DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
FOR TRUST WATER RIGHT

File NR: CS4-00914sb3g
WR Doc ID: 6274540

Change Purpose of Use
Change Place of Use

PRIORITY DATE	WATER RIGHT NUMBER
June 30, 1889	Yakima Adjudication Court Claim No. 00914

APPLICANT	CHANGE APPLICATION NO.
Washington Water Trust 1530 Westlake Avenue, Suite 400 Seattle, WA 98109-3011	CS4-00914sb3g

Purpose and Quantity

Primary Reach

Up to 0.478 cubic-feet per second (cfs) (May 1 through May 30) and 0.239 cfs (May 31 through September 15), and 60.031 acre-feet per year (ac-ft/yr) to be used for the purpose of instream flow.

Secondary Reach:

Purpose	Unit	May	Jun	Jul	Aug	Sept	Oct	Total
Instream Flow	*ac-ft	2.80	4.54	5.94	4.54	2.53	0.52	**20.89**
(average)	cfs	0.045	0.076	0.097	0.074	0.043	0.009	-

*ac-ft=acre-feet

Trust Water Right Place of Use (See Attached Map)

Primary Reach – Begins at a point 150 feet north and 800 feet west from the southeast corner of Section 10, Township 20 North, Range 16 East of the Willamette Meridian (E.W.M.), and ends at a point 2,000 feet north and 2,200 feet west of the southeast quarter corner of Section 14, Township 20 North, Range 16 E.W.M.

Secondary Reach – Begins at a point 2,000 feet north and 2,200 feet west of the southeast quarter corner of Section 14, Township 20 North, Range 16 E.W.M., and continues down the Teanaway River to the confluence with the Yakima River, continues downriver the Yakima River to the confluence with the Columbia River, and then downriver to the confluence of the Columbia River with the Pacific Ocean.

REACH	WATERBODY	RIVER MILE	TWN	RNG	SEC	LATITUDE	LONGITUDE
Begin Primary Reach	Teanaway River	7.8	20 N.	16 E.W.M.	10	47°13'56.53"N	120°49'5.00"W
End of Primary Reach and Begin Secondary Reach	Teanaway River	6.6	20 N.	16 E.W.M.	14	47°13'24.52"N	120°48'9.02"W
End Secondary Reach	Pacific Ocean	-	-	-	-	-	-

Datum: WGS84

Findings of Facts

Upon reviewing the investigator's report, I find all facts relevant and material to Change ApplicationNo. CS4-00914sb3g 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 Change Application No. CS4-00914sb3g, 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 (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 4th day of March 2015.

Sage Park, by Mark C. Schuyler

Sage Park, Section Manager
Water Resources Program/CRO

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Combined Report:
The following investigation pertains to two Water Right Change Application Nos. CS4-00914sb3g and CS4-00914sb3h.

BACKGROUND

Description and Purpose of Proposed Change

On November 21, 2013, Washington Water Trust (WWT) of Seattle, Washington, filed an application with the Washington State Department of Ecology (Ecology) to place a portion of Yakima Adjudication Court Claim No. 00914, Subbasin No. 3, into the State of Washington's Trust Water Right Program (TWRP). WWT requests a permanent transfer to the TWRP for instream flow and mitigation purposes in the Teanaway River. The application was accepted, administratively split into two applications and assigned Water Right Change Application Nos. CS4-00914sb3g and CS4-00914sb3h.

Court Claim No. 00914 was originally confirmed to Don Tidwell (Tidwell) for a maximum instantaneous diversion rate (Qi) of 0.30 cubic-feet per second (cfs) and an annual maximum quantity (Qa) of 97.5 acre-feet per year (ac-ft/yr) for the irrigation of 15 acres and stockwater, May 1 through September 15. The claim includes a surplus provision allowing diversion of an additional 0.30 cfs when all other existing rights are satisfied. This surplus water is typically available for a 30-day period in May and June.

Following flooding in January 2009, the authorized point of diversion was changed from the 3M Ditch to a downstream location adjacent to the place of use. Court Claim No. 00914 has since been divided to reflect portions sold to Steven and Michelle Heck (Hecks), WWT on behalf of Ecology, and the Harry Masterson Testamentary Trust (Masterson).

This report is specific to Application Nos. CS4-00914sb3g and CS4-00914sb3h, pertaining to WWT's and Masterson's portions of Court Claim No. 00914, respectively. WWT proposes to permanently transfer up to 0.478 cfs and 60.031 ac-ft/yr (CS4-00914sb3g) to instream flow within the Teanaway River and downstream on the Yakima River for environmental benefit. Masterson, who operates a mitigation bank under an agreement with Ecology, proposes to transfer up to 0.082 cfs and 10.169 ac-ft/yr (CS4-00914sb3h) to instream flow for mitigation of out of priority use.

There is no change proposed for the portion of Court Claim No. 00914 belonging to the Hecks.

Expedited Processing

These applications qualify for expedited processing under WAC 173-152-050(3)(a) whereby water right change applications may be processed prior to applications submitted at an earlier date when the proposed water use, if approved, would substantially enhance or protect the quality of the natural environment. This proposed change would increase instream flows, improving fish access to habitat in the upper Teanaway River basin, as well as provide mitigation for future water uses.

Based on the provisions of RCW 43.21A.690 and RCW 90.03.265, these applications have been processed by Aspect Consulting, LLC (Aspect Consulting) under Ecology Cost-Reimbursement Assignment No. ASP021 (Master Contract No. C1000185).

Table 1a: Attributes of Court Claim No. 00914 and Proposed Change Under No. CS4-00914sb3g

Attributes	Existing	Proposed
Name	Washington State Department of Ecology (formerly Don Tidwell)	-
Priority Date | Date of Application for Change	**Priority Date** – June 30, 1889	**Application Date** – November 21, 2013
Instantaneous Quantity	0.239 cfs and when surplus water is available in excess of that needed to satisfy all existing rights, an additional 0.239 cfs may be diverted.	Up to 0.478 cfs
Annual Quantity	60.031 ac-ft/yr	60.031 ac-ft/yr
Source	Teanaway River	Teanaway River
Point of Diversion/Withdrawal	SE¼SE¼ Section 10, Township 20 North, Range 16 E.W.M.	N/A
Purpose of Use	Irrigation of 9.2355 acres and Stockwater	Instream Flow
Period of Use	May 1 through September 15	May 1 through September 15
Place of Use	See Attachment 1	Teanaway and Yakima Rivers

Table 1b: Attributes of Court Claim No. 00914 and Proposed Change Under No. CS4-00914sb3h

Attributes	Existing	Proposed
Name	Harry Masterson Testamentary Trust (formally Don Tidwell)	-
Priority Date | Date of Application for Change	**Priority Date** – June 30, 1889	**Application Date** – November 21, 2013
Instantaneous Quantity	0.041 cfs and when surplus water is available in excess of that needed to satisfy all existing rights, an additional 0.041 cfs may be diverted.	Up to 0.082 cfs
Annual Quantity	10.169 ac-ft/yr	10.169 ac-ft/yr
Source	Teanaway River	Teanaway River
Point of Diversion/Withdrawal	SE¼SE¼ Section 10, Township 20 North, Ranch 16 E.W.M.	N/A
Purpose of Use	Irrigation of 1.5645 acres and Stockwater	Instream Flow and Mitigation
Period of Use	May 1 through September 15	May 1 through September 15
Place of Use	See Attachment 1	Teanaway and Yakima Rivers

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in Water Right Change Application Nos. CS4-00914sb3g and CS4-00914sb3h.

- **Public Notice**

  Notice of the proposed appropriations were published in *The Daily Record* of Ellensburg, Washington, on September 2 and 9, 2014. No protests were received by Ecology.

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

  The subject applications are categorically exempt under SEPA (WAC 197-11-305 and WAC 197-11-800(4)) because the instantaneous quantity is less than the 1.0 cfs threshold.

- **Water Resources Statutes and Case Law**

  A transfer to instream flows in the Yakima Basin is governed by RCW 90.38. RCW 90.38.040(1) states that all trust water rights acquired by Ecology shall be placed in the Yakima River Basin Trust Water Right Program to be managed by Ecology. Ecology shall issue a Certificate of Water Right in the name of the state of Washington for each trust water right it acquires. RCW 90.42.100(1) states that Ecology is authorized to use the Trust Water Rights Program in the Yakima River Basin for water banking purposes. RCW 90.42.100(2)(a) states that water banking may be used to mitigate for any beneficial use under chapter 90.03, 90.44 or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users. RCW 90.42.100(2)(b) states that water banking may be used to document water right transfers to and from the Trust Water Rights Program.

  The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp.*

INVESTIGATION

In consideration of these applications, Aspect Consulting reviewed available documents pertaining to the historic use of water, site conditions, WWT's calculations, and the potential effect on existing water rights. This included information submitted by the applicant and pertinent Ecology records including stream gage data, adjudication and water rights records, and water resource policy and guidance documents.

On April 8, 2014, Tyson Carlson (Aspect Consulting) and Kelsey Collins (Ecology) met with Jason McCormick of WWT to locate the original 3M Ditch point of diversion, its alignment from the point of diversion to the place of use, and to observe the historically irrigated acreage.

This project was presented at the Water Transfer Working Group (WTWG) on November 5, 2012. This group represents private, federal, state, and tribal groups interested in water right changes in the Yakima Basin. No objections were received from the WTWG.

History of Water Use

A water right was confirmed under Court Claim No. 00914 to Don Tidwell, in the Yakima River Basin Water Rights Adjudication for Subbasin No. 3, Teanaway River drainage basin, with a Conditional Final Order (CFO) signed on February 8, 2001.

From the point of diversion located on Teanaway River, water was historically conveyed via the 3M Ditch, which roughly paralleled Teanaway River Road, until diverted onto the place of use described above. The fields were generally irrigated by flood irrigation with graded furrow and gated pipe. Tail water was generally intercepted by several riparian areas and/or ponds located on the property, and then directed back toward the Teanaway River, rejoining the Teanaway River approximately 5,700 feet downstream from the original point of diversion.

The pastures were typically planted with timothy hay, and included a small (about 2.5 acres) orchard with ground cover in the northern portion of the property.

In January 2009, flooding of the Teanaway River destroyed the point of diversion, incised the river channel, and eroded several feet of river bank, and made gravity diversion into the ditch difficult. As the

result, property owners approached the Kittitas Conservation District (District) for technical assistance with converting to different irrigation methods and/or points of diversion. The District applied for and received a grant to fund the project from the Salmon Recovery Funding Board. The project decommissioned the 3M Ditch gravity diversion, converted the properties to different systems to withdraw and apply irrigation water, and/or facilitate use of the TWRP to protect the water rights. The project eliminated the largest and one of the last gravity diversions along the mainstem Teanaway River and provided improved fish passage and increased instream flow during late summer period.

Tidwell entered into an amended agreement with Ecology and WWT to sell his portion of Court Claim No. 00914 and place it into trust on July 13, 2012.

Extent and Validity

In order to make a water right change decision, Ecology must make a tentative determination on the extent and validity of the right. Under RCW 90.14.160 any portion of a water right or water right claim not exercised for a period of five successive years, without sufficient cause, shall be relinquished and revert to the state. In cases when a water right has had recent departmental action, including approval of a change application within the last 5 years, clarification is provided by *Water Resources Program Policy for Conducting Tentative Determination of Water Rights (POL-1120)*, indicating a simplified tentative determination may be conducted.

Since signing of the CFO for the Teanaway Subbasin in February 8, 2001, the water right has been exercised by irrigation of the place of use through the 2009 irrigation season, then following the flood, a series of donations and leases temporarily enrolled the right in the TWRP.

In 2010, Tidwell donated 97.5 acre-feet (ac-ft) to the TWRP, authorized in an *Order Pendente Lite (OPL)* signed in Yakima County Superior Court on June 10, 2010. In 2011, Tidwell applied to change the point of diversion from the original 3M diversion (No. CS4-00914sb3c@1), downriver to a point adjacent to the authorized place of use. The application was approved by the Kittitas County Water Conservancy Board, modified and approved by Ecology, then subsequently canceled upon request. During the course of the investigation, it was noted that there were only 11.6 irrigated acres inside the place of use. Accordingly, the annual quantity was reduced from 97.5 ac-ft to 75.4 ac-ft in Ecology's Final Order.

The claim was later divided between Tidwell (10.8 acres; 0.28 cfs and 70.4 ac-ft/yr) and the Hecks (0.77 acre; 0.02 cfs and 5.0 ac-ft/yr) by an Order Joining Party and Dividing Water Rights[1], signed on August 9, 2012. Tidwell's portion of the claim was then temporarily transferred to instream flow beginning in the 2013 irrigation season until such time as Ecology places the claim in permanent trust (*OPL* signed December 13, 2012). Tidwell's portion of the claim was again divided between Ecology and Masterson by an Order to Substitute Parties and Divide Water Right[2], signed November 14, 2013. Attributes of these two portions of the claim are described in Tables 1a and 1b above.

Review of aerial photos from the years 2003, 2005, 2006, 2009, 2011, and 2013, indicate that since issuance of the CFO, Tidwell's authorized place of use has either been irrigated or has been fallowed, with the water right donated to the TWRP or leased by WWT on behalf of Ecology as described above. Irrigation and/or fallowing of the acreage was also demonstrated in Landsat imagery over a similar time span. Furthermore, historic water use was substantiated by Stan Isley, Court Appointed Water Master for the Teanaway River.

Court Claim No. 00914 includes a provision that authorizes diversion of additional water during the spring freshet when all existing rights are satisfied. Under this provision, Ecology and Masterson are

[1] The Order included a calculation error in dividing the Place of Use, resulting in the loss of 0.03 acres.
[2] The Order included a calculation error in dividing the annual quantity (Qa), resulting in the loss of 0.2 ac-ft/yr.

authorized for an additional 0.239 and 0.041 cfs, respectively. This surplus water is normally only available for a 30-day period in May and June. Inspection of available flow data from the Bureau of Reclamation for the lower Teanaway River over the last several years indicate the spring freshet on the Teanaway River typically begins by late March, peaking at around 650 to 800 cfs, then declining to summer baseflow condition by mid-July (approximately 20 cfs). According to Stan Isley, water is available in most water years to fully satisfy the surplus diversion for a 30-day period.

No documented use of stock water was presented for consideration during this investigation.

Other Rights Appurtenant to the Place of Use

No other water rights for irrigation purposes are appurtenant to the Tidwell's authorized place of use, except for Hecks' retained portion of Court Claim No. 00914.

Trust Water Place of Use

Ecology typically manages its trust water rights by defining a primary and a secondary reach. The primary reach is the length of stream between the historic point of diversion and where any of the water diverted, not consumed, returns to the river.

The primary reach under this application begins from the original 3M Ditch point of diversion on the Teanaway River being approximately 150 feet north and 800 feet west from the southeast corner of Section 10, Township 20 North, Range 16 E.W.M. The portion being proposed for transfer into the TWRP will benefit the primary reach for the times and purposes to which they were prescribed as presented in Tables 2a and 2b below.

Return flow from the place of use is generally intercepted by several riparian areas and/or ponds located on the property, and then directed back toward the Teanaway River, converging approximately 5,700 feet downstream from the original point of diversion. It is assumed that no irrigation water, either surface or shallow groundwater, from the subject place of use returns back to the Teanaway River upstream of this point. No other diversions from the Teanaway River now exist within the primary reach. Therefore, the secondary reach begins on the Teanaway River near the downstream extent of the place of use, at a point 2,000 feet north and 2,200 feet west of the southeast quarter corner of Section 14, Township 20 North, Range16 E.W.M. The secondary reach extends downstream on the Teanaway River to the confluence with the Yakima River, and downstream on the Yakima River to the confluence with the Columbia River. The secondary reach then continues down the Columbia River to the confluence with the Pacific Ocean.

The consumptive use is eligible for protection as a trust water right in the secondary reach as described in Tables 3a and 3b below. The consumptive portion of the trust water right may serve as instream flow and instream flow and mitigation for out of priority water use from surface water sources and/or sources in continuity with the Yakima River. Any new appropriations seeking to mitigate with this right must show that they are water budget neutral with respect to the total water supply available (TWSA) in the Yakima Basin Project.

Instream flows in the Teanaway River for both portions of Court Claim No. 00914 in the secondary reach(es) may be measured at the newly established gage at Red Bridge Road.

Trust Water Right Calculations

This section describes how the nonconsumptive and consumptive water use values were calculated to identify how much water will be transferred into the TWRP from fallowing 9.2355 acres for the purpose of instream flow and 1.5645 acres for the purpose of instream flow and mitigation.

In the absence of meter records, Ecology uses various estimation methods such as the Washington Irrigation Guide (WIG) to estimate historic water use. The updated WIG data (Peters, et al. 2013) show the estimated average amount of water required by a crop above the portion of the requirement that might be met by antecedent moisture in the root zone under average climatic conditions (the amount of water a crop needs in excess of rainfall). The monthly WIG data indicate that the Crop Irrigation Requirement (CIR) for clover, the surrogate crop used for timothy hay near Cle Elum area, is 2.00 feet per acre. The surrogate use of clover was also assumed to be conservatively approximate to the CIR for the small orchard with groundcover (e.g., CIR for apples = 2.08 feet per acre; cherries with cover = 2.28 feet per acre).

Subbasin No. 3 (Teanaway River) adjudicated water rights were confirmed for a period of use from May 1 through September 15. However, the updated WIG indicates an average growing season of May through October for clover. It is therefore recognized that a small portion of beneficial use may occur outside the authorized period of use during an average irrigation season.

Using Ecology's *Guidance Document, GUID-1210, Determining Irrigation Efficiency and Consumptive Use*, application efficiency (Ea) was estimated to be 37 percent for flood irrigation. This estimate results from a calculation of the annual CIR (2.00 feet/acre) divided by the court confirmed water duty (5.4 feet/acre). Monthly Total Irrigation Requirement (TIR) was then calculated based on the monthly CIR for clover in the Clem Elum area (TIR = CIR/Ea). The sum of the monthly TIR multiplied by the number of irrigated acres is the total quantity of water required to fully irrigate the authorized place of use. The monthly TIR (in ac-ft) is converted to an instantaneous rate (in cfs) by dividing by the number of days in each respective month, then by the conversion factor 1.9834 ac-ft/day/cfs. The same analysis was completed for each application resulting in a maximum diversion rate (July TIR) of 0.231 cfs (WWT) and 0.039 cfs (Masterson).

Based on this analysis, the irrigation quantities (discussed above) available to be transferred into the TWRP for instream flow and instream flow and mitigation are summarized in Tables 2a and 2b below.

Table 2a: Quantities Eligible for Protection in TWRP (Primary Reach) for No. CS4-00914sb3g

Purpose	Unit	May	Jun	Jul	Aug	Sept	Oct	Total
Instream Flow	ac-ft	6.68	10.85	14.19	10.85	6.05	1.25	**49.87**
Average Qi	cfs	0.109	0.182	0.231	0.176	0.102	0.020	-

Table 2b: Quantities Eligible for Protection in TWRP (Primary Reach) for No. CS4-00914sb3h

Purpose	Unit	May	Jun	Jul	Aug	Sept	Oct	Total
Mitigation	ac-ft	1.13	1.83	2.40	1.83	1.02	0.21	**8.42**
Average Qi	cfs	0.018	0.031	0.039	0.030	0.017	0.003	-

The surplus diversion rate for each portion of the claim was specified by the Court at 0.239 (WWT) and 0.041 (Masterson) cfs. Surplus water is normally only available for a 30-day period in May and June. The surplus diversion volume was calculated as the difference between the total authorized Qa (60.031 ac-ft/yr for Ecology; 10.169 ac-ft/yr for Masterson) and the annual TIR specified in the tables above, equaling 10.16 and 1.75 ac-ft for WWT and Masterson's portion, respectively.

In determining percent of consumptive use (%CU), 5 percent was added to the Ea to account for evaporative losses, totaling 42 %CU. Monthly consumptive use for irrigation was then calculated by

multiplying the TIR by the specified %CU and the area to be fallowed. Total consumptive use is the sum of the monthly consumptive use.

Based on this analysis, Table 3a summarizes the amount of consumptive use from fallowing of 9.2355 acres for instream flows and Table 3b summarizes the amount from fallowing of 1.5645 acres for instream flows and mitigation for out of priority use that will be available in the TWRP.

Table 3a: Consumptive Use (Secondary Reach) for No. CS4-00914sb3g

Purpose	Unit	May	Jun	Jul	Aug	Sept	Oct	Total
Instream Flow	ac-ft	2.80	4.54	5.94	4.54	2.53	0.52	**20.89**
Average Qi	cfs	0.045	0.076	0.097	0.074	0.043	0.009	-

Table 3b: Consumptive Use (Secondary Reach) for No. CS4-00914sb3h

Purpose	Unit	May	Jun	Jul	Aug	Sept	Oct	Total
Mitigation	ac-ft	0.47	0.77	1.01	0.77	0.43	0.09	**3.54**
Average Qi	cfs	0.008	0.013	0.016	0.013	0.007	0.001	-

Trust Water Management

Under Water Right Change No. CS4-00914sb3g, a portion of Court Claim No. 00914 is being changed to instream flow, which shall be protected against diversion and use by junior priority water users from the authorized point of diversion to the confluence of the Yakima and Columbia Rivers, then down the Columbia River to the Pacific Ocean.

In addition, another portion of Court Claim No. 00914 (Water Right Change No. CS4-00914sb3h) is being change to instream flow and mitigation for out of priority water use. As a condition of placing this portion into the State TWRP, a portion of the water placed into trust may be available as mitigation to address the issue of impairment consistent with WAC 173-539A. These quantities will be managed by Ecology as outlined in the project's Trust Water Right Agreement.

Impairment Considerations

Under RCW 90.38.040(5)(a), a trust water right may be exercised only if Ecology first determines that the authorization will not impair or injure any other water rights.

Following flooding in 2009, the historic 3M Ditch, including the gravity surface diversion, was decommissioned by the District. In addition, the six landowners on the ditch were converted to either alternate irrigation supplies, such as down-river point(s) of diversion on either the mainstem Teanaway River or adjacent ponds, or their water rights were placed in the TWRP. Landowners Carollo and Badda, both located within the primary reach, have received authorization to divert from two new points of diversion located downriver, and the proposed changes to instream flow being considered here will not cause a reduction in the availability of water. Similarly, no senior water right in the secondary reach will be negatively affected by increased instream flows during the irrigation season. Therefore, based on these considerations, transferring the subject portions of Court Claim No. 00914 to trust is not expected to impair other water rights.

Consideration of Protests and Comments

No protest or comments were received for consideration.

CONCLUSIONS

A portion of Court Claim No. 00914 is appurtenant to the subject property. Review of the evidence provided within this report and proceedings within the Yakima River Basin Adjudication Court, including Ecology's Final Order (No. CS4-00914sb3c@1) indicate that a total of 11.6 acres have been historically and beneficially used under Court Claim No. 00914. Since that time, the Hecks have purchased 0.77 acres, WWT (on behalf of Ecology) purchased 9.2355 acres, and Masterson purchased 1.5645 acres.

In accordance with chapter 90.38 RCW and *Water Resources Program Policy POL-1120*, the author makes a simplified tentative determination (based on Ecology's Final Order on CS4-00914sb3@1 dated November 18, 2011) that WWT's portion of Court Claim No. 00914 represents a valid right to divert water from the Teanaway River in quantities up to 0.239 cfs and 60.031 ac-ft for the irrigation of 9.2355 acres, from May 1 through September 15, and Masterson's portion of Court Claim No. 00914 represents a valid right to divert water from the Teanaway River in quantities up to 0.041 cfs and 10.169 ac-ft for the irrigation of 1.5645 acres, from May 1 through September 15.

In addition, when surplus water is available in excess of what is needed to satisfy all existing rights, diversion up to 0.478 and 0.082 cfs for WWT's and Masterson's portion, respectively, is available for a 30-day period in May and June.

Approval of this water right change request as provisioned will not enlarge the water right or impair existing water rights.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to Application No.'s CS4-00914sb3g and CS4-00914sb3h be approved in the amounts and within the limitations described on Page 1 and subject to the provisions beginning on Page 2 of this Report of Examination.

Change Application CS4-00914sb3g

Primary Reach

Up to 0.478 cfs (May 1 through May 30) and 0.239 cfs (May 31 to September 15), and 60.031 ac-ft/yr to be used for the purpose of instream flow.

Secondary Reach:

Purpose	Unit	May	Jun	Jul	Aug	Sept	Oct	Total
Instream Flow	ac-ft	2.80	4.54	5.94	4.54	2.53	0.52	**20.89**
(average)	cfs	0.045	0.076	0.097	0.074	0.043	0.009	-

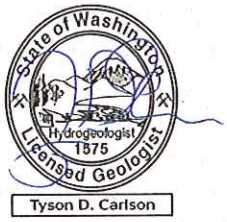
Change Application CS4-00914sb3h

Primary Reach

Up to 0.082 cfs (May 1 through May 30) and 0.041 cfs (May 31 through September 15), and 10 ac-ft/yr to be used for the purpose of instream flow and mitigation.

Secondary Reach

Purpose	Unit	May	Jun	Jul	Aug	Sept	Oct	Total
Mitigation	ac-ft	0.47	0.77	1.01	0.77	0.43	0.09	**3.54**
Average Qi	cfs	0.008	0.013	0.016	0.013	0.007	0.001	-



Report by: _____ 2/27/2015

Tyson D. Carlson, LHG, Aspect Consulting, LLC — Date

Reviewed by: Kelsey J. Collins 3/4/15

Kelsey Collins
Water Resources Program — Date

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ATTACHMENT 1