



**State of Washington**  
**Trust Water Right Report of Examination**  
**Change in Purpose of Use**  
**(Mitigation for Water Budget Neutral Determination)**

<b>PRIORITY DATE</b>	<b>CLASS</b>	<b>WATER RIGHT NUMBER</b>
June 30, 1891	10	Yakima Adjudication Court Claim No. 01201
<b>NAME OF PARTY CONVEYING RIGHT TO TRUST</b>		<b>MAILING ADDRESS</b>
Daryle T. Starkovich, owner		6201 State Route 970 Cle Elum, WA 98922

**Purpose and Quantity**

The purpose of use will be instream flow. The annual quantity will be 0.513 acre-foot per year.

**Approximate Extent of Historic Total Use in the Primary Reach.**

Attribute	May	June	July	Aug	Sept	Total
Qi (cubic feet per second)	0.003	0.003	0.003	0.003	0.003	---
Qa (acre-feet)	0.115	0.112	0.12	0.11	0.056	0.513

**Approximate Extent of Historic Use in the Secondary Reach.**

Attribute	June	July	Aug	Sept	Total
Qi (cubic feet per second)	0.001	0.0019	0.0014	0.002	---
Qa (acre-feet)	0.06	0.118	0.087	0.06	0.325

**Source Location**

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Kittitas	Teaway River	Yakima River	39

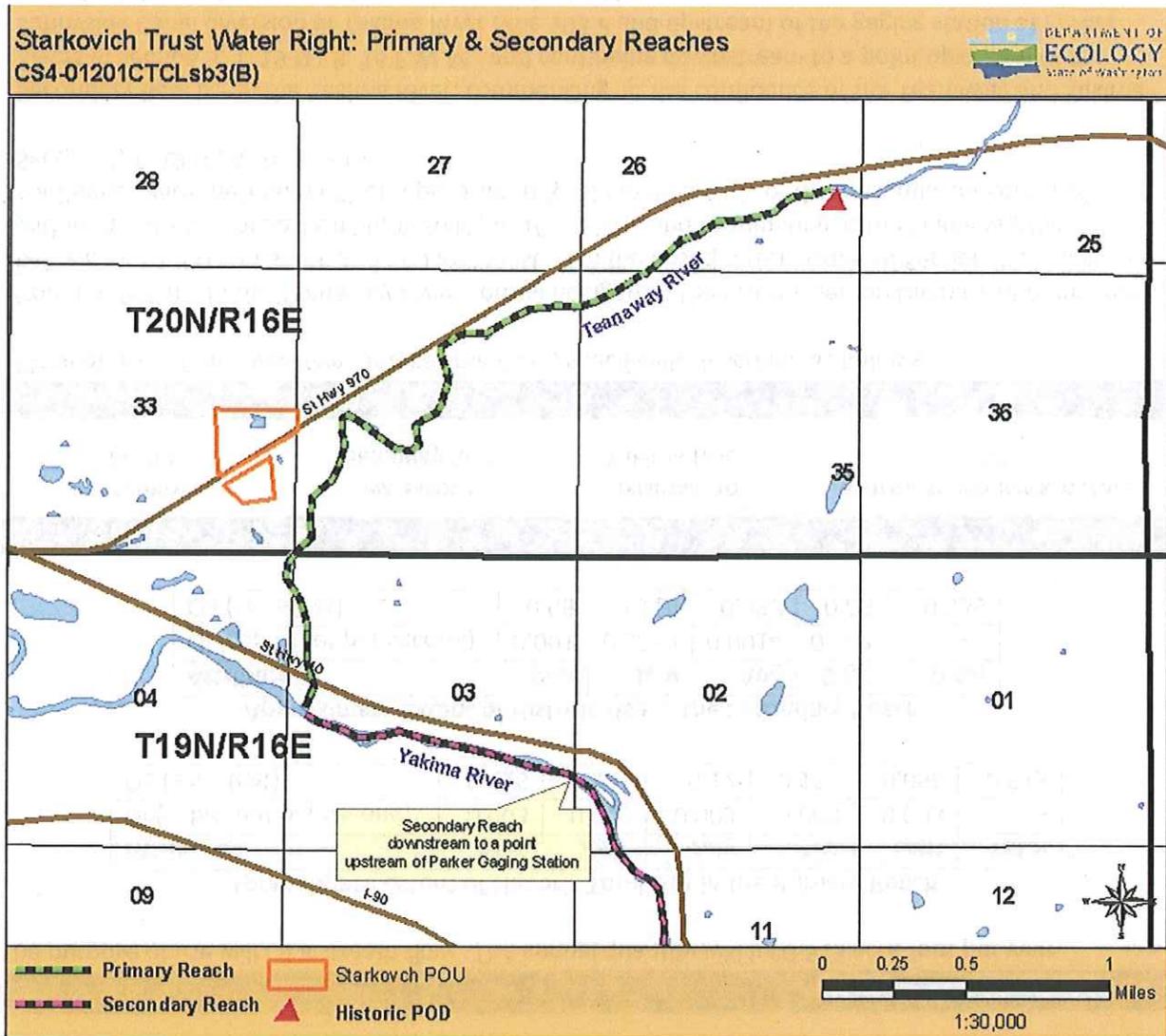
**Place of use (See Figure 1 on Page 2)**

**Place of use** – Teaway River and Yakima River, specifically described as follows:

**Primary Reach** – In the Teaway River, commencing from the historic Seaton Ditch point of diversion being about 1200 feet south and 600 feet west from the east quarter corner of Section 26, being within the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M., and terminating at the Teaway River’s confluence with the Yakima River, approximately 300 feet easterly of the west quarter corner of Section 3, T. 19 N., R. 16 E.W.M.

**Secondary Reach** – In the Yakima River, commencing at the confluence of the Teaway and Yakima Rivers in Section 3, T. 19 N., R. 16 E.W.M., and continuing downstream to a point upstream of the Sunnyside Canal diversion at Yakima River Mile 103.8 and upstream of the gaging station at Parker Dam, both located in Section 28, T. 12 N., R. 19 E.W.M.

Figure 1: Trust Water Place of Use



**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. CS4-01201CTCLsb3(B), 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 2<sup>nd</sup> 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 21 day of OCTOBER 2011.

  
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Mark Kemner, Section Manager  
Water Resources Program/CRO

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## INVESTIGATOR'S REPORT

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### **BACKGROUND – Description and Purpose of Proposed Change**

On April 21, 2010, the Department of Ecology (Ecology) received an application from Michael and Amy Starkovich (applicants) to transfer permanently a portion of the water right confirmed under Yakima Adjudication Court Claim No. 01201 to the state's Trust Water Rights Program (TWRP). The applicants are son and daughter-in-law of Daryle T. Starkovich, the owner of the parent Claim No. 01201.

On March 10, 2011, the Yakima County Superior Court in hearing Cause No. 77-2-01484-5 authorized the partition or division of the water right confirmed under Court Claim No. 01201 into three portions, one of which is the subject of this Trust Water Right Application, CS4-01201CTCLsb3(B). The applicants, with authorization granted by the parent Court Claim's owner, Daryle Starkovich, propose to transfer the subject portion of the water right confirmed under Court Claim No. 01201, in its entirety (0.003 cubic feet per second, 0.513 acre-foot per year), to the TWRP. The proposed trust water right will be managed in the TWRP for instream flow use as mitigation for the applicant's proposed exempt well that would provide water for their planned new home located within the parent water right's authorized place of use.

The annual quantity of 0.513 acre-foot per year (ac-ft/yr) proposed for transfer to the TWRP represents the quantity of water previously used to irrigate the approximate 0.19-acre footprint of the proposed new residence. The season of use is May 1 to September 15. The footprint represents the land area that will be fallowed where a house, garage, and drive areas will be located.

The subject trust water right will be used to mitigate for the consumptive use of water associated with their proposed new residence. Mitigation in the form of a pre-May 10, 1905 water right is required by WAC 173-539A-050(1), the *Upper Kittitas Ground Water Rule*. The well will provide potable water for a new, single-family residence within the parent claim's authorized place-of-use (POU).

Table 1 shows attributes of Yakima Adjudication Court Claim No. 01201 and of the Proposed Change.

**Table 1: Summary of Existing Attributes and Proposed Changes under CS4-01201CTCLsb3(B)**

Attributes	Existing	Proposed
Name	Daryle Thomas Starkovich	Michael & Amy Starkovich
Priority Date   Date of Application	June 30, 1891	June 16, 2010
Instantaneous Quantity (cfs)	0.003	No change
Annual Quantity (ac-ft/yr)	0.513	No change
Source	Teanaway River	No change
Point of Diversion / Withdrawal	(Should be:) 1200 feet south and 600 feet west from the east quarter corner of Section 26, being within the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M.	From a proposed well located within that portion of the SE1/4 of Section 33, T. 20 N., R. 16 E.W. M. lying northwesterly of State Highway 970.
Purpose of use	Irrigation	Instream flow
Period of Use	May 1 through September 15	No change
Place of use	From the NE corner of the SE1/4 of Section 33, T. 20 N., R. 16 E.W.M.; thence west 435 feet, more or less; thence south 125 feet to the point of beginning; thence south 115 feet; thence west 30 feet; thence south 43 feet; thence west 45 feet; thence north 158 feet; thence east 75 feet, to the point of beginning.	Teanaway River Yakima River

**Expedited Processing**

This trust water right application qualifies for expedited processing under WAC 173-152-050 and WAC 173-539A-060 whereby a mitigating trust water right is required prior to the issuance of a permit for new groundwater appropriations in upper Kittitas County. This trust water right is being created to provide the required mitigation for proposed new Water Right Application No. G4-35281.

### **Yakima Water Transfer Working Group (WTWG)**

On February 7, 2010, the proposed application was presented to WTWG. There were no objections to the subject trust water right application, transferring this portion of the Starkovich water right confirmed under Court Claim No. 01201, from irrigation use to instream flow use.

### **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. CS4-01201CTCLsb3(B).

- **Public Notice**

The public notice was published in the Daily Record (Ellensburg, WA), on July 7 and July 14, 2010.

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

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether likely, significant adverse environmental impacts may result from the project), if any one of the following conditions are met:

- It is a surface water right application for more than 1 cubic foot per second. If the project is for agricultural irrigation, the threshold is increased to 50 cubic feet per second, so long as the project will not receive public subsidies.
- It is a groundwater right application for more than 2,250 gallons per minute.
- It is an application combined with other water right applications for the same project, and exceeds the amounts above.
- It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA).
- It is part of a series of exempt actions that, considered together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

This application meets none of these conditions and thus is exempt from the SEPA and a threshold determination is not required.

- **Water Resources Statutes**

Trust water rights are authorized under two chapters of the Revised Code of Washington (RCW): Chapters 90.38 and 90.42 RCW. Chapter 90.38 RCW authorizes the creation and management of trust water rights within the Yakima Basin, whose geography includes the applicants' place-of-use. However, because the subject application seeks to place, and then draw upon those trust water rights, water banking authority is required for this type of trust water management and only chapter 90.42 RCW offers that authority.

- RCW 90.42.040(1) states that water rights acquired by the state shall be placed in the state Trust Water Rights Program to be managed by the department.
- RCW 90.42.040(4)(d) states that the consumptive quantity of a trust water right acquired by the state and held or authorized for use by the department cannot exceed the consumptive quantity of the right prior to transfer into the trust water rights program.
- RCW 90.42.040(5)(a)&(b) states that before any trust water right is created, the department shall require that a notice be published in a newspaper of general circulation published in the county in which the use is made once a week for two consecutive weeks. The department shall also provide notice containing pertinent information to all appropriate state agencies, potentially affected local governments and federally recognized tribal governments, and other interested parties.

- RCW 90.42.100(2)(a) is the department’s authority to use trust water rights to mitigate for water resource impacts, future water supply needs, or any beneficial use, and that within the Yakima River Basin 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 (TWSA) and to satisfy existing rights for other downstream uses and users.
- RCW 90.42.110(2) states that applications to transfer water rights into the state’s Trust Water Rights Program shall be reviewed under RCW 90.03.380 at the time the water right is transferred to the state’s Trust Water Right’s Program for administration for water banking purposes.
- **Washington Administrative Code (WAC)**
  - WAC 173-539A-050(4)(b) states that the applicant has executed an agreement to designate a portion of the trust water right for mitigation of the applicant’s proposed use.
  - WAC 173-539A-050(2)(a) states that as part of a permit application to appropriate public groundwater or a request for a determination of water budget neutrality, applicants shall identify a water right that would be placed into the trust water right program to offset the consumptive use associated with the proposed new use of groundwater.
  - WAC 173-539A-060(4)(d) states that the trust water right will serve as mitigation for impacts to “total water supply available.”

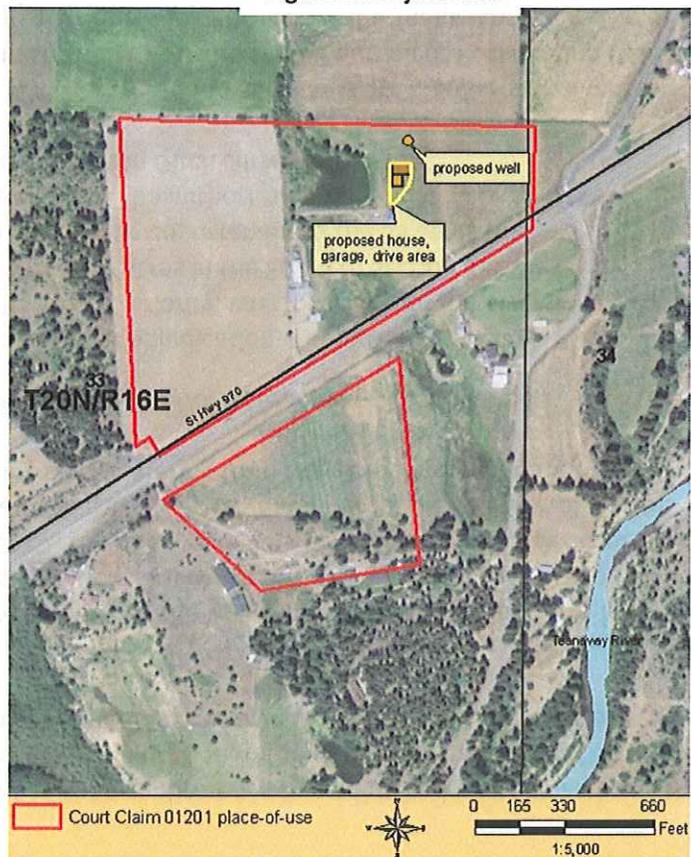
**INVESTIGATION**

**Location and History of Water Use**

On September 24, 2010, Ecology employees Gary Steele and Stan Isley visited the applicants’ residence and location of the place of use for their proposed project. The water right owner Daryle Starkovich and his son Michael Starkovich were present.

Figure 2 shows the place of use (POU) authorized under Court Claim No. 01201 (Claim) where the applicants’ proposed project will be located. It is in the lower Teanaway River valley, situated about three miles east of the town of Cle Elum. The POU is about 1,100 feet northwesterly of the Teanaway River and about one mile north of its confluence with the Yakima River. The water source is the Teanaway River, located in Water Resource Inventory Area 39, Subbasin 3–Teanaway River, Kittitas County.

**Figure 2: Project Area**



The water right under Court Claim No. 01201 has been confirmed in two adjudications. The first was the 1921 Teanaway River Adjudication. The Court Claim is a portion of the right confirmed under Certificate No. 133 with an 1891 priority date authorizing an instantaneous diversion rate of 1.4 cfs to irrigate 70 acres.

The second adjudication was performed more recently by the Washington State Superior Court for Yakima County in *Ecology v. Acquavella, et al.* This Court recognized the earlier 1921 adjudication’s findings for this water right. On February 8, 2001, the Court issued its *Conditional Final Order* confirming a water right under Court Claim No. 0121 authorizing 178.2 ac-ft/yr at a maximum withdrawal rate of 0.66 cfs to irrigate 33-acres and one-ac-ft/yr for stock watering from May 1 to September 15.

The Court’s investigation, in its *Report of Referee, Subbasin No. 3 (Teanaway River)*, stated:

“Certificate No. 133 from the 1921 Teanaway River adjudication is appurtenant to the property. It is a Class 10 right, with an 1891 date of priority, which authorized the diversion of 1.4 cubic feet per second for the irrigation of 70 acres in the SE1/4 of Section 33. The proportionate share of that certificate that would be appurtenant to the 33 acres the claimant is irrigating is 0.66 cubic foot per second. The authorized point of diversion is in the NE1/4SE1/4 of Section 26, which is where the Seaton Ditch currently diverts.”

In 1999, the Seaton Water Users Association (SWUA), whom the applicants are members of, finalized negotiations with the Bonneville Power Administration (BPA) and the US Bureau of Reclamation (USBR) to participate in a fish-enhancement project to benefit the lower reach of the Teanaway River. The BPA funded the project while the USBR designed and oversaw the construction of the new pumped and pressurized irrigation water pipeline delivery system for SWUA. The project retired the historic point of diversion (POD) from the Teanaway River (See Figure 1), replacing it with a new pumpsite about three miles downstream. At the new POD, a new intake structure and pump house were constructed, from which a pressurized pipe delivers water to the SWUA members’ places of use. The new system also included upgraded hand and wheel line sprinkler irrigation systems for each member, under a cost-sharing agreement with BPA.

In return for the new pressurized irrigation system, SWUA members agreed to forego, in stages, up to 50 percent of their court-confirmed annual quantities and 30 percent of the maximum instantaneous rates. For the Starkovich right under Court Claim No. 01201, Table 2 shows the reductions:

**Table 2: Reduced Court Claim No. 01201**

Water Right (time frames)	Annual Quantity (Qa) for 33 acres	Instantaneous Rate (Qi in cfs)	Water Duty Per Acre in ac-ft/yr
Court Confirmed (pre-2000)	178.2 ac-ft/yr	0.66	5.4
BPA/USBR Project (since 2001)	89.1 ac-ft/yr	0.46	2.7

The reduced per-acre water duty of 2.7 acre-feet per year is the basis for the trust water right calculations for the requested change of purpose of use to instream flow purposes.

### **Proposed Use**

The subject water right is proposed for instream flow purposes to mitigate the consumptive loss that would result from the future water use from the applicants' proposed new residence. The consumptive use associated with the proposed new residence is calculated to be 0.118 acre-feet per year. The pending Request for Determination of Water Budget Neutrality does not identify irrigation as a proposed use of groundwater.

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

An existing well is the source of domestic water for the existing Daryle Starkovich house immediately to the west of the proposed new home. That beneficial use is made under authority of the ground water permit exemption under RCW 90.44.050. No other water rights or claims are appurtenant to the subject place of use.

### **Trust Water Right Calculations**

To produce the trust water right, the applicants will fallow 0.19 acre of previously irrigated land to locate a house, garage, and drive area. Applying the reduced water duty of 2.7 ac-ft/yr/A, the result of the 1999 Agreement between the SWUA, BPA, and USBR, this equates to 0.513 ac-ft/yr (2.7 ac-ft/yr x 0.19). The consumptive use associated with 0.19 acres of irrigation is calculated by using the State of Washington Irrigation Guide (WIG) and Ecology Guidance 1210, *Determining Irrigation Efficiency and Consumptive Use* (GUID 1210). The crop irrigation requirement (CIR) for pasture/turf in the Cle Elum area is 18.11 inches per acre, or 1.51 ac-ft per acre. Assuming a 75% efficiency (Ea) of the existing wheelline and handline sprinkler system, the total irrigation requirement (TIR) is 2.01 ac-ft per acre.

$$\text{TIR} = \text{CIR}/\text{Ea} = 1.51 \text{ ac-ft per acre}/0.75 = 2.01 \text{ ac-ft per acre.}$$

The percent consumptive use (CU) associated with wheelline and handline irrigation is 85%, and the total consumptive use is calculated as:

$$\text{CU} = \text{TIR} \times \% \text{CU} = 2.01 \text{ ac-ft per acre} \times 0.85 = 1.71 \text{ ac-ft per acre.}$$

The total consumptive use on the on the 0.19 acres proposed to be fallowed is 0.325 ac-ft/yr.

Pursuant to WAC 173-539A-050(2), the quantity of water required for transfer into the Trust Water Rights Program must match the consumptive quantity necessary for the applicant's proposed use, which is indoor, single family residence. The Washington Department of Health's minimum requirement to serve a single, domestic residence is 350 gallons-per-day (GPD). Thus the minimum annual quantity needed for this purpose is 127,750 gallons (350 GPD x 365 days). With one acre-foot equal to 325,851 gallons, this equates to a 0.392 ac-ft of annual water use. The consumptive portion of 0.392 ac-ft/yr is 0.118 ac-ft/yr, determined by following WAC 173-539A-050(3), that states 30 percent of domestic in-house use on a septic system is deemed consumptive (0.392 ac-ft/yr x 0.30 = 0.118 ac-ft/yr).

Comparing the consumptive uses shows that the fallowing of the 0.19 acre of irrigation yields 0.325 ac-ft/yr of historically consumptively used water, and the new consumptive use for the proposed new Starkovich house would be 0.118 ac-ft/yr, resulting in a surplus of fallowed consumptive use that totals 0.207 ac-ft/yr.

To identify the month-by-month quantity of instream flow that will be assigned to the secondary reach for the proposed trust water right, the monthly fallowed consumptive use is calculated. The intent is to match as closely as possible the historic flow impact that resulted from the consumptive use associated with irrigation of the fallowed 0.19 acre, on the lower Teanaway River and continuing downstream in the Yakima River to the end of the secondary reach above the Sunnyside Diversion Dam and the USBR's Parker Gaging Station. Ecology's GUID 1210, the WIG, and the author's tentative determination of the extent of the underlying water right under Court Claim No. 01201 were used to identify the irrigation application efficiency (Ea) and consumptive use (Cu) to arrive at the following secondary reach monthly instream flow:

	June	July	Aug	Sept	Total
Qi (cfs)	0.001	0.0019	0.0014	0.002	---
Qa (ac-ft)	0.06	0.118	0.087	0.06	0.325

### **Trust Water Management**

A *Trust Water Agreement* (Agreement) between the applicants and Ecology was negotiated. It describes the water right under Court Claim No. 01201(B) and provides for conveyance of the subject water right to Ecology's Trust Water Rights Program (TWRP).

The Agreement outlines the parameters by which the subject trust water right will be placed into the state's TWRP in the amount of 0.513 ac-ft/yr to mitigate for the consumptive use associated with applicants' proposed single domestic use.

### **Impairment Considerations**

Impairment is an adverse impact on the physical availability of water for a beneficial use by other authorized users whose water rights are entitled to protection.

The exercise of a trust water right may be authorized when Ecology determines that neither water rights existing at the time the trust water right is established nor the public interest will be impaired. If impairment becomes apparent during the exercising of the trust water right, Ecology must cease or modify the use of the trust water right.

### **Public Interest Consideration**

Pursuant to RCW 90.42.040(4)(a), exercise of a trust water right may be authorized only if Ecology first determines that the public interest will not be impaired. Ecology must consider how the change in purpose and the acceptance into the Trust Water Rights 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 Protests and Comments**

No protests or comments were received for this trust water right application.

## CONCLUSIONS

The author makes a tentative determination in accordance with RCW 90.42.040 that the portion of Court Claim No. 01201 partitioned by Court Order dated March 10, 2011, represents a valid water right up to 0.03 cfs and 0.513 ac-ft/yr, from May 1 through September 15.

The full authorized quantity under this water right, as proposed for transfer to the Trust Water Rights Program, is in accordance with, and pursuant to, WAC 173-539A to mitigate for new withdrawals as defined in the Upper Kittitas Ground Water Rule.

Approval of this trust water right application as provisioned will not impair existing water rights.

## RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to Court Claim No. 01201 be approved in the amounts and within the limitations listed below and subject to the provisions listed in this Report of Examination.

### Attributes of the Trust Water Right

- For instream flow in the primary reach at a maximum instantaneous rate of 0.003 cfs and an annual quantity of 0.513 ac-ft/yr.
- For instream flow in the secondary reach at a maximum instantaneous rate of 0.0019 cfs and an annual quantity of 0.325 ac-ft/yr.

### Point of Withdrawal

From a proposed well located within that portion of the SE¼ of Section 33, T. 20 N., R. 16 E.W. M. lying north of State Highway 970.

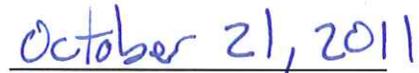
### Place of use

- The primary reach begins in the Teanaway River, commencing from the historic Seaton Ditch point of diversion being about 1200 feet south and 600 feet west from the east quarter corner of Section 26, being within the NE¼SE¼ of Section 26, T. 20 N., R. 16 E.W.M., and terminating at the Teanaway River's confluence with the Yakima River, approximately 300 feet easterly of the west quarter corner of Section 3, T. 19 N., R. 16 E.W.M.
- The secondary reach begins at the confluence of the Teanaway River with the Yakima River as described above, and continuing downstream to a point just above the Sunnyside Diversion Dam at Yakima River Mile 103.8 and upstream of the gaging station at Parker Dam, both located in Section 28, T. 12 N., R. 19 E.W.M.

Report by:

  
Mark C. Schuppe, Supervisor

Office of Columbia River, Yakima, WA



Date

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OCT 17 2011

DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

## Trust Water Right Agreement (Starkovich)

This Trust Water Right Agreement ("Agreement") is made and entered into as of the 10 day of October, 2011, by and between the Washington State Department of Ecology, State Trust Water Rights Program ("Ecology") and Michael and Amy Starkovich, husband and wife ("Starkovich").

Whereas, Ecology is the trustee of the state's Trust Water Rights Program as authorized under Chapter 90.42 RCW (the "Trust"); and

Whereas, Starkovich is the beneficiary of the Estate of Daryle T. Starkovich, the latter of which is the owner of the subject Court Claim 01201(B) as more particularly described and quantified in Exhibit A (the "Water") and presently appurtenant to the land that is legally described in Exhibit A (the "Land"); and

Whereas, on June 29, 2010, Starkovich submitted a Trust Water Right Application to Ecology, WRTS File No. CS4-01201CTCLsb3, as amended ("Application"), to place the Water into the Trust for the purpose of enhancing instream flows and providing mitigation water to offset and allow for the permitting of Starkovich's proposed exempt well installation and to make water budget neutral in the Teanaway and Yakima Rivers the impact on the local water resource from Starkovich's proposed construction of a single family residence on a portion of the real property legally described as on Exhibit A; and

Whereas, Ecology has accepted the Trust Water Right Application (Application), has completed its examination of the extent and validity of the Water and is prepared to issue its Trust Water Right Report of Examination (the "ROE") concerning the extent and validity of the Water and its trust water certificate (the "Certificate").

Whereas, subject to the terms of this Agreement and the Application, Ecology is willing, able and authorized to hold the Water in the Trust as provided for herein;

Now, therefore, in consideration of the forgoing, the mutual covenants and undertakings as hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Purpose.** The purpose of this Agreement and the primary reason that Starkovich is willing to place the Water into the Trust is to provide a senior water right as off-setting mitigation that will allow Starkovich to apply for and receive Determination of Water Budget Neutrality (DWBN) for their new ground water withdrawal within the Yakima River Basin, particularly within Upper Kittitas County. This new water right will be mitigated by way of a permanent designation of such portion of Starkovich's beneficial interest in the Water in Trust as reasonably required to ensure no impairment to Total Water Supply Available (TWSA) or existing water rights; provided that any portion of such mitigation may also be provided by other means.

2. **Closing.** This Agreement shall be effective upon its mutual execution, and the Trust shall commence upon the close of an escrow established by the parties. The term of this Agreement shall then be for so long as the portion of the Water in Trust required for mitigation for the new use remains in the Trust (the "Term"). The escrow shall be opened with an escrow agent mutually agreeable to both parties (the "Escrow Agent") upon the mutual execution of this Agreement and its deposit with the Escrow Agent.

2.1. The escrow shall close within thirty (30) days of the occurrence of the last of the following events: (a) mutual execution of all agreements and documents contemplated by or collateral to this Agreement; (b) Starkovich's deposit of an executed quitclaim deed subject to a condition subsequent in recordable form of the Water to the Trust substantially in the form of Exhibit B attached hereto and incorporated herein (the "Deed"); the giving of all requisite public notices for actions contemplated or referred to herein; the issuance of a trust water right certificate to document the acceptance of the right into the TWRP; the deposit of the Trust Water ROE and the state's Trust Water Right Certificate, each in form and content acceptable to Starkovich; and the expiration of all notice, comment and appeal periods related to the full implementation of this Agreement, the ROE, and the Certificate. Starkovich shall pay any of the escrow costs, and the parties shall execute appropriate escrow instructions to the Escrow Agent.

2.2. Upon closing the Escrow Agent shall record the Deed with the Kittitas County Auditor and/or such other places as may be appropriate and shall deliver the ROE and Certificate to Starkovich.

3. **Request for Determination of Water Budget Neutrality (DWBN).** Ecology has evaluated the extent to which the Water held in the state's Trust Water Rights Program will be suitable to mitigate the domestic uses proposed by Starkovich under Application No. G4-35281 ("DWBN").

3.1 Ecology, pursuant to WAC 173-539A-080, has reviewed the DWBN utilizing such portion of the Water in Trust as reasonably needed under the quantity allocation set out in Exhibit C which, together with any other proposed mitigation measures, shall offset the impacts of the new withdrawal proposed under the DWBN request.

3.2 Ecology shall investigate the Request for DWBN and prepare a written determination of whether the proposed groundwater determination will be water budget neutral consistent with Chapter 173-539A WAC. Ecology's review of the DWBN shall also include the following considerations:

3.2.1 With regard to domestic uses and so long as withdrawals are metered to users; and the subject project is, or will be made, subject to covenants, conditions and restrictions which impose water use restrictions for both inside and outside purposes which will be recorded against the project; and reasonable water use enforcement provisions are provided; and return flows are provided for through an

approved septic or other waste treatment facility reasonably designed to infiltrate treated water in the general area from which it is being withdrawn; the allocation of Trust Water for mitigation shall be at a rate of not less than 0.118 acre-foot of consumptive water (350 gallons per day on a year round basis) per equivalent residential unit ("ERU"), or such greater amount as required by the Kittitas County Department of Health for serving indoor needs of a residential dwelling.

3.2.2 If issued, Ecology's permit relative to the DWBN will specify the conditions and limitations on the use of water in a manner consistent with the Water held in the state's Trust Water Rights Program as mitigation.

3.2.3 If the Water is deemed adequate to fully mitigate the DWBN, then Starkovich, upon receipt of final approval from Kittitas County of its land use application for development of the real property that is the intended place and purpose of use of the DWBN, and exhaustion of all applicable appeal periods thereof, Starkovich shall execute such documentation as necessary to irrevocably and perpetually commit the Water to Trust for purposes of offsetting the DWBN.

4. **Uncommitted Trust Water Rights.** With respect to any Water that has not been irrevocably committed to the Trust, Starkovich may, at any time and at their sole discretion, withdraw said uncommitted water from the Trust.

5. **Management of Trust Water.** During the Term and in its capacity as a fiduciary, Ecology shall hold and manage the Water in trust pursuant to Chapter 90.42 RCW and this Agreement as a part of the total water supply available ("TWSA") in the Yakima River. Ecology:

5.1 Shall take no position and make no assertions that the quantities and beneficial use of the Water is other than that stated in Exhibits A and C, and this representation shall also apply to any Water removed from the Trust;

5.2 Shall, in addition to the protections against relinquishment in RCW 90.14.140(2)(h), at all times during the Term manage, maintain, preserve and protect for the benefit of Starkovich and their successors, designees and assigns all aspects and attributes of the Water, including, but not limited to, the priority date, the total diversionary right, instantaneous quantity, and annual consumptive quantity from impairment, challenges, claims and relinquishment;

5.3 Shall, as expeditiously as reasonable, process DWBN for application G4-35281 where all or a portion of the Water is proposed as mitigation, and shall take all steps necessary to comply with any restrictions imposed by other agreements to which Ecology may be subject, including, but not limited to memorandums of agreement and groundwater moratoriums or subsequently enacted water right processing rules; and

5.4 Shall not assess or charge Starkovich any costs or fees for maintaining the Water in the Trust. The foregoing shall not be construed to prohibit Ecology from charging: its regular, published costs and fees for water right applications, transfers and investigations; costs attributable to assignment of a portion of the Water to Ecology's USBR contract for storage and exchange contract; and fees associated with assignment of Water in the Trust to offset impacts associated with the DWBN; or fees legislatively imposed.

5.5 Ecology has determined that a proposed sale or transfer to third parties of a portion of the Water in Trust as mitigation for a water budget neutrality determination authorizing year-around residential groundwater use will likely result in a nominal reduction in flow after the end of the irrigation season. This reduction in flow is often concurrent with the lowest natural base flows of the year. Consequently, the nominal reductions may negatively affect Teanaway River aquatic resources, including fish production. Ecology and Starkovich agree that investing in one or more upstream or headwaters riparian corridor projects would be a desirable way to address this nominal impact. Starkovich shall deposit Five Hundred Dollars (\$500.00) per residential connection in an escrow or other account managed by a third party ("Reserve Fund") for each transaction that Ecology determines would have such a nominal negative impact.

5.6 Within ten days of written request from Ecology to Starkovich or the agent managing the Reserve Fund, all amounts in the Reserve Fund shall be disbursed to the Kittitas Conservation Trust, or other such recipient as Ecology designates in writing, for the exclusive purpose of funding flood plain function and riparian condition improvements in the Teanaway River Basin.

6. **Representations and Warranties.** In keeping with the purpose of this Agreement and as a material part of the consideration for this Agreement upon which its execution is dependent:

6.1 Starkovich makes the following undertakings, representations and warranties to Ecology:

6.1.1 Starkovich is authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

6.1.2 Upon its full execution, this Agreement is binding upon Starkovich in accordance with its terms.

6.1.3 Starkovich shall use its best efforts to perform fully and timely its obligations and actions contemplated by this Agreement.

6.2 Ecology makes the following undertakings, representations and warranties to Starkovich:

6.2.1 Ecology is a division of the State of Washington duly formed and authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

6.2.2 Each individual executing this Agreement on behalf of Ecology is duly authorized to execute and deliver this Agreement.

6.2.3 Upon its full execution, this Agreement is binding upon Ecology in accordance with its terms.

6.2.4 Ecology shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement.

7. **Termination; Default.** Starkovich shall have the right at any time to withdraw the Trust Water Right and DWBN Applications, terminate this Agreement and remove from the Trust any portion of the Water that has not been permanently allocated as mitigation of other water uses as set forth in this Agreement. In such event, Ecology shall promptly execute a Statutory Warranty Deed transferring the Water from the Trust to Starkovich. If either party defaults in its obligations under this Agreement; or if this Agreement, or a material portion thereof, be declared illegal or unenforceable; or, either party, through no fault or action by such party, should be incapable or prevented from performing any material obligations or actions, the non-defaulting party in the event of a default or either party in any other event shall have the right to the following:

7.1 Declare the Agreement null and void, whereupon the parties shall cooperate to end the trust water right relationship in an orderly manner as follows:

7.1.1 Starkovich shall identify all in-process designation agreements and inform Ecology of their status. Starkovich shall not make representations regarding in-process designations and shall in each instance work with Ecology to determine whether an assignment should be completed. If Ecology agrees, the permit process will be completed promptly in accordance with applicable policies, rules, and law.

7.1.2 Ecology shall promptly convey to Starkovich or its designee the portion of the Water not yet irrevocably designated and assigned as mitigation for individual ground water and surface water permits.

7.1.3 Each party shall be responsible for its own costs associated with terminating this Agreement and ending the trust water right relationship in an orderly manner.

7.2 Pursue any other remedy now or hereafter available.

7.3 In no event shall the termination of this Agreement alter or affect any Water previously allocated for mitigation or permits granted relative to any New Application or the Groundwater Applications.

8. **Assignment.** This Agreement may be assigned by Starkovich upon the giving of written notice to Ecology. This Agreement is binding upon and inures to the benefit of the parties to the Agreement as well as upon and to the benefit of their respective heirs, personal representatives, assigns and other successors in interest.

9. **Notices.** Any notice or communication required by this Agreement between Starkovich and Ecology shall be given to the addresses set forth below:

To Ecology:  
Water Resources Section Manager  
Washington Department of Ecology  
Central Regional Office  
15 West Yakima Avenue, Suite 200  
Yakima, Washington 98902-3452

To Michael and Amy Starkovich:  
6201 State Highway 970  
Cle Elum, WA 98922

10. **Severability.** No provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be unenforceable for any reason outside the control of the parties and subject to the provisions of Paragraph 7.1, the party finding itself unable to enforce the provision may, at its sole discretion, declare this entire Agreement to be null and void.

11. **Waiver.** If either party fails to exercise its rights under this Agreement, it will not be precluded from subsequent exercise of its rights under this Agreement. A failure to exercise rights will not constitute a waiver of any other rights under this Agreement, unless stated in a letter signed by an authorized representative of the party and attached to the original Agreement.

12. **Amendments.** Amendments to this Agreement must be in writing and signed by an authorized representative of each of the parties.

13. **Reciprocal Indemnification.** Each party shall protect, defend, indemnify, and hold the other party harmless from and against their respective acts and omissions and from all third party claims arising out of or related to this Agreement.

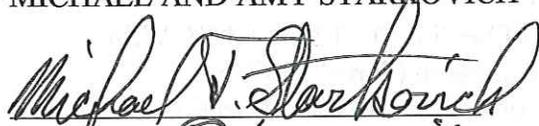
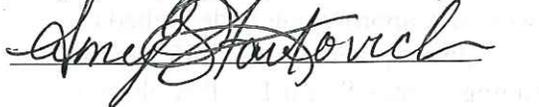
14. **Applicable Law.** This Agreement will be governed and enforced under the laws of the State of Washington. Venue for any action arising under or related to this Agreement shall be in Kittitas County, Washington.

This Agreement is executed as of the date first above written.

WASHINGTON STATE DEPARTMENT OF ECOLOGY

By   
Melissa Downes, Acting Section Manager  
Water Resources Program, CRO  
*MARK KEMNER*

MICHAEL AND AMY STARKOVICH

**EXHIBIT A**  
**Water Right Court Claim 01201(B) (as Divided)**  
**and Land to Which Water Right is Appurtenant**

Source: Teanaway River  
Priority Date: June 30, 1891  
Instantaneous Quantity: 0.003 cfs  
Annual Quantity: 0.513 af/yr  
Purpose of Use: Irrigation  
Period of Use: May 1-September 15  
Point of Diversion: NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 26, T20N, R12E, W.M.,  
Kittitas County, Washington (Parcel 335235)  
Place of Use: 0.19 acre within a portion of the SE  $\frac{1}{4}$  of Section 33, T20N,  
R16 E., W.M., lying northwesterly of State Highway 970, approximately described as  
follows: From the northeast corner of said southeast quarter; thence West 435 feet, more  
or less; thence South 125 feet to the point of beginning; thence South 115 feet, thence  
west 30 feet; thence South 43 feet; thence West 45 feet; thence North 158 feet; thence  
East 75 feet, to the point of beginning, Kittitas County, Washington.

**EXHIBIT B  
FORM OF DEED**

Upon Recording Return to:  
Traci Shallbetter  
SHALLBETTER LAW  
3201 Airport Road  
Cle Elum, WA 98922

DOCUMENT TITLE: WATER RIGHT QUITCLAIM DEED  
GRANTOR: MICHAEL AND AMY STARKOVICH  
GRANTEE: Washington State Department of Ecology, State Trust  
Water Right Program

LEGAL DESCRIPTION OF PROPERTY ASSOCIATED WITH WATER RIGHTS:  
0.19 acre within a portion of the SE ¼ of Section 33, T20N, R16 E., W.M., lying  
northwesterly of State Highway 970, approximately described as follows: From the  
northeast corner of said southeast quarter; thence West 435 feet, more or less; thence  
South 125 feet to the point of beginning; thence South 115 feet, thence west 30 feet;  
thence South 43 feet; thence West 45 feet; thence North 158 feet; thence East 75 feet, to  
the point of beginning, Kittitas County, Washington.

ASSESSOR'S TAX PARCEL NOS.:

815235 (Place of Use)

THE GRANTORS, AMY AND MICHAEL STARKOVICH, for valuable consideration, convey and quit claim to the Washington State Department of Ecology, State Trust Water Right Program, ("Grantee") all of Grantors' right, title, interest and beneficial use of, in and to the water rights arising under or related to Claim 01201(B) as confirmed in Conditional Final Order re Subbasin No. 3 (Teaway) in *State of Washington v. Acquavella, et al*, Yakima County Superior Court Cause No. 77-2-01484-5, on February 8, 2001, and divided by that Order to Divide and Partially Substitute Party, dated March 10, 2011, which water rights are appurtenant to the real property situated in the County of Kittitas, State of Washington, legally described on the cover sheet and incorporated herein by reference;

SUBJECT TO the terms and conditions of that Trust Water Right Agreement attached hereto.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011



**EXHIBIT C**  
**CONSUMPTIVE QUANTITIES**  
**Water Right Claim 01201(B)**

The irrigation requirement for the 0.19 acre that is proposed for fallowing, based on the Washington Irrigation Guide is 18.11 inches per acre per year, or 1.51 AF per acre per year. Based on historic hand and wheel line irrigation practices and efficiency guidelines from Ecology Guidance 1220, the consumptive portion of this quantity attributable to the 0.19 acre of fallowed irrigated land is 0.325 acre-foot per year ( $1.51\text{AF/Y} \times 0.19 \text{ acre} = 0.287 \text{ AF/Y}$  CIR / 0.75 = 0.383 AF/Y TIR  $\times 0.85 = 0.325 \text{ AF/Y}$ ). This calculation is based on 75% application efficiency for wheel and hand lines plus 10% evaporative loss.

The Department of Health minimum service requirement for single family in-house domestic use is 350 gallons per day (0.392 AF/Y) the consumptive portion of which is 0.118 AF/Y (per WAC 173-539A-050(3)).