STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Change of: Yakima Adjudication Court Claim No. 00477
WRTS File No.: CS4-00477CTCL

PRIORITY DATE	CLAIM NO	PERMIT NO	CERTIFICATE NO
June 30, 1871	Yakima Adjudications Claim No. 00477		

NAME
Harrell & Sons Farms LLC

ADDRESS/STREET	CITY/STATE	ZIP CODE
3121 Hanson Rd	Ellensburg	98926-7929

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
Manastash Creek

TRIBUTARY OF (IF SURFACE WATERS)
Yakima River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
3.26 cubic feet per second April 1 through June 30 1.63 cubic feet per second March 1 through March 31, and July 1 through October 31		1098.6

QUANTITY, TYPE OF USE, PERIOD OF USE

3.26 cubic feet per second April 1 through June 30; 1.63 cubic feet per second March 1 through March 31 and July 1 through October 31, for a total of 1098.6 acre-feet per year to irrigate 140 acres.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL

500 feet south and 150 feet east from the north quarter corner of Section 14, being within the NW¼NE¼ 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 N.	17 E.	39	Kittitas

PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM
17-17-14010-0011 (215133)	N 46.96942	W -120.67691	NAD 83

RECORDED PLATTED PROPERTY

PARCEL NUMBER	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
17-18-05040-0004 17-18-05020-0001		

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

[Attachment 1 shows location of the authorized place of use and point(s) of diversion or withdrawal]

The W½SW¼, NE¼SW¼ and the SW¼NW ¼ of Section 5, T.17 N., R.18 E.W.M.

DESCRIPTION OF PROPOSED WORKS

The applicant proposes to change the point of diversion from the Reed Ditch point of diversion to a consolidated upstream location at the present Menastash Water Ditch Association (MWDA) point of diversion. The new point of diversion will be rebuilt to accommodate irrigators from MWDA, Hatfield, Reed, and Anderson diversions. By moving the point of diversion to the new location, the historic Reed Ditch point of diversion will be abandoned and the headworks will be removed from Manastash Creek. A portion of the open ditch delivery system will be replaced with a buried pipe.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Began	November 1, 2011	November 1, 2012

PROVISIONS

Measurements, Monitoring, Metering and Reporting

1. An approved measuring device shall be installed and maintained for each of the sources authorized by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html

2. Water use data shall be recorded daily. The following information shall be included with each submittal of water use data and shall be submitted to the Department of Ecology (Ecology) by January 31st of each calendar year:

    a. owner, contact name if different
    b. mailing address
    c. daytime phone number
    d. WRIA
    e. Court Claim No.
    f. source name
    g. annual quantity used including units
    h. maximum rate of diversion including units
    i. period of use
    j. purpose of use
    k. daily meter readings including units
    l. peak daily flow including units
    m. fish screen status

3. In the future, Ecology may require additional parameters to be reported or more frequent reporting. Ecology will provide data entry information and forms. http://www.ecy.wa.gov/pubs/ecy070170.pdf

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

5. Chapter 173-173 WAC describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements". http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html

Provisions Specific to the Department of Fish and Wildlife

6. This authorization is subject to Washington Department of Fish and Wildlife fish screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria. http://www.wdfw.wa.gov/reg/regions.htm

Quantity Limits, Flow and Regulation

7. An approved stream gage shall be permanently installed in Manastash Creek at a location described as a point 600 feet north and 700 feet east from the southwest corner of Section 12 being within the SW¼SW¼ of Section 12, T. 17 N., R. 17 E.W.M. (This is the historic Reed Ditch Diversion.)

8. Water shall not be diverted from the new point of diversion unless the following minimum rates of flow are measured at the Reed Ditch Diversion: six cubic feet per second (from April 1 through June 30) and three cubic feet per second (July 1 through October 31) or, during periods of proration, the prorated rates. The Reed Ditch Diversion location is given above.

Schedule and Inspections

9. Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above provisions, and to inspect at reasonable times any measuring device used to meet the above provisions.

10. The water right holder shall file the notice of project completion (under which the superseding certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. After Ecology receives the notice a proof inspection shall be conducted after which a superseding certificate shall issue. The superseding certificate will reflect the extent of the project perfected within the limitations of the change authorization. Elements of the proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, point of diversion, and satisfaction of provisions.

11. The six cubic feet per second (April 1 through June 30) and the three cubic feet per second (July 1 through October 31), or such prorated portion thereof to be measured at the Reed Diversion shall be achieved through the methods or acquisitions addressed in the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan. Manastash Creek, including flows measured at Reed Diversion, will continue to be regulated by priority date consistent with *State v. Acquavella*, Yakima County Superior Court No. 77-2-01484-5, and Washington state law.

General Condition

12. The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change authorization by the Department of Ecology does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

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 point of diversion under Change Application No. CS4-00477CTCL, 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 30TH day of June 2009.

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

BACKGROUND

Description and Purpose of Requested Change

On March 20, 2006, Clarence Harrell of Ellensburg, Washington, filed seven applications to change the point of diversion (POD) of Yakima Adjudicated Court Claim No. 00477 in *The State of Washington, Department of Ecology v. James J. Acquavella, et. al.* (*Acquavella*). The applications were accepted and assigned application Nos. CS4-00477CTCL (the subject of this report), CS4-00477CTCL@1, CS4-00477CTCL@2, CS4-00477CTCL@3, CS4-00477CTCL@4, CS4-00477CTCL@5, and CS4-00477CTCL@6. In April of 2007 the applicant received an Order Granting Motion to Substitute Parties in Acquavella to change the name from Clarence Harrell & Hazel Harrell to Harrell & Sons Farms LLC. These applications will reflect this change.

These change applications are seven of 23 that were filed to change the POD from the current Reed Ditch diversion upstream, to a consolidated diversion located at a point 500 feet south and 150 feet east from the north quarter corner of Section 14, T. 17 N., R. 17 E.W.M., on Manastash Creek. (This is the location of the Menastash Water Ditch Association [MWDA] diversion.) The proposed consolidated headwork will divert water for the MWDA, Hatfield Ditch, Reed Ditch, and Anderson Ditch. The delivery system is planned to replace a portion of the earthen ditches with a buried pipe.

Landowners diverting water from three existing PODs on Manastash Creek (Reed, Hatfield, and Anderson diversions) have applied to change their PODs upstream to the existing MWDA POD. This application is one of 29 filed for the Manastash Creek Restoration Project (the Project). These changes are being proposed to reduce the number of diversions from Manastash Creek, facilitate installation of fish screens, improve fish passage, and enhance stream flow as part of the Project. The Project is currently being managed by the Kittitas County Conservation District. Separate Reports of Examination (ROEs) will be issued for each of these 29 applications. This ROE is specific to CS4-00477CTCL.

In addition, five trust water change applications have been filed with Ecology as part of the mitigation proposed to offset potential impacts associated with the upstream POD change proposals. Five separate ROE's have been issued for these trust water applications.

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 change proposal plays a role in achieving the goals of improving 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 the Court Claim No. 00477 and Proposed Change

Table 1: Summary of Existing Attributes and Proposed Changes to Court Claim No. 00477

Attributes	*Documented*	*Proposed*
Name	Harrell & Sons Farms LLC	Harrell & Sons Farms LLC
Priority Date | Date of Application for Change	**Priority Date** June 30, 1871	**Application Date** March 20, 2006
Instantaneous Quantity	3.26 cubic feet per second April 1 thru June 30; 1.63 cubic feet per second March 1 thru March 31 and July 1 thru October 31	3.26 cubic feet per second April 1 thru June 30; 1.63 cubic feet per second March 1 through March 31 and July 1 through October 31
Annual Quantity	1098.6 acre-feet per year for irrigation	1098.6 acre-feet per year for irrigation
Source	Manastash Creek	Manastash Creek
Point of Diversion/Withdrawal	600 feet north and 700 feet east from the southwest corner of Section 12 being within the SW¼SW¼ of Section 12, T. 17 N., R. 17 E.W.M. (Reed Diversion)	500 feet south and 150 feet east from the north quarter corner of Section 14, being within the NW¼NE¼ of Section 14, T. 17 N., R. 17 E.W.M. (MWDA diversion.)
Purpose of Use	Irrigation of 140 acres	Irrigation of 140 acres
Period of Use	March 1 through October 31	March1 through October 31
Place of Use	The W½SW¼, NE¼SW¼ and the SW¼ NW¼ of Section 5, T.17 N., R.18 E.W.M.	The W½SW¼, NE¼SW¼ and the SW¼NW¼ of Section 5, T.17 N., R. 18 E.W.M.

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in POD:

- **Public Notice**
  Public notice of the change applications was published in the Ellensburg Daily Record on February 5, and February 12, 2007. 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). Ecology, acting as the SEPA lead agency for this project, determined that it will have no unmitigated probable significant adverse impacts 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.

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

  WAC 173-152-050(3)(a)
  States that 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.

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 (see *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*). This is necessary to establish whether the claim or right is eligible for change. In this case, the proposed water right for change has been adjudicated by the Yakima Superior Court and a Conditional Final Order (CFO) for the Manastash Creek Subbasin (Subbasin No. 11) issued on June 14, 2001. As there has been at least a 5 year period since the issuance of the CFO, a tentative determination of the extent and validity of the right is required.

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
  - Ecology staff
  - Manastash Steering Committee Members
- Washington State Water Code, relevant case law, and administrative rules and policies
- Review of recent aerial photography
- 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 for Claim No. 00477

Manastash Creek is part of the Yakima River Basin and rights to the use of the creek were addressed in the Yakima River Basin 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. 00477, 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 the water rights confirmed under Court Claim No. 00477 are listed in Table 1. For these water rights, the Court granted a water duty of 7.84 acre-feet per acre, per year, for irrigation from Manastash Creek.

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 self regulate the diversions to meet the most senior rights first.

The Court recognized this recurring pattern and the CFO for Subbasin No. 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.

Court Claim No. 00477 was filed by Clarence and Hazel Harrell for the use of waters from Manastash Creek for irrigation of 225 acres. The Harrells own approximately 593 acres of land, of which 562.4 acres are irrigated using several water sources including Manastash Creek, the West Side Canal, and the Kittitas Reclamation District. Water from Manastash Creek is used to irrigate 350 acres within 10 of the 17 fields farmed by the Harrells. Water from the Kittitas Reclamation District is available for supplemental supply on 141 of the 350 acres. Return flow waters in Back Ditch are used to irrigate approximately 100 acres. Return flow waters in Center Ditch are used to irrigate approximately 61.4 acres. Water from the West Side is used to irrigate 51 acres. Mr. Harrell filed Water Right Claim Nos. 144792 through 144795 for water use from Reed, Center and Back Ditches and unnamed springs for irrigation. He also filed claims for water use from two springs for stock water and domestic supply.

The Court confirmed to the Harrell's under Claim No. 00477, nine water rights for use of Manastash Creek and one water right for use of an unnamed spring described as follows:

- With a priority date of June 30, 1871, 3.26 cfs from April 1 through June 30, 1.63 cfs from March 1 through March 31 and from July 1 through October 31, 1098.6 ac-ft/yr for irrigation of 140 acres in the W½SW¼, NE¼ SW¼ and the SW¼NW¼ of Section 5, T. 17. N, R 18 E.W.M.
- With a priority date of June 30, 1871, 0.583 cfs from April 1 through June 30, 0.292 cfs March 1 through March 31 and from July 1 through October 31, 196 ac-ft/yr for irrigation of 25 acres in the W½SW¼, S½NW¼ and NE¼SW ¼ of Section 5, T. 17 N., R 18 E.W. M.
- With a priority date of June 30, 1872, 3.84 cfs from April 1 through June 30, 1.92 cfs from March 1 through March 31 and from July 1 through October 31; 1294.1 ac-ft/yr for irrigation of 165 acres in the S½SE¼ of Section 32, T. 18, N., R 18 E.W.M. and the N½NE¼, SW¼NE¼, NE¼SW¼ of Section 5, T. 17. N., R. 18 E.W.M.
- With a priority date of June 30, 1872, 0.315 cfs April 1 through June 30, 0.157 cfs March 1 through March 31 and July 1 through October 31, 105.8 ac-ft/yr for irrigation of 13.5 acres in that portion of the SW¼SE¼ of Section 5, T. 17. N., R. 18 E.W.M. lying north of Hanson Road.
- With a priority date of June 30, 1877, 0.112 cfs from April1 through June 30, 0.056 cfs from March 1 through March 31 and from July 1 through October 31, 37.5 ac-ft/yr for irrigation of 4.8 acres in the NE¼NE¼NE¼ of Section 7, T. 17 N., R 18 E.W.M.
- With a priority date of June 30, 1877, 2.91 cfs from April 1 through June 30, 1.45 cfs from March 1 through March 31 and from July 1 through October 31, 962 ac-ft/yr for irrigation of 125 acres in Government Lots 3 and 4, the NW¼SE¼ and that portion of the SE¼SW¼ north of Hanson Road, all in Section 5, T. 17 N., R 18 E. W. M.
- With a priority date of June 30, 1878, 1.84 cfs from April 1, through June 30 , 0.92 cfs from March 1 through March 31 and from July 1 through October 31, 626.8 ac-ft/yr for irrigation of 80 acres in the NW¼SE¼, SE¼NE¼ and the N½NE¼SE¼ of Section 5, T. 17 N., R 18 E.W.M.
- With a priority date of June 30, 1871 0.06 cfs continuously, 6 ac-ft/yr for stock water within the W½NW¼ of Section 5, T. 17 N., R. 18 E.W.M. from an unnamed spring
- With a priority date of June 30, 1871 0.03 cfs, 3 ac-ft/yr for one-half acre of lawn and garden from March 1 through October 31 irrigation and continuously stock water within the W½NW¼ of Section 5, T. 17 N., R. 18 E.W.M. from an unnamed spring

The subject of this Report of Examination is the water with a priority date of June 30, 1871, for the diversion of 3.26 cfs from April 1 through June 30, 1.63 cfs from March 1 through March 31 and from July 1 through October 31, 1098.6 ac-ft/yr for the irrigation of 140 acres in the W½SW¼, NE¼SW¼ and the SW¼NW¼ of Section 5, T. 17. N., R. 18 E.W.M. Testimony during the adjudication hearings showed that this 140 acres has been irrigated from Manastash Creek. The confirmed water quantities for this water right are listed in Table 1. The Court used the formula of 0.0233 cfs and 7.84 acre-feet per acre to calculate these quantities.

The irrigated lands lay north of Manastash Creek and water is delivered through an earthen canal system. The water is diverted into the Reed Ditch (an earthen ditch) until it converges with Kittitas Reclamation District (KRD) lateral "13.8" (an earthen ditch). At this point the water from Claim No. 00477 co-mingles with the water from KRD and flows to the applicant's property. The water is then applied to the fields by rill irrigation.

Based on reviewing 2002, 2005, and 2006 aerial photos, it appears the entire 140 acre place of use has been irrigated since the CFO issued.

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 initiated in 2001. In 2008, membership was confirmed through a resolution of the Steering Committee. Current membership includes representatives of the water users of MWDA, 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, National Marine Fisheries Service, Washington Environmental Council (WEC), and the Yakama Nation.

The steering committee was formed in response to the 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 goals are to satisfy compliance issues with fish passage and headwork screening in Manastash Creek, and metering water diverted from Manastash Creek. By achieving these goals the irrigators would address ESA requirements and Chapter 173-173 WAC.

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 (BPA) awarded $1.4 million to the Manastash Project through the Washington State Department of Fish & Wildlife in 2002 to construct fish screen and fish passage facilities. BPA approved an $891,000 instream flow grant in 2007, and in 2008, BPA approved an additional $748,000 toward fish screen construction.

In the years between 2003 and 2006, the strategy for providing fish screens and fish passage facilities underwent a number of changes. Initially, the Anderson, Reed, Hatfield, and Keach-Jensen Diversions were to be moved to the MWDA 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 assisted water right holders and 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, only the POD is proposed for change. The applicant's property will continue to be irrigated with water from Manastash Creek. Rill irrigation will continue to be the water application method. This is the same water application method as historically described within court documents.

If this application is approved, the water will be diverted from the new combined POD into a pipe. The pipe will discharge into an open ditch upstream of where the first user would have historically withdrawn their water.

Other Rights Appurtenant to the Place of Use

The rights confirmed under Court Claim No. 00477 have portions that overlap each other. The Court's determination of how these rights are to be separated is discussed in the *History of Water Use for Claim No. 00477* section of this report. The KRD also may deliver water to these lands for supplemental water.

Impairment Considerations

An upstream change in POD results in an affected reach within the surface water source. The affected reach is defined by that section of the surface water source between the current POD location and the proposed POD location.

Under this change proposal, the affected reach is within Manastash Creek: the current POD is the Reed Diversion, located at approximately creek mile 4.8, and the proposed POD is the MWDA Diversion, located at approximately creek mile 5.6. The affected reach is approximately 0.8 miles in length.

The affected reach between the proposed Consolidated Diversion (Hatfield, Reed, and Anderson), which is at the MWDA diversion, and the existing Reed diversion is 3950' in length.

In general, moving points of diversion upstream is problematic, as rearing habitat and production potential for fish, riparian vegetation, and aquatic invertebrates residing within the reach can be adversely affected by the reduced flow. Diminished stream flow within the 3,950' reach would also have negative impacts on production potential for age "0" (newly emerged fry) and 1 year old steelhead smolts. The 2006 flow data indicate that flows bypassed in July through the end of the irrigation season below MWDA diversion were variable, but generally ranged from 2-5 cfs. All surface flow is presently diverted at the Reed Diversion when flows are in this range. By diverting all available water at the Reed Diversion it has created a reach within Manastash Creek to be dry. This reach is approximately 3.25 miles.

Another potential impact is to existing Keach-Jenson POD's. As this application is proposing to change the POD upstream of the Keach-Jenson the possibility of impairment must be addressed. The water users within the Manastash Creek Basin have historically self regulated their diversions to insure that the senior right were fulfilled first. By moving this POD upstream of the Keach-Jenson POD, this change application, if approved, will be limited to the amount of water and the priority date confirmed by the Court.

If this change is approved it reduces the flow in the affected reach by a maximum of 3.26 cfs. This will be mitigated for by increasing the stream flow within the 3.25 mile dry reach below the historic Reed diversion.

To offset potential impairment and impacts from moving Reed Diversion upstream, after initial implementation of the change in POD, it is proposed that six cfs (or the pro-rated portion thereof) will be bypassed at the new consolidated POD from April 1 through June 30, about three cfs of flow (or the prorated portion thereof) would be bypassed from July 1 through October 31 plus the estimated conveyance loss between new consolidated POD and Reed Diversion. The conveyance water that will be bypassed at the combined head works for this project is defined as "that water that has naturally been lost within Manastash Creek to convey senior class water between the MWDA POD to the proposed changed POD." In addition to the flows described, flows in excess of quantities determined in the CFO will also be left instream and measured at a point located at the historic Reed Diversion.

To achieve these flows the Manastash Creek Steering Committee has developed the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan. This plan addresses the commitments that the members of the Steering Committee have agreed upon to achieve these flows. The Steering Committee also has committed to continue to look for more water to be placed into trust and enhance the instream flow of Manastash Creek. This plan has also been presented to Ecology as mitigation for any impacts that may occur due to any upstream move.

KRD Operational Spill Water

The implementation plan includes an agreement that water users will not divert any water that KRD spills into Manastash Creek. The KRD canal spill is located at RM 5.4 (between MWDA and Reed diversions). Spilled water is currently diverted, and as the irrigation season progresses, the majority of spilled water is diverted into the Reed Ditch. Spill timing and quantity is highly variable, with spills ranging from 0-30 cfs. This operational spill, to the extent that it is present at any time, would be additive to the obtained bypass flow for instream flow purposes of six cfs from April 1 through June 30 and three cfs from July 1 through October 31 before pro-rationing.

Consideration of Protests and Comments

There was no letters of protest or comments filed for this application.

CONCLUSIONS

The water right confirmed under Court Claim No. 00477, with a priority date of June 30, 1871, 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:

- 3.26 cfs from April 1 to June 30;
- 1.63 cfs from March 1 to March 31 and July 1 to October 31;
- 1098.6 ac-ft/yr.
- These quantities have been diverted to irrigate 140 acres and beneficially used under Court Claim No. 00477.

In accordance with Chapter 90.03 RCW, the author makes a tentative determination that the water right confirmed under Court Claim No. 00477 with a priority date of June 30, 1871, represents a valid water right that

authorizes the diversion of up to 3.26 cfs from April 1 through June 30, and 1.63cfs from March 1 through March 31 and July 1 through October 31 up to 1098.6 ac-ft/yr of water from Manastash Creek.

Approval of this change to change the POD as mitigated will not cause impairment.

Approval of this change to change the POD as mitigated will not enhance the subject right (Court Claim No. 00477).

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change on one of the water rights confirmed under Court Claim No. 00477 be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, et seq.

Authorized Quantities

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

- 3.26 cfs from April 1 to June 30;
- 1.63 cfs from March 1 to March 31 and July 1 to October 31;
- 1098.6 ac-ft/yr.
- These quantities have been diverted to irrigate 140 acres and beneficially used under Court Claim No. 00477.

Purpose of Use

Irrigation of 140 acres.

Point of Diversion

500 feet south and 150 feet east from the north quarter corner of Section 14, being within the NW¼NE¼ of Section 14, T. 17 N., R. 17 E.W.M. (The MWDA diversion.)

Place of Use

The W½SW¼, NE¼SW¼ and the SW¼NW¼ of Section 5, T. 17 N., R. 18 E.W.M.

Report by: Eric Hartwig _____ 6-30-09

Eric Hartwig, Water Resources Program — Date

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Attachment 1

Manastash Restoration Project
Change Application
CS4-00477CTCLsb11

WASHINGTON STATE DEPARTMENT OF ECOLOGY

Court Claim No. 00477 POU
Priority Date June 30, 1871

Proposed POD

Reed POD

Manastash Creek

Currier Creek

Reecer Creek

YAKIMA RIVER

KITTITAS VALLEY

Project Area

Kittitas County

Ellensburg

Yakima County

Yakima

110,000 55,000 0 110,000 220,000
Feet

N
W E
S

Legend
- County
- WRIA
- cities
- 24K Highways
- Local Roads
- Townships
- pou