



State of Washington
Trust Water Right Report of Examination

CS4-01746CTCLsb10
WR Doc ID 4685200

Add or Change Purpose of Use Change Place of Use

PRIORITY DATE June 30, 1881	WATER RIGHT NUMBER Yakima Adjudication Court Claim No. 01746
APPLICANT Gerald A. Williams, Williams Family Revocable Living Trust	MAILING ADDRESS 16151 SE 42 nd Street Bellevue WA 98006

Purpose and Quantity

Primary Reach

0.015 cubic feet per second, 3.12 acre-feet/year for the purpose of instream flow and mitigation for out of priority uses from April 1 through October 15.

Secondary Reach

Purpose	Unit	April	May	Jun	Jul	Aug	Sept	Oct 15	Total
Instream Flow/ Mitigation	Ac-ft	0.0	0.21	0.47	0.65	0.52	0.29	0.04	2.19
Average Qi	cfs	0.0	0.003	0.008	0.011	0.008	0.005	0.001	-

Trust Water Right Place of Use (See Attached Map)

Primary Reach – Begins at a point 1,400 feet south and 1,500 feet east from the northwest quarter corner of Section 11, T. 18 N., R. 19 E.W.M., and ends at a point 2,130 feet north and 80 feet east of the southwest quarter corner, of Section 11, T. 18 N., R. 19 E.W.M.

Secondary Reach – Begins at a point 2,130 feet north and 80 feet east of the southwest quarter corner, of Section 11, T. 18 N., R. 19 E.W.M. and continues down Schnebly Creek to the confluence with Coleman Creek, Naneum Creek, Wilson Creek, and the Yakima River to the USBR Gage at Parker at river mile 106.7, in the SW¼SW¼ of Section 17, T. 12 N., R. 19 E.W.M.

REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	LATITUDE	LONGITUDE
Begin Primary Reach	Schnebly Creek	-	18N	19E	11	47° 4'14.55"N	120°25'44.25"W
End Primary Reach and Begin Secondary Reach	Schnebly Creek	-	18N	19E	11	47° 3'56.24"N	120°26'4.43"W
End Secondary Reach	Yakima River	106.7	12N	19E	17	46°31'27.28"N	120°28'36.64"W

Provisions Related to the Trust Water Right

Real Estate Excise Tax

1. This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. E-mail: REETSP@DOR.WA.GOV Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477, (360) 570-3265, <http://dor.wa.gov/>.

Trust Water Right Agreement

2. This decision is subject to The Williams Family Trust Water Right Agreement between Jerry Williams and Ecology, signed on December 8, 2011.

Other

3. This permanent instream flow trust water right is the result of following the 0.775 acre portion of Court Claim 01746 that was partitioned to Ecology in the *Order Granting Motion to Substitute parties and Divide Water Right* signed on December 8, 2011. The real property to which the water rights are appurtenant shall remain fallow unless and until another valid water right is transferred to or a new valid water right is established on the historic place of use.
4. The Department of Ecology must manage this trust water right to effectively mitigate for impacts to total water supply available and flow reductions that adversely affect fish. Any portion of this trust water right that is assigned to the 2009 Exchange Contract No. 09XX101700 between the Department of Ecology and the U.S. Bureau of Reclamation will be managed in accordance with the contract and its associated review procedures.

Findings of Facts

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

Therefore, I ORDER the requested change of place and purpose of use under Trust Water Right Application No. CS4-01746CTCLsb10, be approved subject to existing rights and the limits, rates, purposes, and provisions specified above.

YOUR RIGHT TO APPEAL

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures").

The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decisions;
- 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 22 day of MARCH 2012.



Mark Kemner, Section Manger
Water Resources Program/CRO

BACKGROUND**Description and Purpose of Proposed Change**

On May 27, 2010, Jerald A. Williams of Bellevue, Washington, Trustee of the Williams Family Revocable Living Trust (WFT) filed an application with the Washington State Department of Ecology (Ecology) to place a portion of water used under Yakima Adjudication Court Claim No. 01746, Subbasin No. 10, into the State of Washington's Trust Water Right Program (TWRP). Mr. Williams requests a permanent transfer to the TWRP for purposes of instream flow and mitigation for out of priority water use in the Yakima Basin. The application was accepted and assigned Application No. CS4-01746CTCLsb10.

With a priority date of June 30, 1881, Court Claim No. 01746 was confirmed to Willard A. and Mildred Williams for a maximum instantaneous diversion rate (Qi) of 0.64 cubic feet per second (cfs) and a cumulative annual quantity (Qa) of 182.4 acre-feet per year (ac-ft/yr) for irrigation of 32 acres, April 1 through October 15, and 0.03 cfs and 2.5 ac-ft/yr for stock water, year round.

In July 2011, Jerry Williams and Ecology signed a Trust Water Right Agreement outlining how the proposed instream flow right addressed in this report could be used to mitigate for out of priority water uses.

On December 8, 2011, Court Claim No. 01746 was formally partitioned in the *Order Granting Motion to Substitute Parties and Divide Water Right*, Court Claim No. 01746, Subbasin 10. Partition No. 01746(A) includes 0.625 cfs and 179.28 ac-ft/yr for irrigation of 31.225 acres, April 1 through October 15, and 0.03 cfs and 2.5 ac-ft/yr for stock water, year round. Partition No. 01746(B) includes 0.015 cfs and 3.12 ac-ft/yr for irrigation of 0.775 acres, April 1 through October 15. The partition order didn't formally designate an A and B portion of the original court claim, however these designations appear in this report for ease of reference.

This report is specific to Ecology's portion of Court Claim No. 01746(B). Mr. Williams and Ecology propose to transfer the quantities into the TWRP and mitigate for out of priority water use in the Yakima Basin. The proposed future uses include domestic and group domestic groundwater and surface water uses. The (A) portion of Court Claim No. 01746 retained by Mr. Williams and the WFT not be affected by the proposed transfer.

On December 8, 2011, an amended Trust Water Right Agreement was signed to replace the July 2011 agreement. The processing and issuance of this change decision and any permits mitigated by this right are subject to this agreement.

Table 1: Attributes of Court Claim No. 01746(B) and Proposed Change

Attributes	Existing	Proposed
Name	Jerald A. Williams, Williams Family Revocable Living Trust and Washington State Dept. of Ecology	Same
Priority Date Date of Application for Change	Priority Date – June 30, 1881	Application Date – May 27, 2010
Instantaneous Quantity	0.015 cfs	0.015 cfs
Annual Quantity	3.12 ac-ft/yr	3.12 ac-ft/yr
Source	Schnebly Creek	Schnebly Creek
Point of Diversion/Withdrawal	SW¼NE¼NW¼ Section 11, T. 18 N., R. 19 E.W.M.	N/A
Purpose of Use	Irrigation	Instream Flow and Mitigation
Period of Use	April 1 through October 15	April 1 through October 15
Place of Use	See Attachment 1	Schnebly Creek, Coleman Creek, Naneum Creek, Wilson Creek, and Yakima River.

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 No. CS4-01746CTCLsb10.

- Public Notice**
 Notice of the proposed appropriation was published in The Daily Record of Ellensburg, Washington, on December 12 and 19, 2011. The public notice described both the Williams transfer to trust (this report) as well as 19 applications on Lake Kachess proposing to use the Williams trust right for mitigation. One protest was received during the 30-day comment period and is addressed in the Consideration of Protests and Comments section below.
- State Environmental Policy Act (SEPA)**
 The subject application is 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 the Department of Ecology (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.

- **Expedited Processing**

This application qualifies for expedited processing under WAC 173-152-050(2)(d) which would result in providing for public water supplies. Based on the provisions of RCW 43.21A.690 and RCW 90.03.265, this application has been processed by Aspect Consulting, LLC (Aspect Consulting) under Ecology Cost-Reimbursement Assignment No. ASP011 (Master Contract No. C1000185).

INVESTIGATION

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

A site visit was completed on July 22, 2011. Tyson Carlson of Aspect Consulting visited the land proposed to be fallowed, located the point of diversion, and observed the farm's irrigation methods.

This project was presented at the Water Transfer Working Group (WTWG) on August 30, 2010. This group represents private, federal, state and tribal groups interested in water right changes in the Yakima Basin. There were no objections as long as any mitigated permits would be subject to Storage Contract No. 09XX101700 between Ecology and the United States Bureau of Reclamation (USBR).

History of Water Use

Court Claim No. 01746 with attributes described in Table 1 above was confirmed to Willard A. and Mildred Williams, in the Yakima River Basin Water Rights Adjudication for Subbasin No. 10 (Kittitas). The Conditional Final Order (CFO) was signed on December 4, 2006.

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.

From the point of diversion located on Schnebly Creek, water is conveyed in a ditch along the eastern property line and diverted onto the place of use described above. The fields are irrigated by flood irrigation. Graded furrows direct the water from east to west across the field(s). Tail water is collected in a ditch along the western property line, and then directed back toward Schnebly Creek – which transects the property – converging approximately 2,500 feet downstream from the original point of diversion.

The farm has been under continuous lease since the Williams' retirement in 1984. Review of available aerial photos and Landsat imagery indicate that since issuance of the CFO, the William's authorized place of use has been fully irrigated as described above.

Proposed Use

The (B) portion of Court Claim No. 01746 obtained by Ecology (see History of Water Right Section above) is proposed for transfer to instream flows to be used for mitigation of new uses.

Land to be Followed

The proposed lands to be followed include 33,780 square feet (approximately 0.775 acres) within Parcel A of that certain survey as recorded March 18, 2009 in Book 36 of surveys at pages 59-60, under Auditor's File No. 200903180009, records of Kittitas County, Washington; being a portion of the southwest quarter of Section 11, T. 18 N., R. 19 E.W.M., in the county of Kittitas, State of Washington.

The land to be followed includes 1,000 foot long, 12-foot wide driveway along the southern parcel line and a 0.5-acre swath where a home, barn, corral, and parking will be constructed.

Other Rights Appurtenant to the Place of Use

The Williams property is within the boundaries of Kittitas Reclamation District (KRD), but the property has never been assessed fees. The manager of KRD, Ken Hasbrouck signed this application to indicate his concurrence that the request did not impact KRD.

No other water rights for irrigation purposes are appurtenant to the subject 0.775 acres associated with Partition No. 01746(B).

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 following 0.775 acres for the purposes of future mitigation.

Ecology uses various estimation methods such as the Washington Irrigation Guide (WIG) to estimate water use. The WIG data 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 pasture in the Ellensburg area is 2.62 ac-ft/yr per acre from May 13 to October 14. Kittitas basin adjudicated water rights were confirmed for a period of use from April 1 through October 15.

Using Ecology's *Guidance Document, GUID-1210, Determining Irrigation Efficiency and Consumptive Use, Table 1*, the average application efficiency (Ea) for graded furrow flood irrigation is 65 percent. The total irrigation demand (TIR) was calculated based on the monthly CIR for pasture in the Ellensburg area ($TIR = CIR/Ea$). The sum of the monthly TIR multiplied by the number of acres to be followed is the total quantity of water available to transfer into the TWRP, equaling 3.12 ac-ft/yr at a maximum diversion rate of 0.015 cfs (July TIR). The monthly TIR (in acre-feet) 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 irrigation quantities (discussed above) available to be transferred into the TWRP for mitigation are presented in Table 2 below.

Table 2 – Quantities Eligible for Protection in TWRP (Primary Reach)

Purpose	Unit	April	May	Jun	Jul	Aug	Sept	Oct 15	Total
Mitigation	af	0.0	0.31	0.69	0.93	0.74	0.42	0.06	3.12
	cfs	0.0	0.005	0.011	0.015	0.012	0.007	0.001	-

Monthly consumptive use (CU) for irrigation was then calculated by multiplying the TIR by the specified %CU and the area to be followed. The average % CU for graded furrow application is 70%. (CU = TIR x %CU) Total consumptive use is the sum of the monthly consumptive use.

Based on this analysis, Table 3 summarizes the amount of consumptive use from following of 0.775 acres for instream flows and mitigation for out of priority use that will be available in the TWRP.

Table 3 – Consumptive Use (Secondary Reach)

Purpose	Unit	April	May	Jun	Jul	Aug	Sept	Oct 15	Total
Mitigation	af	0.0	0.21	0.47	0.65	0.52	0.29	0.04	2.19
Average Qi	cfs	0.0	0.003	0.008	0.011	0.008	0.005	0.001	-

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 point of diversion and where any of the water diverted, not consumed, returns to the stream. The secondary reach begins at the downstream end of the primary reach and is defined as that length of stream which benefits from a reduction in consumptive use.

The primary reach under this application begins from the authorized point of diversion¹ on Schnebly Creek being approximately 1,400 feet south and 1,500 feet east from the northwest quarter corner of Section 11, T. 18 N., R. 19 E.W.M. The partition of the Williams’ original claim 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 Table 2.

Return flow from the Williams place of use is collected in a small ditch and directed back toward Schnebly Creek, approximately 2,500 feet downstream from the 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 Schnebly Creek upstream of this point. Therefore, the secondary reach begins on Schnebly Creek near the Fairview Hall Road culvert, at a point 2,130 feet north and 80 feet east of the southwest quarter corner, of Section 11, T. 18 N., R. 19 E.W.M. The secondary reach extends downstream on Schnebly Creek to the confluence with Coleman Creek, Naneum Creek, Wilson Creek, then to the Yakima River. The secondary reach extends downstream on the Yakima River to the USBR Gage at Parker.

¹ The Court identified the point of diversion as being 1320 feet south and 1470 feet east of the northwest corner of Section 11. For the sake of accuracy this report refers to the point located in the site visit. The discrepancy is not great enough to warrant a change in point of diversion.

The consumptive use associated with Partition No. 01746(B) is eligible for protection as a trust water right in the secondary reach as described in Table 3 above. The consumptive portion of the trust water right may serve as 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.

Trust Water Management

Court Claim No. 01746(B) is being changed to instream flow and mitigation for out of priority water use. As a condition of placing this water right into the State Trust Water Rights Program, 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 right.

The Schnebly Creek point of diversion is shared with Court Claim No. 00605, confirmed to Albert F. Scott & Dorothy Scott, Stephen K. German & Donna German, for 1.0 cfs and 150 ac-ft/yr for the irrigation of 138 acres. The Scott/German irrigated acreage is located to the north (i.e. up ditch) of Williams' property. Therefore, following diversion from Schnebly Creek, water is first available to Court Claim No. 00605 before arriving at the Williams place of use. The small reduction in flow (0.015 cfs) is not expected to impact either claim.

In addition, no water right on Schnebly Creek will be negatively affected by increased instream flows during the irrigation season. Therefore, based on these considerations, transferring Court Claim No. 01746(B) to trust is not expected to impair other water rights.

Consideration of Protests and Comments

On January 10, 2012 a letter of protest was received on behalf of the Ellensburg Water Company, Cascade Irrigation District, and West Side Irrigating Company ("Irrigation Water Providers). The letter cites that the Irrigation Water Providers have authorized points of diversion between the source of mitigation and its proposed new mitigated users. The Irrigation Water Providers diversions are on the mainstem Yakima River upstream from where the Williams trust water right would be contributing to instream flows, and downstream from the intended new mitigated uses on Lake Kachess.

The Irrigation Water Providers assert that Yakima River flows at their points of diversion "will be negatively impacted – unless or until the U.S. Bureau of Reclamation (USBR) can provide operational guarantees that any such mainstem Yakima River deficit will be eliminated by means of additional (upstream) reservoir spills."

The public notice described both the Williams transfer to trust (this report) as well as 19 applications on Lake Kachess proposing to use the Williams trust right for mitigation. The protestor only provided one \$50 protest fee and it was unclear which application was specifically being protested. The issue of assigning uses to the contract is not directly relevant for this report since it is addressing a transfer to instream flows. However it is clear that the Irrigation Water Providers would like Ecology to require any use of this mitigation to be assigned to Storage Contract No. 09XX101700 between Ecology and USBR. If the 19 applications described in the public notice are approved for new water right permits, they will be assigned to the contract. However, future applications requesting to use the Williams mitigation bank will be evaluated on a case by case basis.

The protest letter also questions the reliability of the Schnebly Creek water right in late season and that permitting new uses based on using this right as mitigation may enlarge Court Claim No. 01746. However, Mr. Williams has been able to fully irrigate his acreage with this right during the late season. Ecology does not have any records of curtailment of this right on Schnebly Creek. Therefore, the reliability of this water right is sufficient for the proposed purpose of use (mitigation) and approval of this change application will not lead to enlargement of this water right.

Public Interest

Pursuant to RCW 90.42.040(4)(a) exercise of a trust water right may be authorized only if the department first determines that the public interest will not be impaired. Ecology considers how the change in purpose and acceptance into the Trust Water Right Program will affect an array of factors such as wildlife habitat, recreation, water quality, and human health. The environmental amenities and values associated with the area were taken into account during the consideration of this change application. Consideration of these factors allows the author to reach the conclusion in the Conclusions section below that this transfer will not impair the public interest.

Citations

State of Washington, Department of Ecology v. James J. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Report of Referee*, Subbasin No. 10 (Kittitas). Signed February 26, 2004.

State of Washington, Department of Ecology v. James J. Acquavella, et al., Yakima County Superior Court Case No. 77-2-01484-5, *Conditional Final Order*, Subbasin No. 10 (Kittitas). Signed December 4, 2006.

CONCLUSIONS

Court Claim No. 01746(B) 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 0.775 acres have been historically and beneficially used under Court Claim No. 01746(B).

In accordance with Chapter 90.38 RCW, the author makes a tentative determination that the Court Claim No. 01746(B) represents a valid right to divert water from Schnebly Creek in quantities up to 0.015 cfs and 3.12 acre-feet for the irrigation of 0.775 acres, from April 1 through October 15.

Approval of this water right change request as provisioned will not enlarge the water right, impair existing water rights or will not be detrimental to existing rights or detrimental to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to CS4-01746CTCLsb10 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.

Primary Reach

0.015 cubic feet per second, 3.12 acre-feet/year for the purpose of instream flow and mitigation for out of priority uses from April 1 through October 15.

Secondary Reach

Purpose	Unit	April	May	Jun	Jul	Aug	Sept	Oct 15	Total
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Report by:

Tyson D. Carlson
LHG, Aspect Consulting, LLC

3-22-2012
Date

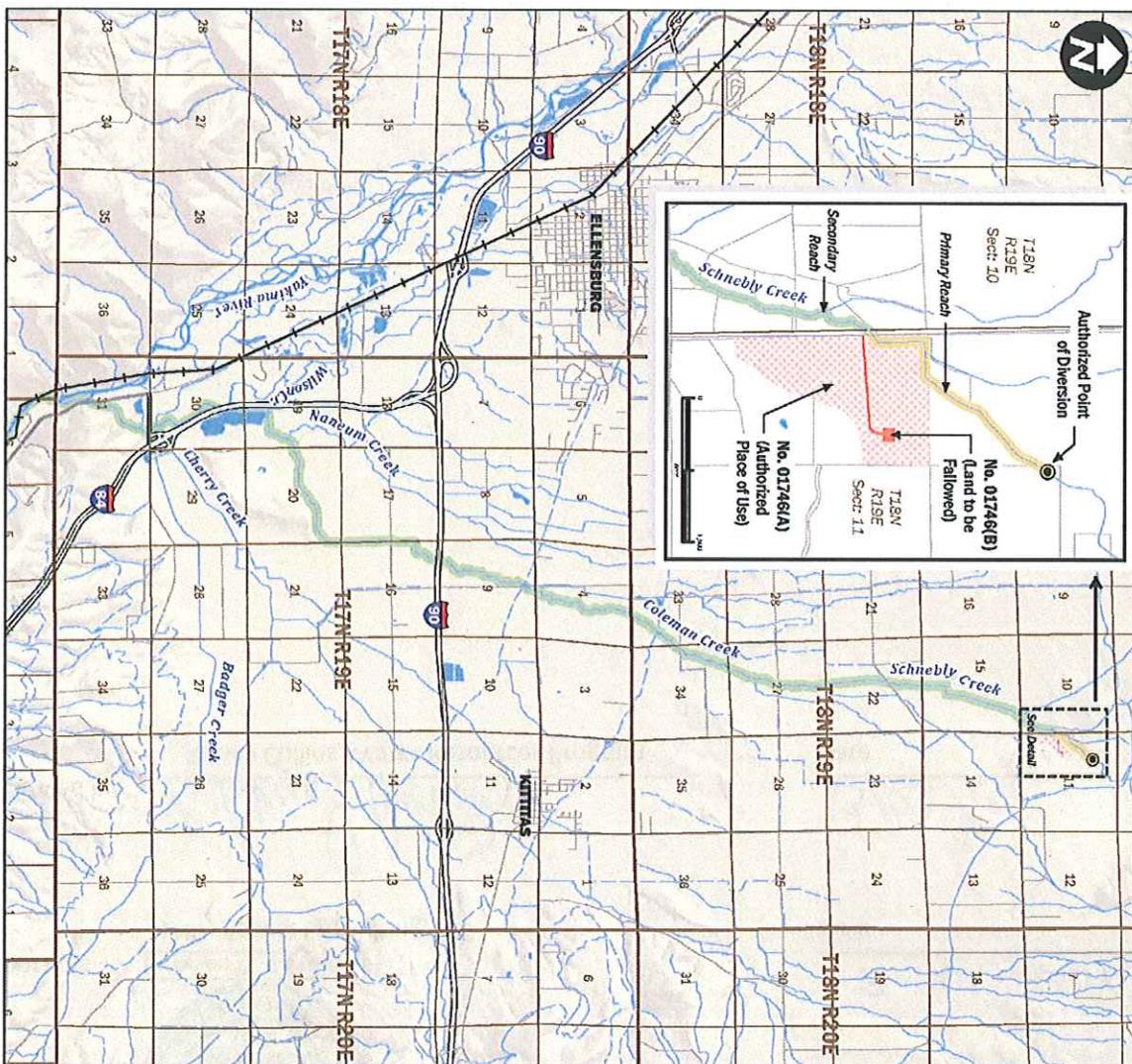
Reviewed by:

Kelsey J Collins
Kelsey Collins, Water Resources Program

3/22/12
Date

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ATTACHMENT 1



Comments: Place of use and point of diversion are defined on the cover sheet under the heading "LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED."

LEGEND

- Place of Use:
- No. 01746(A) Authorized Point of Diversion
 - No. 01746(B)
- Primary Reach
- Secondary Reach (refers to Wapato Diversion Dam at R/W 106.7)
- Local Road
 - Highway
 - Interstate
 - Railroad
 - Tax Parcel (refer detail map only)
 - Township/Range
 - Sections



No. CS4-01746CTCLsb10
 (Derald A. Williams, Williams Family Revocable Living Trust)
 T15N/R18E - Section 11
 Kittitas County, Washington

September, 2011
 ASPECT CONSULTING

ATTACHMENT NO. 1