File No.: CS4-08084J@3
WR Doc ID: 6007954

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Changed Purpose and Place of Use

PRIORITY DATE	WATER RIGHT NUMBER	BEGIN TRUST TERM	END TRUST TERM
1901	S4-08084AL J	April 30, 2014	March 31, 2023

WATER RIGHT HOLDER
SCOTT AND KAREN S. LARSON
P.O. BOX 157
CARLTON, WA 98814

SITE ADDRESS (IF DIFFERENT)

Purpose and Quantity

Instream flow allocated to primary and second reaches in the following manner:

PRIMARY REACH: 0.258 cubic feet per second (cfs), 37.4 acre-feet per year (ac-ft/yr) from April 1 to November 1.

SECONDARY REACH:

MONTH	APR	MAY	JUN	JUL	AUG	SEP	OCT	TOTAL
ACRE-FEET PER MONTH	0.0	3.4	6.72	8.16	5.62	3.77	0.37	28.04
CFS GAINED BY SECONDARY REACH	0.0	0.11	0.11	0.13	0.09	0.13	0.0	0.57

Trust Water Right Place of Use (See Attachment 1)

WATERBODY	TRIBUTARY TO	COUNTY	WATER RESOURCE INVENTORY AREA
Libby Creek	Methow River	Okanogan	48-Methow

REACH	WATERBODY	CREEK MILE	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Begin Primary Reach	Libby Creek	2.7	32 N.	21 E.W.M.	25	SW1/4NE1/4	120°8'59.566"W	48°14'50.986"N
End Primary Reach	Libby Creek	0.98	32 N.	22 E.W.M.	31	NW1/4NE1/4	120°7'52.928"W	48°14'9.808"N
Begin Secondary Reach	Libby Creek	0.98	32 N.	22 E.W.M.	31	NW1/4NE1/4	120°7'52.928"W	48°14'9.808"N
End Secondary Reach	Libby Creek	0	32 N.	22 E.W.M.	32	NE1/4SW1/4	120°6'52.291"W	48°13'42.691"N

Latitude/Longitude coordinates may approximate reach segments. Datum: NAD83/WGS84

Primary Reach: Beginning at the historic point of diversion and ending at a location 7,700 feet downstream on Libby Creek within the NW¼NE¼ of Section 31, T. 32 N., R. 21 E.W.M.

Secondary Reach: Beginning at the end of the Primary Reach and ending at the confluence of Libby Creek and the Methow River.

PORTION OF RIGHT NOT CONVEYED INTO TRUST

Total Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.21	cfs	20.6

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Irrigation of nine acres	0.21		cfs	20.6		04/01 - 11/01

SOURCE FACILITY/DEVICE	PARCEL	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
LIBBY CREEK	3222300012	32 N.	22 E.W.M.	30	SW¼SW¼	120°8'24.681"W	48°14'24.421"N

Place of Use (See Attachment 1)

PARCELS (NOT LISTED FOR SERVICE AREAS)

3222302010, 3222300011P, 3222300010, 3222300009P, AND 3222302006

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

SW¼SE¼ of Section 30, T. 32 N., R. 22 E.W.M., and SE¼SE¼ of Section 30, T. 32 N., R. 22 E.W.M., Okanogan County.

Description of Water System

The irrigation water is diverted through a gravity flow ditch. The ditch flows into a pond where the water is pumped to three fields. Five acres are irrigated with center pivots and four acres are irrigated with hand lines and sprinklers.

Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (cfs)

Provisions

Real Estate Excise Tax Notice

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.

Department of Revenue
Real Estate Excise Tax
P.O. Box 47477
Olympia WA 98504-7477

Phone: (360) 570-3265
Internet: http://dor.wa.gov/
E-mail: REETSP@DOR.WA.GOV

Measurements, Monitoring, Metering, and Reporting

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation, operation, and information reporting. It also allows a water user to petition the Department of Ecology (Ecology) for modifications to some of the requirements.

Water Use Efficiency

Use of water under this authorization will be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.

Schedule and Inspections

Ecology personnel, upon presentation of proper credentials, will have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices, and associated distribution systems, for compliance with water law.

Findings of Facts and Decisions

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. CS4-08084J@3, 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
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503 **Pollution Control Hearings Board** 1111 Israel RD SW, Ste. 301 Tumwater, WA 98501	**Department of Ecology** Attn: Appeals Processing Desk P.O. Box 47608 Olympia, WA 98504-7608 **Pollution Control Hearings Board** P.O. Box 40903 Olympia, WA 98504-0903

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://www.leg.wa.gov/CodeReviser.

Signed at Yakima, Washington, this 17th day of NOVEMBER 2014.

Robert F. Barwin, Acting Section Manager
Water Resources Program/CRO

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INVESTIGATOR'S REPORT

BACKGROUND

On August 12, 2013, Washington Water Trust, on behalf of Scott and Karen S. Larson, filed an application to temporarily change the purpose of use and place of use for a portion of water under Libby Creek Adjudicated Certificate No. 84. The application was accepted and assigned identifier No. CS4-08084J@3.

EXISTING WATER RIGHT ATTRIBUTES

WATER RIGHT OWNER:	Harry Mourer
PRIORITY DATE:	1901
PLACE OF USE:	SW¼SE¼ of Section 30, T. 32 N., R. 22 E.W.M., and SE¼SE¼ of Section 30, T. 32 N., R. 22 E.W.M., Okanogan County.

COUNTY	WATERBODY	TRIBUTARY TO	WRIA
Okanogan	Libby Creek	Methow River	48-Methow

PURPOSE	RATE	UNIT	AC-FT/YR	BEGIN SEASON	END SEASON
Irrigation of 33.2 acres	0.78	cfs		04/01	11/01

SOURCE NAME	PARCEL	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Libby Creek	3222300012	32 N.	22 E.W.M	30	SW SW	120°8'24.546"W	48°14'26.575"N

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

APPLICANT NAME:	Larson Scott and Karen S.
DATE OF APPLICATION:	August 12, 2013
PLACE OF USE:	Instream flow in Libby Creek and irrigation in the SW¼SE¼ of Section 30, T. 32 N., R. 22 E.W.M., and SE¼SE¼ of Section 30, T. 32 N., R. 22 E.W.M., Okanogan County.

COUNTY	WATERBODY	TRIBUTARY TO	WRIA
Okanogan	Libby Creek	Methow River	48-Methow

PURPOSE	RATE	UNIT	AC-FT/YR	BEGIN SEASON	END SEASON
Instream Flow	0.258	cfs	37.4	04/01	11/01
Irrigation of nine acres	0.211	cfs	20.6	04/01	11/01

SOURCE NAME	PARCEL	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Libby Creek	3222300012	32 N.	21 E.W.M.	25	SW NE	120°8'24.546"W	48°14'26.575"N

Legal Requirements for Requested Change

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

Public Notice

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 Omak-Okanogan County Chronicle on June 4, 2014 and June 11, 2014.

No comments or protests were received.

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 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 (gpm);

(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.

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

The following information was obtained from research of department records and review of 2005, 2006, 2009, and 2011 aerial photographs.

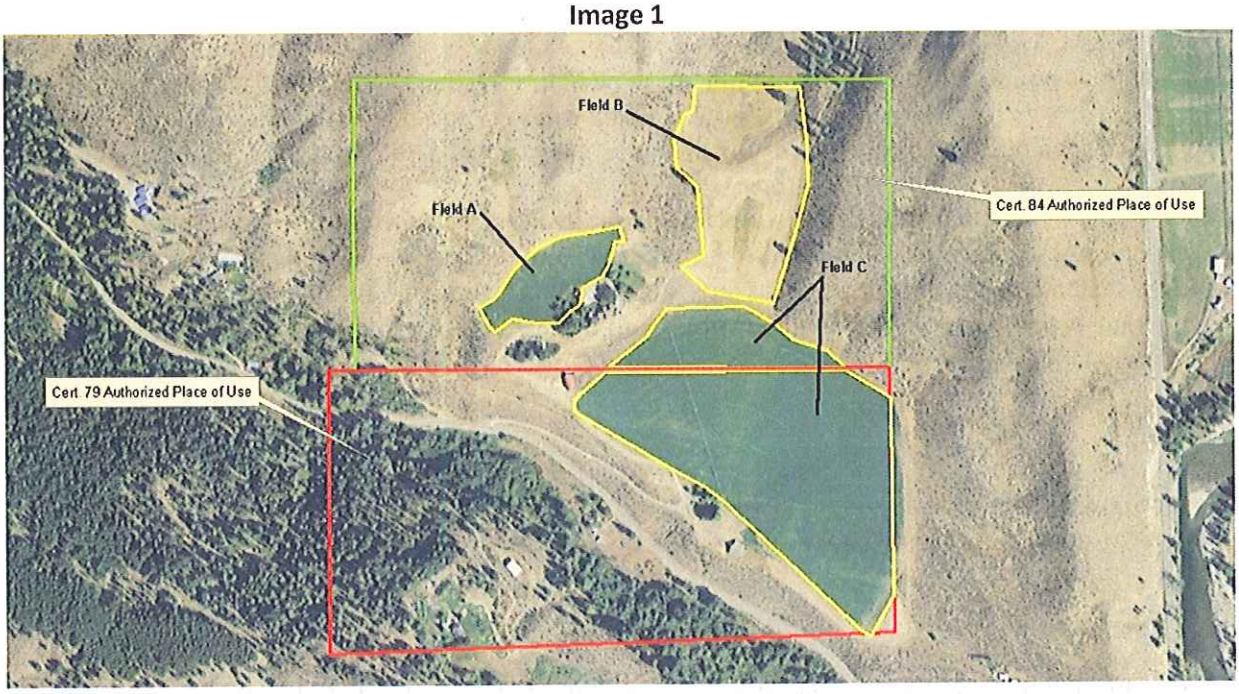
History of Water Use

In order to make a water right change decision, the Department of Ecology (Ecology) must first make a tentative determination on the validity and extent of the right. Under RCW 90.14.160, the failure to divert or withdraw water for any period of five successive years after September 1, 1967, without sufficient cause, shall relinquish such right or portion thereof, and said right of portion thereof shall revert to the state.

Libby Creek Decree No. 3934 of November 18, 1921, confirmed a right to Harry Mourer for irrigation of 15 acres; 1.7 acres within the SW¼SE¼ and 13.3 acres within the SE¼SE¼ of Section 30, T. 32 N., R. 22 E.W.M. It also stated that he was entitled to further develop an inchoate portion of the right to irrigate an additional 18.2 acres; five acres within the SW¼SE¼ and 13.2 acres within the SE¼SE¼ of Section 30, T. 32 N., R. 22 E.W.M.

The field is now comprised of one four-acre field (Field A), one 11 acre field (Field B), and one five-acre field (a portion of a 30.5 acre field (Field C), of which 25.5 acres are served by Libby Creek Adjudicated Certificate No. 79) which are irrigated from April 1 thru November 1 (Image 1).

Image 1



The water was historically diverted from two points of diversion into gravity flow ditches. The fields were irrigated by means of flood irrigation. The water is now only diverted from the point of diversion within the SW¼SW¼ of Section 30, T. 32 N., R. 22 E.W.M. into a gravity flow ditch, and irrigation methods used are a combination of pivot, hand, and wheel lines.

On June 27, 2001, Ecology received an application to temporarily change the place of use and purpose of use to instream flow for a portion of water under Libby Creek Adjudicated Certificate No. 84. In June of 2003, Ecology approved the temporary change through 2004. This change resulted in the continued irrigation of five acres April 1 through June 30, four acres April 1 to November 1, and 11 acres were donated to the State Trust Water Rights Program for instream flow from April 1 to November 1.

In 2005, Ecology received a letter from Washington Water Trust requesting to extend the temporary change in place of use and purpose of use granted in 2003 through 2011. The request to extend the temporary change was approved on February 17, 2005.

Review of department records and aerial photographs from 2005, 2006, 2009, and 2011, indicate that three fields within the place of use for Libby Creek Adjudicated Certificate No. 84 have either been irrigated or fallowed (with the fallowed portion in trust) as described above.

Proposed Use

The applicant proposes to irrigate Field A (four acres), and the five acre portion of Field C of pasture/turf, from April 1 through November 1. The applicant then proposes to put the remainder of the water that would be required to irrigate Field B (11 acres) into the State Trust Program from April 1 through November 1.

Other Rights Appurtenant to the Place of Use

Water Right Claim No. 113984 was submitted by Keith A. and Norma Jean Batchazor on June 13, 1974, stating they withdraw an unknown quantity of water per year for stock water from a dug out (ground water) located within the SE¼SE¼ of Section 30, T. 32 N., R. 22 E.W.M.

Trust Water Calculations

Ecology describes instream flow by defining two reaches known as the primary and secondary reach. The primary reach is the length of stream between the historic point of diversion and where any of the water diverted, and not consumed, returns to the stream. The secondary reach typically begins at the downstream end of the primary reach from the point that the return flows reenter the system and is defined as that length of stream which benefits from a reduction in consumptive use.

The primary reach for the proposed change begins at the historic point of diversion and ends at a location 7,700 feet downstream on Libby Creek within the NW¼NE¼ of Section 31, T. 32 N., R. 22 E.W.M. The secondary reach begins at the end of the primary reach and ends at the confluence of Libby Creek and the Methow River.

The water duty, as confirmed under Libby Creek Adjudicated Certificate No. 84, is 0.0235 cfs per acre. The Washington State Irrigators Guide (WIG) at the Methow monitoring station estimated that pasture/turf requires 3.4 ac-ft/yr. Therefore, to irrigate 20 acres of pasture/turf from April 1 to November 1 (214 days) requires 0.47 cfs, 68 ac-ft/yr.

The proposed fallowing of 11 acres will add 0.258 cfs, 37.4 ac-ft/yr to the primary reach from April 1 through November 1.

The benefit to instream flow for the secondary reach will vary throughout the irrigation season based on historic irrigation practices. The consumptive use associated with the fallowing of 11 acres was calculated using the WIG and Ecology's Guidance Document 2010. An average application efficiency of 65% was selected to approximate for the use of impact sprinklers.

The following table identifies the trust water quantities by month for the secondary reach:

MONTH	APR	MAY	JUN	JUL	AUG	SEP	OCT	TOTAL
ACRE-FEET PER MONTH	0.0	3.4	6.72	8.16	5.62	3.77	0.37	28.04
CFS GAINED BY SECONDARY REACH	0.0	0.11	0.11	0.13	0.09	0.13	0.0	0.57

Water Not Placed in Trust

A total of 0.211 cfs, 20.6 ac-ft/yr is to be retained by the applicant for the continued irrigation of nine acres.

Considerations of Protests and Comments

No protests were filed against this application.

CONCLUSIONS

After review of the evidence the author makes the tentative determination that Libby Creek Adjudicated Certificate No. 84 represents a valid right to divert water from Libby Creek and is eligible for change.

Approval of this change request will not cause impairment of existing rights or be detrimental to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts below and within the limitations and provisions listed on page 1-4:

- 0.211 cfs and 20.6 ac-ft/yr to irrigate nine acres April 1 through November 1.
- Temporary Instream Flow Water Right (April 1, 2014 – March 21, 2023).

Primary Reach: 0.258 cfs and 37.4 ac-ft/yr beginning at the historic point of diversion and ending at a location 7,700 feet downstream on Libby Creek within the NW¼NE¼ of Section 31, T. 32 N., R. 22 E.W.M.

Secondary Reach: beginning at the end of the Primary Reach to the confluence of Libby Creek and the Methow River.

MONTH	APR	MAY	JUN	JUL	AUG	SEP	OCT	TOTAL
ACRE-FEET PER MONTH	0.0	3.4	6.72	8.16	5.62	3.77	0.37	28.04
CFS GAINED BY SECONDARY REACH	0.0	0.11	0.11	0.13	0.09	0.13	0.0	0.57

Jacquelyn M Metcalfe *Date* 11/14/14

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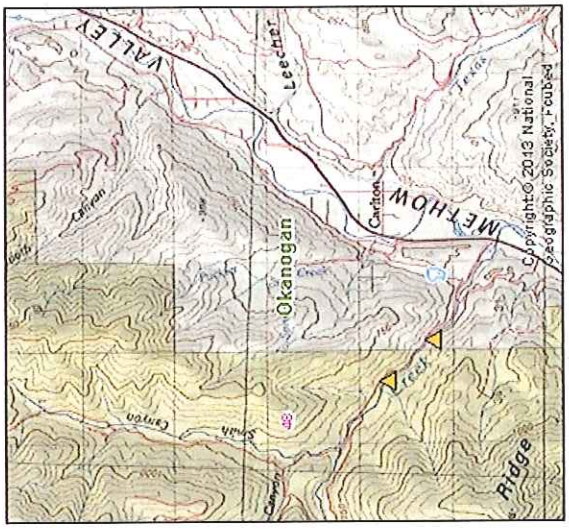
ATTACHMENT 1

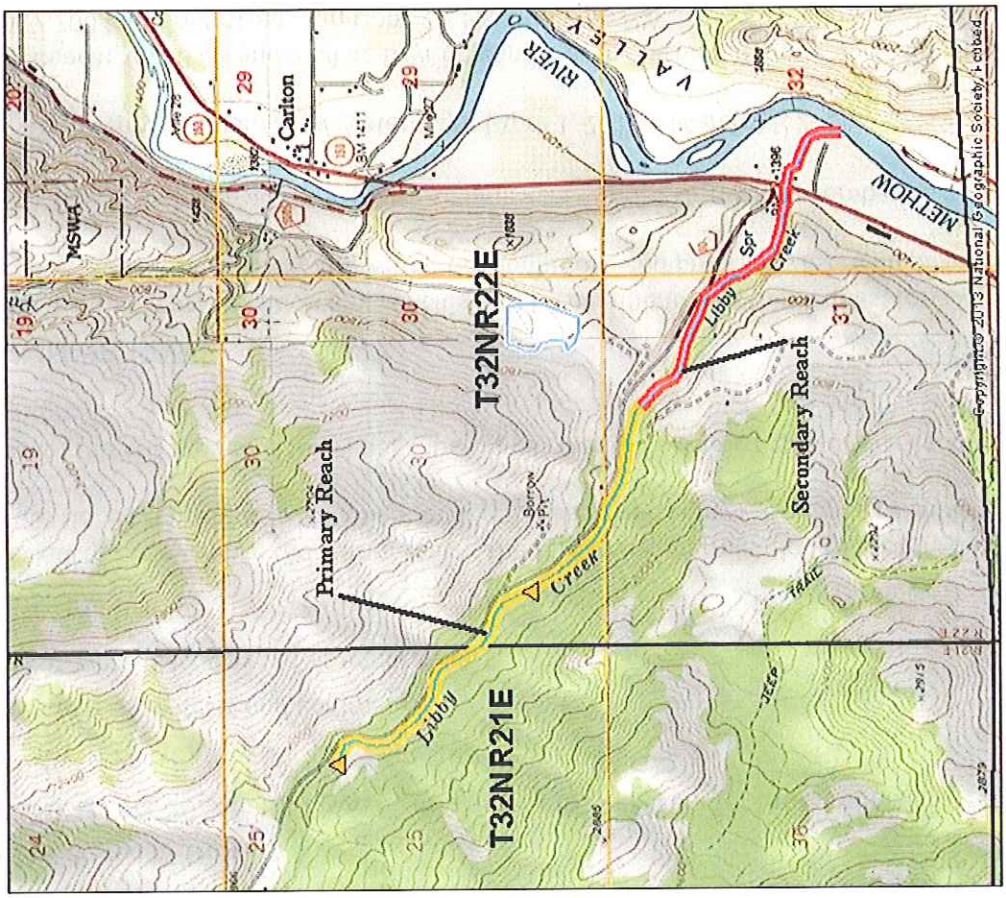
Scott & Karen S. Larson
CS4-08084J@3
T32N/R22E
WRIA 48 - Okanogan County



Basemap ESRI US Topographic Maps

Legend

- Fallowed Acres
- Authorized Point of Withdrawal
- Authorized Point of Diversion
- Primary Reach
- Secondary Reach
- Townships
- Sections
- WRIA
- Counties



Basemap ESRI US Topographic Maps

0 900 1,800 3,600 5,400 7,200 Feet

Map Date: 6/24/2014

Comment:
Place of use and source locations are as defined within the Report of Examination cover sheet for the document identified in the header above.