



STATE OF WASHINGTON
 DEPARTMENT OF ECOLOGY
DRAFT
TRUST WATER RIGHT
REPORT OF EXAMINATION
Change of Purpose and Place of Use
 WRTS File No.: CS4-00950CTCLsb11

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
June 30, 1872	Yakima Adjudications 00950, (A)03025		

NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM		
Menastash Water Ditch Association		
ADDRESS/STREET	CITY/STATE	ZIP CODE
PO Box 1088	Ellensburg, WA	98924-1088

TRUST WATER RIGHT ATTRIBUTES

SOURCE		
Manastash Creek		
TRIBUTARY OF (IF SURFACE WATERS)		
Yakima River		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
2.8		844.23

QUANTITY, TYPE OF USE, PERIOD OF USE

Primary Reach
 2.8 cubic feet per second for instream flow from April 1 through June 30
 1.4 cubic feet per second for instream flow from July 1 through October 31
 Total annual quantity not to exceed 844.23 acre-feet per year.

Secondary Reach
 There is no secondary reach for this trust water change.

HISTORIC POINT OF DIVERSION OR WITHDRAWAL

APPROXIMATE LOCATION OF HISTORIC DIVERSION / WITHDRAWAL					
500 feet south and 150 feet east from the north quarter corner of Section 14, T. 17 N., R. 17 E.W.M.					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
NW ¹ / ₄ NE ¹ / ₄	14	17	17 E.	39	Kittitas
PARCEL NUMBER	LATITUDE	LONGITUDE		DATUM	
	N 46.96974	W 120.67589		NAD 83	

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

Primary Reach
 The primary reach begins on Manastash Creek at the historic point of diversion located approximately 500 feet south and 150 feet east from the north quarter corner of Section 14, T. 17 N., R. 17 E.W.M. (approximate creek mile 5.6) and ends at the confluence with the Yakima River (approximate Yakima River mile 154.5).

Secondary Reach
 There is no secondary reach for this trust water change.

TRUST WATER RIGHT TERM

BEGIN DATE	END DATE
July 1, 2008	Perpetuity

**PORTION OF WATER RIGHT
NOT PLACED INTO TRUST
WRTS File #: CS4-00950CTCLsb11**

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
June 30, 1872	Yakima Adjudications 00950, (A)03025		

NAME Menastash Water Ditch Association		
ADDRESS/STREET	CITY/STATE	ZIP CODE
PO Box 1088	Ellensburg, WA	98926-1088

WATER RIGHT ATTRIBUTES

SOURCE Manastash Creek		
TRIBUTARY OF (IF SURFACE WATERS) Yakima River		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
25.16		7,598.27 for irrigation 118.2 for stock water
QUANTITY, TYPE OF USE, PERIOD OF USE		
<p>25.16 cubic feet per second for irrigation and stock water use from April 1 through June 30. 12.58 cubic feet per second for irrigation and stock water use from July 1 through October 31. Total annual quantity from April 1 through October 31 is not to exceed 7,598.27 acre-feet per year to irrigate 1,971.7 acres.</p> <p>13.98 cubic feet per second for stock water only from November 1 through March 31 Total annual quantity not to exceed 118.2 acre-feet per year</p>		

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION—WITHDRAWAL					
500 feet south and 150 feet east from the north quarter corner of Section 14, T. 17 N., R. 17 E.W.M.					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
NW¼NE¼	14	17	17 E.	39	Kittitas
PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM		
	N 46.96974	W 120.67589	NAD 83		

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED
[See Attachment 2 for a map of the place of use and point of diversion]

Beginning at a point approximately 1320 feet south and 50 feet west from the northeast corner of Section 11, T. 17 N., R. 17 E.W.M. at the intersection of Richards County Road and the Manastash Ditch; thence proceeding in a generally northerly direction along the Manastash Ditch to the northwest corner of the southwest ¼ of Section 1, T. 17 N., R. 17 E.W.M., in the County of Kittitas, State of Washington; Thence north to the northwest corner of Section 36, T. 18 N., R. 17 E.W.M., said County and State, thence east along the Robinson Canyon County Road to the intersection with the Manastash Ditch; thence in a generally northerly direction along the alignment of said ditch to the intersection with the West Side Canal lying within the northeast ¼ of Section 25, T. 18 N., R. 17 E.W.M., said County and State; thence in a generally southeasterly direction along the alignment of West Side Canal to the intersection with Robinson Canon County Road; thence easterly along said Robinson Canyon County Road to the northeast corner of the northwest ¼ of the northeast ¼ of Section 31, T. 18 N., R. 18 E.W.M., said County and State; thence south approximately 1320 feet; thence west to the intersection of the West Side Canal; thence following said canal in a generally southerly direction to a point where it intersects with Weaver County Road; thence west on Weaver County Road to the northwest corner of Section 5, T. 17 N., R. 18 E.W.M., said County and State; thence south along the section line approximately 100 feet; thence proceeding along a line approximately south 70° west 1500 feet; thence proceeding along a line in a northwesterly direction approximately 1300 feet to the northeast corner of the southeast ¼ of the northwest ¼ Section 6, T. 17 N., R. 18 E.W.M., said County and State; thence running south approximately 4000 feet to the intersection with Hanson County Road; thence west 1320 feet to southwest corner of the southeast ¼ of the southwest ¼ of Section 6, T. 17 N., R. 18 E.W.M., said County and State; thence north approximately 2640 feet to the northeast corner of the northwest ¼ of the southwest ¼ of said Section 6; thence proceeding on a line due west to the intersection of Cove County Road; thence south along Cove County Road to the intersection with Richardson County Road; thence proceeding west on Richardson County Road to Hatfield Canyon lateral; thence north along the lateral alignment to the corner of the northeast ¼ of the northwest ¼ of Section 12, T. 17 N., R. 17 E.W.M.; thence west to the northwest corner of the northeast ¼ of the northwest ¼ of said Section 12; thence south to Richards County Road; thence west to the point of beginning.

DESCRIPTION OF WATER SYSTEM

N/A

DEVELOPMENT SCHEDULE

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

PROVISIONS

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

General

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

When flows in Manastash Creek are at a level that does not allow Manastash Water Ditch Association (MWDA) to divert their entire water right, the flow rate for instream flow shall equal 10% of the water available to MWDA to divert.

Measurements, Monitoring, Metering and Reporting

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

- (1) The trust water right shall be measured at the historic point of diversion (the MWDA diversion) described as 500 feet south and 150 feet east of the north quarter corner of Section 14, being within the NW¹/₄NE¹/₄ of Section 14, Township 17 N., Range 17 E.W.M. The trust water quantities may be protected only at this point on Manastash Creek.
- (2) The instantaneous and annual quantities of trusted water shall be measured daily at a point on Manastash Creek immediately downstream of the Reed Diversion described as a point 600 feet north and 700 feet east from the southwest corner of Section 12 being within the SW¹/₄SW¹/₄ of Section 12, T. 17 N., R. 17 E.W.M. on Manastash Creek. Quantities measured here are for monitoring goals set forth by the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan and The Resolution of Manastash Steering Committee Regarding Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan.
- (3) Upon funding availability a measuring device shall be measured daily downstream of the Barns Road diversion at a point within the SW¹/₄NE¹/₄, Section 4, T. 17 N., R. 18 E.W.M. The exact location is not known at this time. Quantities measured here are for monitoring goals set forth by the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan and The Resolution of Manastash Steering Committee Regarding Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan.

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

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

General

The remaining portion of Court Claim No. 00950, (A)03025 shall follow the provisions listed within the *Report of the Referee* dated May 9, 1994, *Supplemental Report of the Referee* dated April 17, 1998, *Second Supplemental Report of the Referee* dated April 23, 2001, and the *Conditional Final Order for Subbasin 11 (Manastash Creek)* within the Yakima River Adjudication, *The State Of Washington Department of Ecology vs. James J Acquavella, et al.* (Yakima Adjudication) unless superseded by a Final Decree or other such superseding document.

Measurements, Monitoring, Metering and Reporting

The remainder of Court Claim No. 00950, (A)03025 shall comply with the *Order Requiring Metering Measuring, and Reporting Requirements, All Subbasins (1-31) in Benton, Kittitas, and Yakima Counties* entered September 15, 2005, in the Yakima Adjudication. A copy of the order is included with hard copies. The order may be viewed at the following web site: <http://www.ecy.wa.gov/programs/wr/measuring/images/pdf/order772014845.pdf>.

Fish Screening

The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program. Phone (360) 902-2534 if you have questions about screening criteria. <http://www.wdfw.wa.gov/reg/regions.htm>

FINDINGS OF FACT AND ORDER

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

Therefore, I ORDER the requested change of place and purpose of use under Trust Water Right Application No. CS4-00950CTCLsb11, 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 _____ day of _____ 2009.

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

BACKGROUND

Description and Purpose of Proposed Change

On June 13, 2008 the Menastash Water Ditch Association (MWDA) of Ellensburg Washington, filed a change application to add a purpose of use and change the place of use under Court Claim No. 00950(A) (03025) in *The State of Washington, Department of Ecology v. James J. Acquavella, et. al.* (*Acquavella*). This application was accepted and assigned application number CS4-00950CTCLsb11. This change application is one of five that were filed as part of a reverse auction held by the Washington Department of Ecology (Ecology) and Washington Rivers Conservancy (WRC). This application addresses one member of the MWDA (Dave Duncan). Mr. Duncan proposes to sell a portion of his MWDA shares to the Washington State Trust Water Rights Program (TWRP). This application proposes to place a portion of Mr. Duncan's shares, equating to an annual quantity of 844.23 acre-feet per year (acre-ft/yr) of water and a delivery rate of 2.8 cubic feet per second (cfs) from April 1 through June 30, and 1.4 cfs from July 1 through October 31, into the TWRP. This trust water right will be for permanent instream flow enhancement in Manastash Creek. Mr. Duncan intends to continue irrigating his property with shares from the Kittitas Reclamation District (KRD).

The Kittitas County Conservation District has applied to change the point of diversion (POD) from three existing PODs (Reed, Hatfield, and Anderson) on behalf of their users upstream to the existing MWDA POD. This change application is one element in the Manastash Creek Restoration Project (described in the "Investigation" section of this report). It is intended to be part of the mitigation for potential impacts to Manastash Creek associated with the upstream move in point of diversion. Four other trust water change applications have also been filed with Ecology as part of the same mitigation.

Five separate Reports of Examination (ROEs) will be written for each application. Although many elements of the five ROEs will be similar or identical in parts, each proposed change in place and purpose of use will be evaluated individually. This ROE only addresses Ecology's conclusions and recommendations related to Water Right Change Application No. CS4-00950CTCLsb11.

Expedited Processing

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

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

Attributes of Court Claim No. 00950, (A)03025 and Proposed Change

Table 1: Summary of Existing Attributes and Proposed Changes to Court Claim No. 00950, (A)03025

Attributes	Documented	Proposed
Name	Menastash Water Ditch Association	Washington Rivers Conservancy
Priority Date Date of Application for Change	June 30, 1872	June 13, 2008
Instantaneous Quantity	27.96 cfs from April 1 through June 30 13.98 cfs from July 1 through March 31	<p>Trust Water Portion 2.8 cfs from April 1 through June 30 1.4 cfs from July 1 through October 31 0.0 cfs November 1 through March 31</p> <p>Remaining Portion 25.16 cfs from April 1 through June 30 12.58 cfs from July 1 through October 31 13.98 cfs November 1 through March 31</p>
Annual Quantity	8,442.5 acre-feet per year for irrigation 118.2 acre-feet per year for stock water	<p>Trust Water Portion 844.23 acre-feet per year</p> <p>Remaining Portion 7,598.27 ac-ft per year for irrigation 118.2 ac-ft per year for stock water</p>
Source	Manastash Creek	Manastash Creek
Point of Diversion/Withdrawal	NW ¹ / ₄ NE ¹ / ₄ of Section 14, T. 17 N., R. 17 E.W.M., Kittitas County	<p>Trust Water Portion N/A</p> <p>Remaining Portion 500 feet south and 150 feet east of the north quarter corner of Section 14, being within the NW¹/₄NE¹/₄ of Section 14, Township 17 N., Range 17 E.W.M.</p>
Purpose of Use	Irrigation and stock water	<p>Trust Water Portion Instream flow purposes</p> <p>Remaining Portion Irrigation and stock water</p>
Period of Use	April 1 through October 31 for irrigation Year round for stock	<p>Trust Water Portion April 1 through October 31</p> <p>Remaining Portion April 1 through October 31 for irrigation Year round for stock</p>
Place of Use	See Attachment 3	<p>Trust Water Portion Manastash Creek from MWDA point of diversion described as 500 feet south and 150 feet east of the north quarter corner of Section 14, being within the NW¹/₄ NE¹/₄ of Section 14, Township 17 N., Range 17 E.W.M. to the confluence with the Yakima River.</p> <p>Remaining Portion See attachment 3</p>

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in purpose and place of use:

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

INVESTIGATION

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

- Documentation submitted with the applications
- Conversations with:
 - Washington Rivers Conservancy (WRC) staff
 - Review of recent aerial photography
 - Ecology staff
 - Manastash Steering Committee Members
 - Dave Duncan (MWDA member).
- Washington State Water Code (WAC) and administrative rules and policies
- Yakima County Superior Court *Reports of Referee and Conditional Final Order (CFO) in Acquavella Subbasin No. 11 (Manastash Creek)*
- Yakima County Superior Court *Report of the Court Concerning the Water Rights for the Kittitas Reclamation District*. Vol. 14
- Manastash Creek Project Summary Memorandum (Golder 2006)
- Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan (Kittitas County Conservation District, 2007a)
- Resolution of the Manastash Steering Committee Regarding this plan. (Kittitas County Conservation District, 2007b)

History of Water Use

The Manastash Water Ditch Association (MWDA) was formed in 1884 by a group of irrigators who all used the same irrigation ditch. The irrigators formed the MWDA to organize and share maintenance of the ditch and head works. There were originally 30 shares (30 cfs) divided among the irrigators. The irrigated lands lay north of Manastash Creek and water was (and still is) delivered through an earthen canal system.

Manastash Creek is part of the Yakima River Basin Water Rights Adjudication (*Department of Ecology v. James J. Aquavella, et al.*) (Yakima Adjudication). During the Yakima Adjudication proceedings, a *Conditional Final Order* (CFO) specific to Manastash Creek (Subbasin No. 11) issued on June 14, 2001. Court Claim No. 00950, (A)03025, the subject court claim of this Report of Examination, was part of the Yakima Adjudication proceedings and is addressed in Reports of the Referee for Subbasin No. 11 and in the CFO for Subbasin No. 11. The confirmed water quantities for Court Claim No. 00950, (A)03025 are listed in Table 1. The Court granted a water duty of 3.85 acre-feet per acre, per year, for irrigation from Manastash Creek. The lands irrigated by MWDA are also supplied irrigation water by the Kittitas Reclamation District (KRD) as an alternate source (Court Claim No. 0465).

Dave Duncan is a member of the MWDA and holds the right to the shares of Manastash Creek water proposed for this change. Mr. Duncan is the legal owner of the land where this water has been put to beneficial use. He has irrigated timothy hay and pasture turf on the property. Flood irrigating is the current and historic method of irrigating these fields. These lands have been served by KRD water as well as Manastash Creek water. KRD water is diverted from the Yakima River at Lake Easton. When Mr. Duncan's property does not receive sufficient water from Manastash Creek, his land is then irrigated using KRD water.

Based on reviewing 2002, 2005, and 2006, aerial photos and statements by the applicant, it appears the entire 2,191 acre place of use has been irrigated since the CFO issued. No evidence of non-use prior to June 14, 2001, the date the CFO issued, has surfaced. By fully using Mr. Duncan's share of the MWDA's water right, his share of the water right is protected from relinquishment under Chapter 90.14 RCW.

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

The Court recognized this recurring pattern and the CFO for Subbasin 11 (Manastash Creek) issued with a reduced instantaneous rate of water delivery later in the water year for the majority of irrigation rights. These rights are reduced by 50% on July 1. However, natural conditions typically have already reduced the flow to the point where only Class 1 and a portion of the Class 2 water is available after July 1.

In 2005, a statewide drought had an effect on the water supply to the Manastash Basin. The drought impacted the ability of the MWDA to divert water. Because MWDA is junior to other rights, they are required to reduce their diversion of water until senior water users receive their full entitlement. Due to the drought, reduction took place earlier in the irrigation season than in an average water year.

Manastash Creek Restoration Project History

The Manastash Creek Restoration Project is implemented by the Manastash Creek Steering Committee with assistance from the Kittitas County Conservation District (KCCD). The Manastash Creek Steering Committee was formed in 2001 and consists of representatives of the water users of Manastash Water Ditch Association, Keach Ditch, Jensen Ditch, Hatfield Ditch, Reed Ditch, Anderson Diversion, and Barnes Road Diversion, as well as representatives of the Washington State Department of Ecology, Washington State Department of Fish & Wildlife, Washington Environmental Council, Westside Irrigation Company, Kittitas Reclamation District, US Bureau of Reclamation and the Yakama Nation.

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

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

The Washington State Legislature appropriated \$2.24 million in 2002 for construction of fish screens and fish passage at Manastash Creek diversions. In addition to those funds, the Bonneville Power Administration awarded \$1.4 million to the Manastash Project through the Washington State Department of Fish & Wildlife in 2002 to construct fish screen, water metering, and fish passage facilities.

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

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

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

Proposed Use

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

Other Water Rights Appurtenant to the Place of Use

Specific to Mr. Duncan's property subject to this change application, this property is within the Kittitas Reclamation District (KRD) boundaries and has historically been delivered water to fulfill crop requirements when water was unavailable from Manastash Creek. If this change is approved, Mr. Duncan intends to irrigate the property in full using KRD water under Court Claim No. 0465 in lieu of water from Manastash Creek.

Hydrologic/Hydrogeologic Evaluation

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

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

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

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

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

Trust Water Right Primary and Secondary Reaches

If this change application is approved, the subject property is intended to be irrigated entirely by water provided by the Kittitas Reclamation District (KRD). (KRD water source is the Yakima River). The method of irrigation (flood) is not intended to change. As such, the amount of water being applied to Mr. Duncan's property would remain the same – or even less during periods of KRD proration. Return flow pathways would, therefore, remain as before, the majority of which are likely intercepted by the Yakima River upstream of its confluence with Manastash Creek.

A primary reach is comprised of both consumptive and non-consumptive water. The primary reach extends from the historical diversion point to an area where most return flows would have returned to the surface water source. Under this change application, irrigation water historically used is proposed to remain in Manastash Creek. This water is comprised of both the consumptive and non-consumptive portions that Dave Duncan has historically used. It would be able to be protected in the primary reach only. The primary reach is described below.

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

Trust Water Right Calculations

Dave Duncan has proposed to convey a portion of his portion of the MWDA's confirmed right under Court Claim No. 00950, (A)03025 (source is Manastash Creek) to the state's TWRP. Mr. Duncan's portion proposed for trust is an annual quantity of 844.23 acre-ft/yr. This represents 219.3 acres and an instantaneous rate of 2.8 cfs from April 1 through June 30, and 1.4 cfs from July 1 October 31. This amount is approximately 10% of the MWDA right.

The conversion of the 844.23 acre-feet into the instantaneous quantity and irrigated acres that it represents is illustrated in the following equations:

Entire right

$$2,191 \text{ acres} \div 844.23 \text{ acre-ft} = 3.85 \text{ acre-ft per acre}$$

$$27.96 \text{ cfs} \div 2191 \text{ acres} = 0.0128 \text{ cfs per acre}$$

Trust portion

$$844.23 \text{ acre-ft} \div 3.85 \text{ acre-ft per acre} = 219.3 \text{ acres}$$

$$219.3 \text{ acres} * 0.0128 \text{ cfs per acre} = 2.8 \text{ cfs}$$

Trust Water Place of Use

The trust water primary reach is described as beginning at the historic point of diversion (the MWDA diversion) located approximately 500 feet south and 150 feet east from the north quarter corner of Section 14, T. 17 N., R. 17 E.W.M. (approximate Creek Mile 5.6) and extending to the confluence with Manastash Creek and the Yakima River (approximate Yakima River Mile 154.5).

Trust Water Management

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

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

If this change application is approved, in accordance with the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan, when flows in Manastash Creek are at a level that does not allow the Manastash Water Ditch Association (MWDA) to divert their entire water right, the flow rate for instream flow would equal 10% of the water available to MWDA to divert.

Impairment Considerations

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

When considering impairment, consideration is given to the change in water sources. Historically, Mr. Duncan's land subject to this change has used irrigation water from both Manastash Creek (the MWDA Diversion) and the Yakima River (KRD's Lake Easton Diversion). When irrigation water was unavailable from Manastash Creek, the KRD would provide the balance. If this application is approved, the applicant would be limited to irrigation water provided by the KRD. This represents a change in Mr. Duncan's water delivery regime. Because return flow pathways would remain the same, the resulting effect on the Yakima River would be felt from the KRD's Lake Easton Diversion (approximate River Mile 203) to its confluence with Manastash Creek (approximate River Mile 154.5). This stretch of the Yakima River is the "affected reach" described in the next two paragraphs.

Potential impacts within the affected reach associated with the proposed change center on 2.8 cfs – the amount being forgone from Manastash Creek. Timing of the impact would normally only affect the early part of the irrigation season, when Mr. Duncan would have been using Manastash Creek water. Later in the season, irrigation water derived from the KRD anyway. Note that, historically, Mr. Duncan has had the flexibility to use KRD water instead of MWDA water at any time.

The Yakima River is regulated by the Bureau of Reclamation (Bureau) with water from artificial storage. Water released from storage serves rights under contract with the Bureau. The Bureau's regulation directly affects flows in the affected reach. The USGS hydrograph at Umptanum indicates that Yakima River levels in that area fluctuate generally between 2000 cfs and 5000 cfs from April through August (with some higher spikes) and reduce to approximately 1000 cfs in September and October. Both the Washington State Department of Fish and Wildlife and the Yakama Nation have indicated that restoring continuous flow in Manastash Creek is preferable to the maximum 2.8 cfs effect on the Yakima River in the affected reach. Note that 2.8 cfs is approximately 0.1% of 2000 cfs and 1.4 cfs is approximately 0.1% of 1000 cfs. The increase in diverted amount is negligible within the affected reach.

Enhancement and the KRD Right

This change proposal is unique in that the primary source of irrigation water (MWDA – Manastash Creek) would be conveyed into trust and the subject property is intended to be irrigated in full via an alternate source (KRD – Yakima River). No lands will be provisioned to be fallowed.

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

Enhancement and the Remaining MWDA Right

If the change application is approved, the exact annual quantity and instantaneous rate for conveyance into trust would be deducted from the confirmed quantities in Court Claim No. 00950, (A)03025 (the MWDA right). The season of use would remain the same.

In addition, when flows in Manastash Creek are at a level that does not allow the MWDA to divert their entire water right, the flow rate for instream flow would equal 10% of the water available to MWDA to divert. By reducing the water quantities of the MWDA right as such, the right will not be enhanced. (The amount proposed for trust is approximately 10% of the MWDA right.)

A Word on Foreign Return Flows

Return flows, including foreign return flows, have primarily augmented the flow in Manastash Creek only downstream of most diversions on Manastash Creek. Some return flows may be intercepted by other irrigation canals before they can return to Manastash Creek. The Yakima Adjudication Court determined that only those return flows that originate from Manastash Creek (and could demonstrate legal, historic use) could be confirmed a return flow right in Subbasin 11 (Manastash Creek).

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

A Word on TWSA

TWSA stands for the Total Water Supply Available and is comprised of the entire Yakima River basin outflow. Some TWSA water comes from artificial storage, used to fulfill Bureau of Reclamations contracted rights. Each user has an assigned amount each year, which is their proportion of the available TWSA (Bureau of Reclamation 2002). A measuring point of TWSA is at Parker, Washington, located downstream of Union Gap, Washington.

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

Public Interest Considerations

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

CONCLUSIONS

A portion of Court Claim No. 00950, (A)03025 is appurtenant to the subject property. Review of the evidence provided within this report and proceedings within the Yakima River Basin Adjudication Court indicate that a total of 2,191 acres have been historically and beneficially used under Court Claim No. 00950, (A)03025. This includes the subject property.

In accordance with Chapter 90.38 RCW, the author makes a tentative determination that Court Claim No. 00950, (A)03025 represents a valid water right authorized to divert up to 27.96 cfs from April 1 through June 30, and 13.98 cfs from July 1 through March 31, up to 8560.7 acre-ft/yr of water from Manastash Creek.

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

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

RECOMMENDATIONS

Based on the above investigation and conclusions, the author recommends that the application for change to Court Claim No. 00950, (A)03025 be approved in the amounts and within the limitations listed below and subject to the provisions listed in this Report of Examination.

Trust Water Right Attributes

Maximum of 2.8 cfs from April 1 through June 30 and maximum 1.4 cfs from July 1 through October 31, not to exceed 844.23 acre-ft/yr for instream flow for fish maintenance and enhancement, recreation uses and preservation of environmental and aesthetic values in Manastash Creek.

The primary reach begins at the current head works of the MWDA system on Manastash Creek described as 500 feet south and 150 feet east of the north quarter corner of Section 14, being within the NW¹/₄NE¹/₄ of Section 14 of T. 17 N., R. 17 E.W.M. and extends to the confluence with the Yakima River.

There is no secondary reach for this trust water change.

Remaining Portion of Court Claim No. 00950, (A)03025 (the MWDA right) Attributes

Maximum of 25.16 cfs from April 1 through June 30 and maximum 12.58 cfs from July 1 through October 31, not to exceed 7,598.27 acre-ft/yr for irrigation of 1,971.7 acres, and a maximum of 13.98 cfs for stock water only from November 1 through March 31, not to exceed 118.2 acre-ft/yr.

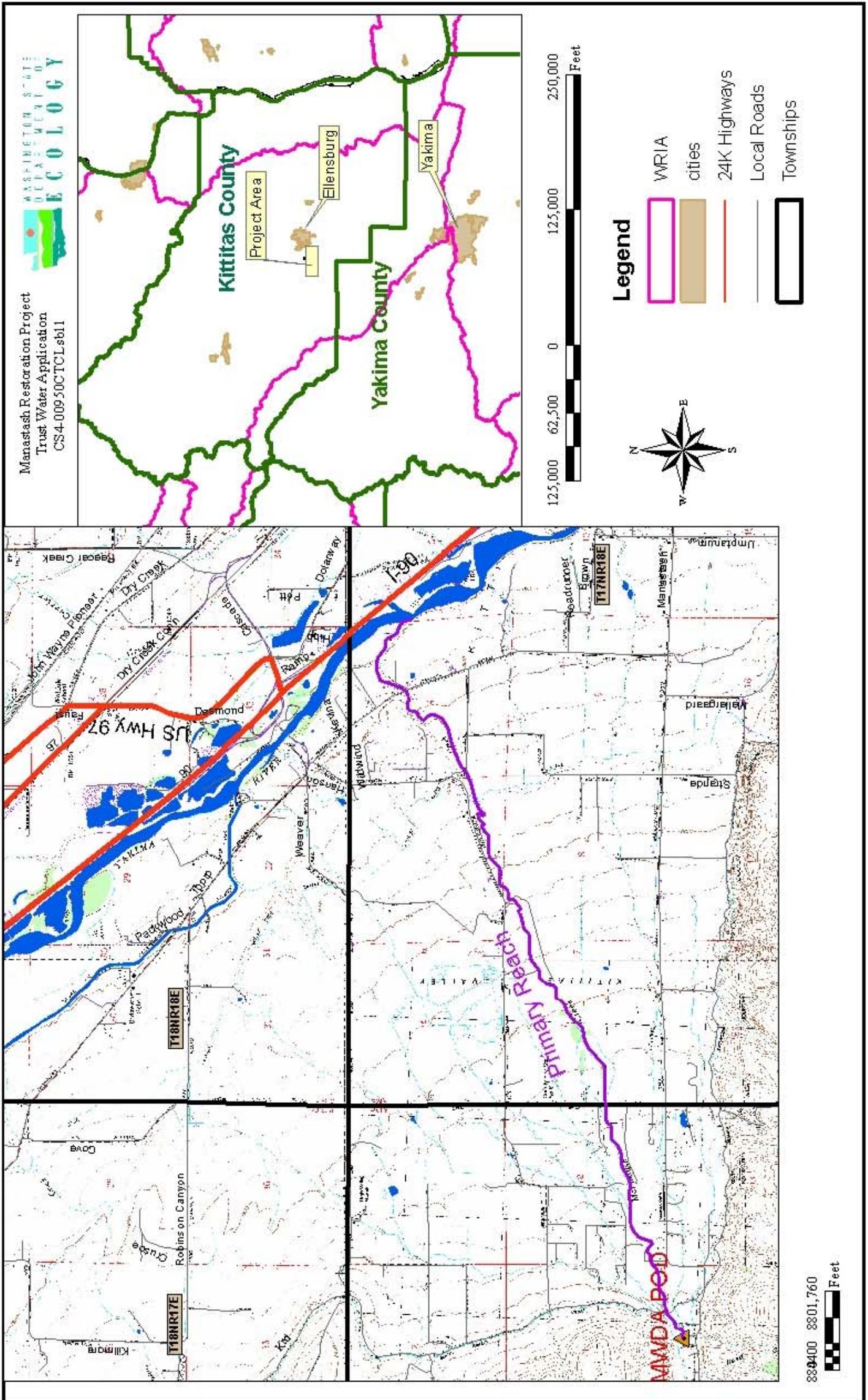
Report by: _____
Eric A Hartwig, Water Resources Program

Date

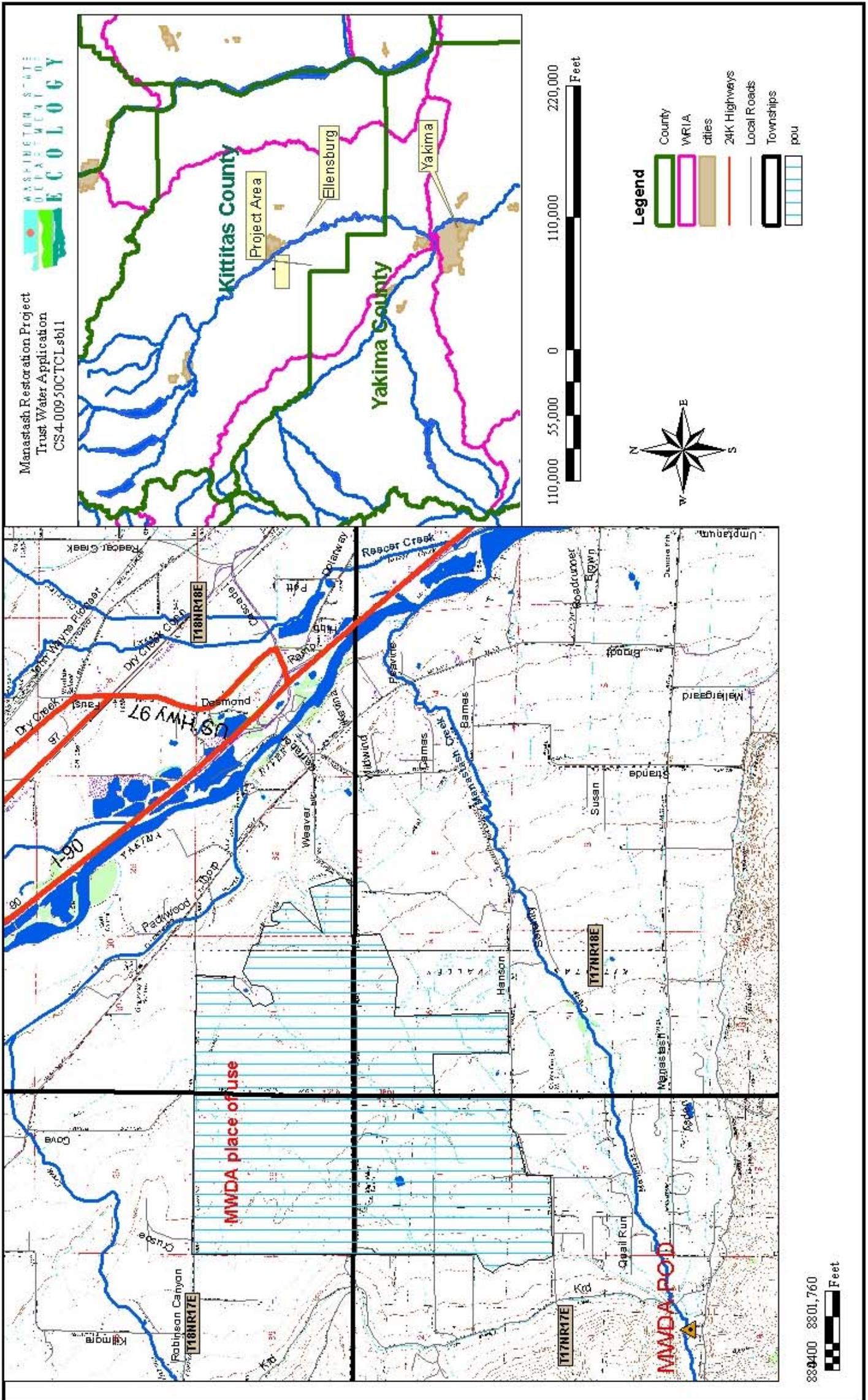
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- Kittitas County Conservation District. 2007b. Resolution of Manastash Steering Committee Regarding Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan.
http://www.kccd.net/Current_Protects/Manastash/Signed%20Implementation%20Plan%20Resolution.pdf

Attachment 1



Attachment 2



Attachment 3

Beginning at a point approximately 1320 feet south and 50 feet west from the northeast corner of Section 11, T. 17 N., R. 17 E.W.M. at the intersection of Richards County Road and the Manastash Ditch; thence proceeding in a generally northerly direction along the Manastash Ditch to the northwest corner of the southwest $\frac{1}{4}$ of Section 1, T. 17 N., R. 17 E.W.M., in the County of Kittitas, State of Washington; Thence north to the northwest corner of Section 36, T. 18 N., R. 17 E.W.M., said County and State, thence east along the Robinson Canyon County Road to the intersection with the Manastash ditch; thence in a generally northerly directions along the alignment of said ditch to the intersection with the West Side Canal lying within the northeast $\frac{1}{4}$ of Section 25, T. 18 N., R. 17 E.W.M., said County and State; thence in a generally southeasterly direction along the alignment of West Side canal to the intersection with Robinson Canon County Road; thence easterly along said Robinson Canyon County Road to the northeast corner of the northwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of Section 31, T. 18 N., R. 18 E.W.M., said County and State; thence south approximately 1320 feet; thence west to the intersection of the West Side Canal; thence following said canal in a generally southerly direction to a point where it intersects with Weaver County Road; thence west on Weaver County Road to the northwest corner of Section 5, T. 17 N., R. 18 E.W.M., said County and State; thence south along the section line approximately 100 feet; thence proceeding along a line approximately south 70° west 1500 feet; thence proceeding along a line in a northwesterly direction approximately 1300 feet to the northeast corner of the southeast $\frac{1}{4}$ of the northwest $\frac{1}{4}$ Section 6, T. 17 N., R. 18 E.W.M., said County and State; thence running south approximately 4000 feet to the intersection with Hanson County Road; thence west 1320 feet to southwest corner of the southeast $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of Section 6, T. 17 N., R. 18 E.W.M., said County and State; thence north approximately 2640 feet to the northeast corner of the northwest $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of said Section 6; thence proceeding on a line due west to the intersection of Cove County Road; thence south along Cove County Road to Hatfield Canyon lateral; thence north along the lateral alignment to the corner of the northeast $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of Section 12, T. 17 N., R. 17 E.W.M.; thence west to the northwest corner of the northeast $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of said Section 12; thence south to Richards County Road; thence west to the point of beginning.