreement, but died not long after the sale closed. USBR subsequently razed the McCormack house and buildings and decommissioned the McCormack domestic well. Several other instream flow trust water rights share the same instream reach POU as this proposed USBR instream flow Trust water right.

## Hydrologic/Hydrogeologic Evaluation

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For the purpose of this evaluation, the region of interest extends from FG #30, the control gate on the Yakima River side channel in Yakima Sportsman State Park, at the head end of Blue Slough. As described above in the previous Blue Slough description section, upper Blue Slough flow depends on water diverted through FG #30 into upper Blue Slough as its only source of water currently. Siltation and sediment aggradation in the side channel that feeds water to Blue Slough create difficulties at present in getting water to FG #30 and into upper Blue Slough at low water flow levels in the summer.

The USBR maintains two key stream flow gauging stations on the lower Yakima River: the Parker Gauge located downstream of the Sunnyside Diversion Dam, and the Prosser Gauge located below the Prosser Diversion Dam. USBR maintains target instream flows in the Yakima River at these two gauging stations throughout the irrigation season each year, from April 1 through October 31. Title XII established base YRBWEP target flows at these two gauging stations. USBR maintains those base YRBWEP target flows at the Parker and Prosser gauges, plus the additional fallowed consumptive use of the water rights acquired under Title XII YRBWEP Phase 2 authority for instream flow use, including the subject USBR (former McCormack) water right. Additionally, USBR adds other State Trust Water Rights, acquired by Ecology and others, whose secondary reaches carry down the lower Yakima River past the Parker and Prosser gauges, to these target instream flows managed by USBR.

Both USBR staff and the author (Ecology staff) have monitored the physical availability of water to satisfy this water right at its historic POD on lower Blue Slough since 2001. Water has always been available in this time period to fully satisfy this water right in lower Blue Slough. The author has worked with USBR River Operations staff each year to identify the total amount of target flow addition water that USBR must add each year to the base YRBWEP target flows at the Parker and Prosser gauges, which, since 2001, has included the fallowed consumptive use portion of the subject water right. This ensures that this water right has been tracked and fully exercised for instream flow use from its historic Blue Slough diversion point, all the way down lower Blue Slough to the Yakima River, and all the way down the Yakima River to the Columbia River, since USBR acquired it in 2001.

## Trust Water Right Place of Use

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The primary reach for this USBR Trust water right will be from the head end of Blue Slough at FG #30 in Yakima Sportsman State Park, past the historic McCormack POD along lower Blue Slough, down-slough to the point on lower Blue Slough where the last return flows from the historic McCormack 10-acre irrigated pasture returned to Blue Slough.

The secondary reach for this USBR Trust water right will begin at the end of the primary reach and will extend down lower Blue Slough to its confluence with the Yakima River, and will then continue downstream in the Yakima River to the Yakima River's confluence with the Columbia River.

## Trust Water Right Calculations

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The permanent retirement/fallowing by USBR of the historic McCormack water right, confirmed for irrigation of 10 acres and stock water, resulted in the entire Court-confirmed quantity of the water right being used by USBR since 2001 for instream flow Trust water right use in the primary reach of Blue Slough. This quantity is 0.20 cfs, 60 ac-ft/yr, from April 1 through October 31 each year, with a November 4, 1886 date of priority.

USBR's permanent retirement/fallowing of the historic McCormack off-stream water use under this water right has augmented the flows in the secondary reach for this Trust water right by the amount of the historic consumptive use portion of the water right, since 2001. The author used *Washington Irrigation Guide* data (WA210-VI-WAIG, OCTOBER 1985) and Ecology's *Guidance Document, GUID-1210, Determining Irrigation Efficiency and Consumptive Use*, to estimate the total consumptive use portion of the water right.

Fallowing these 10 acres of historically flood-irrigated pasture, using the Yakima climatic station crop irrigation requirement data for pasture given in the *Washington Irrigation Guide*, results in 31.066 ac-ft/yr of fallowed crop consumptive use. An additional 5% evaporative loss associated with the historic flood irrigation practice, totaling 2.996 ac-ft/yr, must be added to the crop consumptive use of 31.066 ac-ft/yr to determine the total fallowed consumptive use portion of the water right. The total consumptive use is 34.062 ac-ft/yr.

The tables on pages 1 and 9 of this report show the monthly distribution of secondary reach instream flows derived from the 34.062 ac-ft/yr of fallowed consumptive use associated with this Trust water right.

## Impairment Considerations

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The subject 1886-priority USBR (former McCormack) water right is the downstream-most water right confirmed on Blue Slough. It is also one of the most-junior priority water rights confirmed to the Yakima River/Blue Slough. Only two confirmed Yakima River/Blue Slough water rights have more junior priority dates:

- 1) Estate of Grace L. Parrish, August 25, 1904 priority, 0.20 cfs, 42 ac-ft/yr, for irrigation of 10 acres and stock water, from April 1 through October 31; and
- 2) Bob Grimsey (Merlin Horn/KOA), now owned by USBR, November 10, 1964 priority, 2.80 cfs, for fish propagation and recreation year-round.

These two junior-priority Yakima River/Blue Slough water rights are both located along upper Blue Slough, and have historically been completely dependent upon water diverted into upper Blue Slough through FG #30, from the Yakima River side channel in Yakima Sportsman State Park. Since 2001, adequate water has been physically present in lower Blue Slough at the historic McCormack POD to fully satisfy this USBR (former McCormack) water right, as a result of flow inputs to Blue Slough below (down-slough) of both of these two junior-priority Yakima River/Blue Slough water rights.

Approving the requested change of this USBR water right to instream flow use in Blue Slough and downstream in the Yakima River is not anticipated to adversely affect junior upstream users by “calling” (i.e., regulating) them more frequently. There are no other water users downstream on Blue Slough of the historic place of use for this right to affect.

The instream flow Trust water right enjoys the same November 4, 1886 priority date as the original water right confirmed by the Court. This instream flow Trust water right has been, and will continue to be, managed according to its relative water right priority dates within the Moxee Subbasin 24 and Yakima River mainstem schedule of rights confirmed by the Adjudication Court. It will be exercised and protected only when all potentially-affected senior-priority water rights are fully satisfied.

## **CONCLUSIONS**

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In accordance with chapters 90.03 and 90.38 RCW, the author makes the tentative determination that Surface Water Right No. S4-83811-J, confirmed under Court Claim No. 01603 with a priority date of November 4, 1886, represents a valid water right that authorizes the diversion and use of:

- up to 0.20 cfs, from April 1 through October 31, up to 60.00 acre-feet per year, of water from the Yakima River/Blue Slough, for irrigation of 10 acres and stock water, that is eligible for transfer to instream flow Trust water use in only the primary reach of Blue Slough; and,
- 34.062 ac-ft/yr of fallowed consumptive use water, from April 1 through October 31, that is eligible for transfer to instream flow Trust water use in the secondary reach of lower Blue Slough and the Yakima River, according to the monthly distribution of secondary reach instream flows given below in the Recommendations Section of this report.

Approval of this water right change for this water right, as conditioned, will not cause impairment of other existing water rights.

Approval of this water right change will not enhance or enlarge the subject water right.

## **RECOMMENDATIONS**

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Based on the above investigation and conclusions, I recommend that this request for a change to instream flow Trust water use be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

*Purpose of Use and Authorized Quantities*

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

**S4-83811-J PRIMARY REACH:**

0.20 cfs, 60.00 ac-ft/yr, for primary-reach only Trust water right use in Blue Slough, from April 1 through October 31;

**S4-83811-J SECONDARY REACH:**

<b>Purpose</b>	<b>Unit</b>	<b>April</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sept</b>	<b>Oct</b>	<b>Total</b>
Instream Flow	ac-ft/yr	1.038	5.377	6.404	8.285	6.710	4.421	1.827	34.062
Average Qi	cfs	0.017	0.087	0.108	0.135	0.109	0.074	0.030	-

**Place of Use:**

PRIMARY REACH – Begins at the Blue Slough diversion point from the Yakima River side channel within Yakima Sportsman State Park, located 400 feet south and 1,000 feet west from the north quarter corner of Section 28, being within the NE¼NW¼ of Section 28, T. 13 N., R. 19 E.W.M., Yakima County Parcel No. 191328-21001, Yakima RM 112.0; continues down Blue Slough past the historic McCormack diversion point (now abandoned) from Blue Slough, located 300 feet south and 500 feet east of the northwest corner of Section 4, being within Government Lot 4 (the approximate NW¼NW¼) of Section 4, T. 12 N., R. 19 E.W.M., Yakima County Parcel No. 191204-22007 (approximately adjacent to Yakima RM 110.5); and ends at the point on Blue Slough that was the last point where historic return flows from the former McCormack irrigated fields (now owned by USBR) rejoined Blue Slough, located approximately 1,600 feet south and 500 feet east of the NW corner of Section 4, being within the SW¼NW¼ of Section 4, T. 12 N., R. 19 E.W.M., Yakima County Parcel No. 191204-23003 (approximately adjacent to Yakima RM 110.3).

SECONDARY REACH – The secondary reach begins at the end of the primary reach, on Blue Slough, located approximately 1,600 feet south and 500 feet east of the NW corner of Section 4, being within the SW¼NW¼ of Section 4, T. 12 N., R. 19 E.W.M., Yakima County Parcel No. 191204-23003 (approximately adjacent to Yakima RM 110.3); continues down Blue Slough to Blue Slough’s confluence with a Yakima River side channel and the Yakima River mainstem, located approximately 550 feet north and 1,250 feet west of the southeast corner of Section 8, being within the S½SE¼ of Section 8, T. 12 N., R. 19 E.W.M., Yakima County Parcel No. 191208-99989, approximately Yakima RM 107.5; and continues down the Yakima River to the secondary reach’s termination at the confluence of the Yakima River with the Columbia River, located within Section 19, T. 9 N., R. 29 E.W.M. (Yakima RM 0.0, Columbia RM 335.0.)

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE							
REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LONGITUDE	LATITUDE
Begin Primary Reach	Yakima River/Blue Slough POD	Yakima RM 112.0	13 N.	19 E.	28	-120.46042 W	46.59083 N
End Primary Reach	On Blue Slough	(Yakima RM ~110.3)	12 N.	19 E.	4	-120.45702 W	46.55840 N
Begin Secondary Reach	Blue Slough (then Yakima River, to Columbia River)	(Yakima RM ~110.3)	12 N.	19 E.	4	-120.45702 W	46.55840 N
End Secondary Reach	Yakima River Confluence with Columbia River	Yakima RM 0.0, Columbia RM 335.0	9 N.	29 E.	19	-119.23116 W	46.25271 N

Datum: WGS84

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*Stan Isley, Permit Writer*

*Date*

DRAFT

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Attachment 1: Blue Slough and Primary Reach

