



State of Washington  
 Department of Ecology  
 Office Of Columbia River  
 Final Report of Examination for  
 Trust Water Change Application  
 CS4-SWC2532@1

File NR CS4-SWC2532@1  
 WR Doc ID 6085225

Changed Place of Use  
 Changed Purpose of Use

<b>PRIORITY DATE</b> 11/25/1921	<b>WATER RIGHT NUMBER</b> CS4-SWC2532(A)@1	<b>TRUST TERM</b> PERMANENT
<b>WATER RIGHT OWNER</b> Tom Burnett 19626 S Lakeshore Rd Chelan, WA 98816-9374		

**Purpose and Quantity**

The right has changed from irrigation to the purposes of instream flow and mitigation for out-of-stream uses. The right will be conveyed by Quit Claim Deed to the State’s Trust Water Rights Program (Trust). The right has the maximum instantaneous flow rate and annual quantity values allocated in the following manner:

Period	Primary Reach		Secondary Reach	
	Flow (cfs)	Acre-feet	Flow (cfs)	Acre-feet
04/01 -10/31	0.81	129	0.5	110

The Primary Reach of an instream flow Trust Water Right is that portion of a water body that benefits from both the former consumptive use and former return flow waters of a water right. Downstream of the Primary Reach is found the Secondary Reach. The Secondary Reach benefits only from the former consumptive use as the return flow would have found its way back to the water body under the previously authorized use. Values given for the Secondary Reach would mitigate proposed out-of-stream uses located downstream along the Columbia River near Malaga, WA. Attributes of these proposed out-of-stream uses are captured in applications S4-29956 and S4-31083.

For the Secondary Reach, the quantity conveyed to Trust is further limited by monthly values given in Table 1 below:

**Table 1: Monthly Trust Water Quantities and Rates (Secondary Reach) from WIG Data (pasture/turf at Chelan Station)**

Monthly Trust Water Quantities and Rates (Secondary Reach)							
	May	June	July	August	September	October	Total
<b>Qa (ac-ft)</b>	14.6	26.1	30.8	22.3	14.6	1.6	110
<b>Qi (cfs)</b>	0.24	0.44	0.50	0.36	0.25	0.03	N/A

## Trust Water Right Place of Use

WATERBODY	TRIBUTARY TO	COUNTY	WATER RESOURCE INVENTORY AREA
Twenty-Five Mile Creek	Lake Chelan	Chelan	47-Chelan
Lake Chelan	Chelan River	Chelan	47-Chelan
Chelan River	Columbia River	Chelan	47-Chelan
Columbia River	Pacific Ocean	Chelan	47-Chelan

REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
	Twenty-Five Mile							
Begin Primary Reach	Creek		29N.	20E.W.M.	36	SW SW	47.96453	-120.28789
End Primary Reach	Lake Chelan	~23	29N.	21E.W.M.	19	S½	47.99397	-120.26173
Begin Secondary								
Reach	Lake Chelan	~23	29N.	21E.W.M.	19	S½	47.99397	-120.26173
End Secondary Reach	Columbia River	461.8	22N.	21E.W.M.	19	SW SE	47.37936	-120.24575

*Datum: NAD 83*

*Locations approximate*

## Trust Water Right Provisions

### General

The water to be conveyed to Trust under CS4-SWC2532@1 is intended to mitigate new appropriations as captured within applications S4-29956 and S4-31083. If applications S4-29956 and S4-31083 are approved and after any and all appeals settled such that they would rely on this Trust transfer as mitigation:

- 1) All water at the original Place of Use shall cease under S4-SWC2532.
- 2) Within 30 days of the last appeal period, a Quit Claim Deed shall be filed with the Washington Department of Ecology conveying the authorized Trust water quantity and rate(s) under this Report of Examination to the Washington Department of Ecology.
- 3) Any authorizations that issue under applications S4-29956 and S4-31083 shall be provisioned such that they are subject to any cessation or modification resulting from a finding of impairment pursuant to RCW 90.42.040(4)(b).

If the three steps listed above are complied with, a Trust Water Certificate shall issue in the name of the Washington Department of Ecology for the amounts conveyed to Trust under this authorization.

### Real Estate Excise Tax

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. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477 Internet: <http://dor.wa.gov/> or E-mail: [REETSP@DOR.WA.GOV](mailto:REETSP@DOR.WA.GOV).

## PORTION OF RIGHT NOT CONVEYED INTO TRUST

PRIORITY DATE  
11/25/1921

WATER RIGHT NUMBER  
CS4-SWC2532(B)@1

WATER RIGHT OWNER

### Total Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
3	CFS	Not Specified

### Purpose

PURPOSE	DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Irrigation and Domestic Supply	3		CFS	Not Specified		Not Specified

ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION				
	NON-ADDITIVE		WATER SYSTEM ID	CONNECTIONS			
118.5			N/A				

SOURCE FACILITY/DEVICE	PARCEL	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Twenty-Five Mile Creek	292036000000	29N.	20E.W.M.	36	SW SW		

### Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

Not Specified

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Three areas as on original Surface Water Certificate 2532 described as such:

- 1) 30 acres within the SE¼NE¼ and the NE¼SE¼ of Section 25, T. 29N., R. 20E.W.M.
- 2) 33.5 acres within Lots 2 & 3 of Section 30, T. 30N., R. 29E.W.M.
- 3) 55 acres within the SE¼NW¼ and NE¼NW¼ of Section 30, T. 30N., R. 29E.W.M.

### Proposed Works

No proposed works – project completed.

### Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
NA	NA	In Full Use

### Provisions

#### Administrative Split

The superseding certificate that will capture the portion not conveyed to Trust is the result of the division of Surface Water Certificate 2532, and shall not be construed as validation as to the extent of the water use as originally authorized. The amounts provided on the superseding portions of this water

right are not confirmed by Ecology in the recording of the division of said right. The actual amounts authorized by the superseding certificates are subject to the historic beneficial use of water.

### Findings of Fact and Decision

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. CS4-SWC2532@1, subject to existing rights and the provisions specified above.

### Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

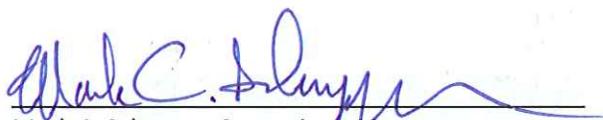
To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Signed at Yakima, Washington, this 2nd day of September 2015.



Mark C. Schuppe, Operations Manager  
Office of Columbia River

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

## INVESTIGATOR'S REPORT

Thomas Perkow, Department of Ecology

Water Right Control Number CS4-SWC2532@1

Tom Burnett

### BACKGROUND

The general location of this project is approximately one mile east-southeast from where Twenty-Five Mile Creek discharges to Lake Chelan, near mile 23 on the Lake. Twenty-Five Mile Creek State Park lies between the Creek and the project. The project's intent is to convey water formerly used for orchard irrigation, and more recently for aesthetic qualities as part of a larger determined future development, into the State's Trust Water Rights Program (Trust). This Trust water (among other proposed conveyances beyond the scope of this report) would be used as mitigation for new out-of-stream uses in Chelan County as captured in new water right applications S4-29956 and S4-31083. The subject change application was submitted on January 21, 2014, by Tom Burnett and assigned tracking number CS4-SWC2532@1. This report serves as the written findings of fact concerning CS4-SWC2532@1.

#### EXISTING Water Right Attributes

<b>Water Right Owner:</b>	Tom Burnett, among many others
<b>Priority Date:</b>	11/25/1921
<b>Place of Use</b>	The SE¼NE¼ and NE¼SE¼ of Section 25 of T. 29N., R. 20E.W.M. AND portions of Sections 19, 20, and 30 of T. 29N., R. 21E.W.M.

County	Waterbody	Tributary To	WRIA
Chelan	Twenty-Five Mile Creek	Lake Chelan	47-Chelan

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Irrigation & Domestic supply	4	CFS	Not Specified	Not Specified	Not Specified

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Twenty-Five Mile Creek	292036000000	29N.	20E.W.M.	36	SW SW		

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

#### REQUESTED Water Right Attributes

<b>Applicant Name:</b>	Tom Burnett
<b>Date of Application:</b>	1/21/2014
<b>Place of Use</b>	Burnett's portion would remain instream from the diversion point on Twenty-Five Mile Creek and continue downstream to Lake Chelan, the Chelan River, and the Columbia River, to a proposed diversion point near Malaga, WA.

County	Waterbody	Tributary To	WRIA
Chelan	Twenty-Five Mile Creek, Lake Chelan, Chelan River, Columbia River	Lake Chelan	47-Chelan

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Instream Flow	0.81	CFS	152.53	Not Specified	Not Specified
Domestic Multiple & Irrigation	Not Specified	CFS	93.05	Not Specified	Not Specified

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Twenty-Five Mile Creek	292036000000	29N.	20E.W.M.	36	SW SW		

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

### Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the proposed transfer to Trust of a portion of Surface Water Certificate (SWC) 2532.

#### **Public Notice**

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Wenatchee World on March 23, and March 30, 2014, and the Douglas County Empire Press on March 27, and April 3, 2014.

#### **Consultation with the Department of Fish and Wildlife**

The Department must give notice to the Department of Fish and Wildlife (WDFW) of applications to divert, withdraw or store water. Ecology mailed such notice on April 11, 2014, to WDFW.

#### **Trust Water Notice**

Under RCW 90.42.040(5)(b), Ecology must send notice of the creation of a Trust water right to appropriate state agencies, local governments, tribes, and other interested parties. On April 11, 2014, Ecology sent such notice to the appropriate recipients. A list of these recipients can be obtained from Ecology's Office of Columbia River.

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

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

- (a) It is a surface water right application for more than one (1) cfs, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cfs, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;

- (d) 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);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

### ***Water Resources Statutes and Case Law***

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

RCW 90.14.140(2)(c) states that a water right not used for more than five years is not relinquished if it is claimed for a determined future development to take place within 15 years of the last beneficial use of water under the water right. In addition, a series of court cases provide guidance in assessing such a plan. In order to be valid, a determined future development plan must satisfy criteria as established in (1) *R.D. Merrill Company v. Pollution Control Hearings Board*; (2) *City of Union Gap and Ahtanum Ridge Business Park LLC v. Washington State Department of Ecology*; (3) *Protect Our Water v. Islanders for Responsible Water Management (Intervenors), State of Washington, Department of Ecology, and King County Water District No. 19*; and (4) *Orondo Fruit Company, Marcus Griggs, Douglas County Public Utility District, and Michael and Dina Beck v. Washington Department of Ecology*. These criteria include:

- The project must be sufficiently complex as to require more than five years to complete;
- The plan must be determined and fixed within five years of the last beneficial use of the water;
- The party exercising the plan must have equity in the water right;
- The plan must remain fixed, and;
- Affirmative steps must be taken to implement the plan within 15 years.

Chapter 90.42 RCW authorizes Ecology to hold water in Trust to be used for water banking purposes. Water banking may be used as mitigation.

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

## **INVESTIGATION**

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### **Water Use History, DFD, Validity and Extent, Trust Water Conveyance**

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SWC 2532 originally issued in July, 1946, with a priority date of November 25, 1921, for the irrigation of 185.3 acres and domestic supply from a diversion point located on Twenty-Five Mile Creek, approximately 2.5 miles upstream from its mouth. The right is somewhat unique in that it describes six discrete places of use and ascribes irrigated acreage values to each described place of use. Three of the six areas are subject to this change application, totaling 66.8 acres of actually irrigated acreage as listed on the original Certificate. The authorized place of use of another right (SWC 4525) overlaps with the three subject areas. SWC 4525 has a 1947 priority, increases the instantaneous diversion rate and authorizes the diversion of water from Lake Chelan. It is non-additive in annual quantity to SWC 2532.

A change to SWC 4525 in 2008 (CS4-SWC4525) was processed by the Chelan County Water Conservancy Board (Chelan Board) and approved by Ecology which changed its irrigation use to continuous municipal and its place of use to conform to a water system plan.

The Chelan Board's Report of Examination (ROE) for CS4-SWC4525 provides background information, a discussion on the relationship between the two rights, and a tentative determination on the validity and extent of the two rights where they overlap at the subject area. Ecology's approval Order provided some additional data. These resulted in a finding that the two rights in the subject area historically used 230 ac-ft consumptively for the irrigation of 60 acres, of which 93.05 ac-ft were ascribed to SWC 4525 (85.85 ac-ft for the irrigation of 25 orchard acres and 7.2 ac-ft of interior domestic use). This left 136.95 ac-ft of consumptive use for SWC 2532 in the overlapping area for the irrigation of 30 orchard acres and 5 domestic acres (lawns, say). The Chelan Board's analysis did not include the three other places of use under SWC 2532, as the authorized place of use of SWC 4525 does not extend beyond the three subject areas.

This investigation will similarly not disturb the water allocated to the three other places of use under SWC 2532, as they are not directly related to this proposal. Additionally, SWC 2532 already identifies which places of use are authorized quantities of water, describing how the water is divided up among landowners. If this change authorization is approved, since the original certificate ascribed irrigated acreage to each discrete place of use, and since no change is proposed to these other places of use, two superseding documents would issue. One superseding document would capture the proposed changes while the other one would keep the unchanged areas undisturbed. An exception is that the instantaneous rate would be divided up proportionately while accounting for domestic uses taking place in the three other places of use. While signatures of all parcel owners within the subject place of use were obtained, letters were sent by Certified mail from the Peterson/Marquis law firm (the applicant's legal counsel, hereafter referred to as "Peterson/Marquis") to all parcel owners in the three other places of use describing the change proposal and providing both the law firm's and Ecology's contact information. These were sent on March 11, 2015. There were no responses to either Ecology or the law firm.

The 2008 Chelan Board's discussion on validity and extent for SWC 4525 and a portion of SWC 2532 was reviewed by Ecology and further refined within Ecology's approval Order. Ecology's Policy 1120, titled "Water Resources Program Policy for Conducting Tentative Determinations of Water Rights" indicates that the entire history of a water right need not be conducted if the subject right has had recent departmental action within the last five years. Here, the issuance of a change authorization in May of 2008 qualifies as recent departmental action to the extent that the following validity and extent discussion will be confined to the same area as the original tentative determination and will only look back as far as 2006, after the orchard was pulled out. The remaining three areas described in SWC 2532 that are outside the area proposed for change are not subject to the validity and extent tentative determination described below.

Aerial photography and satellite imagery review indicates that in 2006 and 2007 some level of irrigation continued within the subject place of use. However, during the period 2008 to 2012, it appears no use occurred within the subject place of use. This represents a five-year period of non-use, and thus potentially subject to relinquishment under Chapter 90.14 RCW. This is discussed in the next paragraph. From a Technical Memorandum prepared by RH2 Engineering on March 17, 2014, (RH2 Memo) specific to this area, approximately 40 acres were irrigated in 2013. Some irrigation was observed in 2013 aerial photographs, consistent with the RH2 Memo. Observations during a field visit on May 14, 2014,

comport with the RH2 Memo's assertions, where impact sprinklers along hand lines were in operation on green, paddock-like grounds. Peterson/Marquis, indicated that, to the best of their knowledge, irrigation practices in 2014 were essentially the same as in 2013.

Relinquishment under Chapter 90.14 RCW refers to continuous five year periods of non-use of water, though some limited exemptions apply (RCW 90.14.140). One of these exemptions pertains to the future intended use of the water, known as the "Determined Future Development" (DFD) exemption, as introduced above in the "Background" section. Peterson/Marquis indicate that a DFD plan exists for the subject area consistent with RCW 90.14.140(2)(c). This is of particular note since the orchard was pulled out at the end of the 2005 growing season. Briefly, the DFD plan is to convert the former orchard to a housing development, and the 2008 changes to SWC 4525 document this intent. A review of parcel data ownership reveals that this area has been divided up into smaller parcels and now owned by multiple parties. Recent aerial photography indicates that roads have been built to access some of these parcels and at least one home appears to have been recently constructed. Part of this DFD plan includes using water under SWC 2532 for the irrigation of the general area to grow pasture/grass and a few remaining orchard trees, thus enhancing the aesthetic qualities to potential buyers. Indeed, Peterson/Marquis indicate that the on-going irrigation of the property is *"for aesthetic purposes to maintain the appearance and value of properties subject to sale for residential use..."* As such, the DFD appears to meet the criteria listed above, where the plan would take longer than five years to complete, the plan was fixed before five years of non-use had occurred, the plan has not wavered in scope, the applicant has equity in the plan and associated water rights, and affirmative steps have been taken to realize the plan. The change to instream flow and conveyance to Trust now contemplated by this investigation was not part of the original DFD plan.

The amount to convey to Trust would be based on the consumptive amount that was carried through to DFD completion. The DFD pertaining to SWC 2532 (discussed above) was a component of a larger DFD where orchard irrigation is changing to domestic purposes. To the extent aesthetic irrigation took place under the DFD for SWC 2532, the consumptive use would be available for conveyance to Trust. From the irrigation scheduling described within the RH2 Report, approximately 40 acres were irrigated under the DFD. Using the value given in the US Department of Agriculture's Washington Irrigation Guide (WIG) of 29.12 inches/acre (2.43 ft/ac) for pasture/grass at the Chelan station, 97 ac-ft would have been used consumptively by the irrigated pasture grasses. Under a 75% irrigation efficiency factor for hand line impact sprinklers (from Ecology's Guidance Document GUID 1210, and suggested by Peterson/Marquis), 129 ac-ft were diverted and applied. When accounting for water lost to evaporation during the application process, GUID 1210 indicates that approximately 85% of the total amount diverted and applied would be used consumptively. Eighty-five percent of 129 ac-ft is **110 ac-ft**, and this would be the portion available for transfer to Trust.

### Trust Water Conveyance

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As part of this proposal, the applicant requests a transfer of 0.81 cfs, formerly used as irrigation, to Trust. The original documents filed in the 1920s indicate the original application requested 3 cfs, with the area now proposed for change added later adding 1 cfs for a total of 4 cfs. This is known as the "Lindsley" portion. The 0.19 cfs remaining could account for domestic uses that may be associated with SWC 2532 in this area. The subject 0.81 cfs over 66.8 acres results in 0.012 cfs/acre, which does not exceed a reasonable value for the type of historic and recent irrigation used at the site. The instantaneous rate of withdrawal, if conveyed to Trust, would be limited to monthly values as presented in the Table below titled "Monthly Trust Water Quantities and Rates". In this Table, the instantaneous rates reflect a constant rate to attain the given monthly acre-feet. The monthly acre-feet are based on

WIG data for pasture/turf at the Chelan station. The instantaneous rate values given in the Table are less than 0.81 cfs.

Under this proposal, both a Primary Reach and Secondary Reach would benefit from the proposed Trust conveyance. The Primary Reach of an instream flow Trust Water Right is that portion of a water body that benefits from both the former consumptive use and former return flow waters of a water right. Downstream of the Primary Reach is found the Secondary Reach. The Secondary Reach benefits only from the former consumptive use as the return flow would have found its way back to the water body under the previously authorized use. Here, return flow would have found its way back to Lake Chelan very near to where Twenty-Five Mile Creek discharges to Lake Chelan. As such, the Primary Reach would be confined to the lower 2.5 miles of Twenty-Five Mile Creek (downstream of the original Point of Diversion), while the Secondary Reach would begin around Mile 23 of Lake Chelan. From this area on Lake Chelan, the POU would continue downstream along the Lake to the Chelan River, and then to its confluence with the Columbia River. From there, it would extend further downstream along the Columbia River to the points of diversion given in applications S4-29956 and S4-31083 (located near Malaga, WA).

**Proposed Use**

The proposed use is to cease diverting water for irrigation under three of the areas described within SWC 2532 only (the remaining three areas described within SWC 2532 are undisturbed by this investigation) and transfer this unused portion to Trust to be used as instream flow and mitigation for new uses captured within new water right applications S4-29956 and S4-31083. The Trust conveyance would involve the transfer of Deeds from the applicant to Ecology. The Place of Use (POU) of the Trust water would begin at the diversion on Twenty-Five Mile Creek, and extend downstream along Twenty-Five Mile Creek to where it discharges to Lake Chelan very near Mile 23 of the Lake. From this point on Lake Chelan, the POU would continue downstream along the Lake to the Chelan River, and then to its confluence with the Columbia River. From there, it would extend further downstream along the Columbia River to partially mitigate proposed new out-of-stream uses located near Malaga, WA, which are described more fully in new water right applications S4-29956 and S4-31083. Other rights proposed for change would similarly help mitigate these two new water right applications, but are not part of this report.

For the Secondary Reach, Trust water values obtained through Ecology’s tentative determination of validity and extent would be further limited by month as given in the WIG for pasture/turf at the Chelan station, and presented in the following Table:

<b>Monthly Trust Water Quantities and Rates (Secondary Reach)</b>							
	May	June	July	August	September	October	Total
<b>WIG (inches)</b>	3.87	6.90	8.14	5.91	3.87	0.43	29.12
<b>% WIG</b>	13.3	23.7	28.0	20.3	13.3	1.5	100
<b>Qa (ac-ft)</b>	14.63	26.07	30.8	22.33	14.63	1.65	110
<b>Qi (cfs)</b>	0.24	0.44	0.50	0.36	0.25	0.03	N/A

## Other Rights Appurtenant to the Place of Use

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SWC 4525 and CS4-SWC4525 overlap in place of use at the subject area and have been discussed already within this report. SWC 4525 serves to boost the instantaneous rate and has a non-additive relationship in annual quantity with SWC 2532.

SWC 01542 shares the same point of diversion and overlaps in part with SWC 2532, but is not part of this project. Notes in the SWC 01542 file suggest that the intent of this right was to be in addition to SWC 2532, however the irrigation use was primarily intended for an area outside of the subject area.

Claim 088931 asserts surface water (a spring) for domestic and stock use in an area not owned by the applicant but within the POU. This claim is not part of this proposal.

## Impairment Considerations

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No longer irrigating under SWC 2532 and conveying this water into Trust would reduce a commensurate amount of water being diverted from Twenty-Five Mile Creek. Water formerly withdrawn would remain in Twenty-Five Mile Creek and make its way to the Columbia River via Lake Chelan and the Chelan River. While no impairment is expected, should this expectation fail, Ecology is bound by RCW 90.42.040(4)(b), which states that "*If impairment becomes apparent during the time a trust water right is being exercised, the department shall cease or modify the use of the trust water right to eliminate the impairment.*" If approved, any authorization relying on this Trust water conveyance as mitigation should be provisioned to be subject to the cessation or modification.

### **Public Interest Considerations**

Under RCW 90.03.380, and upheld in *Public Utility District No. 1 of Pend Oreille County v. Ecology*, the public interest test does not apply to surface water right changes. However, the proposal involves conveying water to Trust, and under RCW 90.42.040(4)(a), prior to the exercise of a trust water right the public interest must not be impaired.

Water no longer diverted from Twenty-Five Mile Creek would remain instream to offset uses further downstream near Malaga, WA. This benefit to aquatic resources is in the public interest as expressed in Chapter 90.54 RCW.

### **Consideration of Protests and Comments**

No protests were filed against this application.

## CONCLUSIONS

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- The public notice complies with RCWs 90.42.040(5)(a), 90.42.110, and 90.03.280.
- Additional notice provided to other relevant agencies and entities complies with RCW 90.42.040(5)(b).
- The Washington Department of Fish and Wildlife received notice under RCWs 90.42.040(5)(b), 90.42.110(2), 90.03.280, and 77.57.020.
- Electronic notice to the Okanogan County Commissioners was provided pursuant to RCW 90.03.380(10)(a).
- A tentative determination on the validity and extent of the subject right was made (see Recommendations below).
- No impairment is expected.

- Detriment to the public interest is not expected.

## RECOMMENDATIONS

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Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above

### Purpose of Use and 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:

#### To Convey to Trust under CS4-SWC2532@1:

Primary Reach: 0.81 cfs; Secondary Reach: 0.5 cfs (Limited further by monthly breakdown of quantities and rates as presented in Table 1 of the Report of Examination above.)

Primary Reach: 129 ac-ft; Secondary Reach: 110 ac-ft per year

#### For the purpose of instream flow as mitigation

The Place of Use (POU) of the Trust water would be as follows: The Primary Reach would be confined to the lower 2.5 miles of Twenty-Five Mile Creek (downstream of the original Point of Diversion), while the Secondary Reach would begin around mile 23 of Lake Chelan. From this area on Lake Chelan, the POU would continue downstream along the Lake to the Chelan River, and then to its confluence with the Columbia River. From there, it would extend further downstream along the Columbia River to the points of diversion given in applications S4-29956 and S4-31083 (located near Malaga, WA). Points of Diversion or Withdrawal are not applicable for this Trust water conveyance used as instream flow.

#### Not Conveyed to Trust

The nameplate will no longer include "Lindsley". The remaining three names on the Certificate will be Hale, Ayers, and Barks all of Lakeside, Washington.

3 cfs

The Place of Use is reduced by the three areas subject to this authorization, comprising 66.8 acres. The remaining three areas are not changed, being described as:

- 1) 30 acres within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 25 of T. 29 N., R. 20E.W.M.
- 2) 33.5 acres within Lots 2 & 3 of Section 30 of T. 29 N., R. 21E.W.M.
- 3) 55 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 30 of T. 29 N., R. 21E.W.M.

No other changes to any other attribute of the certificate were made.

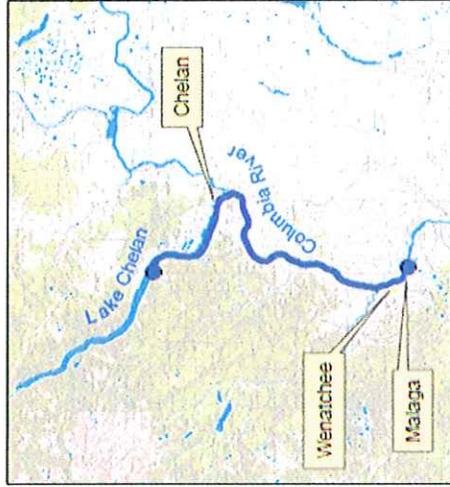
Report Writer

Date

*If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*

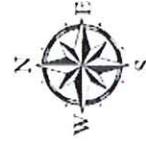
# CS4-2532@1 General Project Area and Locations of Primary Reach and Secondary Reach

Attachment 1



## LEGEND

- Primary Reach
- Secondary Reach



Map by Thomas Perlow - April 24, 2015

OCR Final Trust Water Report of Examination