



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Change of Point of Diversion/Withdrawal
CS4-02276CTCL@1

PRIORITY DATE <i>May 10, 1905</i>	CLAIM NUMBER <i>Court Claim No.2276</i>	PERMIT NUMBER	CERTIFICATE NUMBER
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NAME Frank W. Payne United States Bureau of Reclamation (USBR)			
ADDRESS (STREET) 29426 9 th Place Street 1917 Marsh Road	(CITY) Federal Way Yakima	(STATE) WA WA	(ZIP CODE) 98003-3737 98901

PUBLIC WATERS TO BE APPROPRIATED

SOURCE <i>Well</i>	TRIBUTARY OF (IF SURFACE WATERS)		
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MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE <i>359 gpm</i>	MAXIMUM ACRE FEET PER YEAR 160
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QUANTITY, TYPE OF USE, PERIOD OF USE
359 gallons per minute (gpm) up to 160 acre-feet per year (acre-ft/yr) for irrigation of 40 acres from May 1 through September 15.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL
Approximately 2140 feet south and 785 east from the NW corner of Section 14, T. 17 N., R. 18 E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) SW ¹ / ₄ NW ¹ / ₄	SECTION 14	TOWNSHIP 17N.	RANGE, (E. OR W.) W.M. 18E.	W.R.I.A. 39	COUNTY Kittitas
PARCEL NUMBER 1718140200003	LATITUDE		LONGITUDE	DATUM	

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
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LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

[Attachment 1 shows location of the authorized place of use and point(s) of diversion or withdrawal]
NW¹/₄SW¹/₄, W¹/₂NW¹/₄ lying west of Riverbottom Road of Section 14, T. 17 N., R. 18 E.W.M.

DESCRIPTION OF PROPOSED WORKS

A shallow ring well having a 20 horse power pump, producing 360 gallons per minute at build out. There will be a 6" mainline connecting the well to the existing pump station. Existing pump station is located on Parcel No. 17-18-14020-0003 at a point approximately 100 feet west of the well location.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: Begun	COMPLETE PROJECT BY THIS DATE: Complete	WATER PUT TO FULL USE BY THIS DATE: September 15, 2011
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PROVISIONS

Wells, Well logs and Well Construction Standards

1. In accordance with WAC 173-160, wells shall not be located within certain minimum distances of potential sources of contamination. These minimum distances shall comply with local health regulations, as appropriate. In general, wells shall be located at least 100 feet from sources of contamination. Wells shall not be located within 1,000 feet of the boundary of a solid waste landfill.
2. All wells constructed in the state shall meet the construction requirements of WAC 173-160 titled "Minimum Standards for the Construction and Maintenance of Wells" and RCW 18.104 titled "Water Well Construction". Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard shall be decommissioned.
3. All wells shall be tagged with a Department of Ecology unique well identification number. If you have an existing well and it does not have a tag, please contact the well-drilling coordinator at the regional Department of Ecology office issuing this decision. This tag shall remain attached to the well. If you are required to submit water measuring reports, reference this tag number.
4. Installation and maintenance of an access port as described in WAC 173-160- 291(3) is required.

Measurements, Monitoring, Metering and Reporting

5. An approved measuring device shall be installed and maintained for each of the sources authorized by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173.
<http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>
6. Water use data shall be recorded weekly and maintained by the property owner for a minimum of five years. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to the Department of Ecology by January 31st of each calendar year.
7. The following information shall be included with each submittal of water use data:
 - a) owner,
 - b) contact name (if different from owner),
 - c) mailing address,
 - d) daytime phone number,
 - e) WRIA,
 - f) period of use,
 - g) Permit/Certificate/Claim No.,
 - h) source name,
 - i) annual quantity used including units,
 - j) maximum rate of withdrawal including units,
 - k) monthly meter readings including units
 - l) peak monthly withdrawal including units
 - m) purpose of use
 - n) well tag number
9. In the future, the Department of Ecology may require additional parameters to be reported or more frequent reporting. The Department of Ecology prefers web based data entry, but does accept hard copies. The Department of Ecology will provide forms and electronic data entry information. <http://www.ecy.wa.gov/pubs/ecy070170.pdf>
10. WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements". <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

Schedule and Inspections

11. Department of Ecology personnel, upon presentation of proper credentials, shall 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.
12. The water right holder shall file the notice of project completion when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate of change will reflect the extent of beneficial use within the limitations of the change authorization. Elements of the project completion inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and compliance with provisions.

Provisions set forth by the Conditional Final Order, Washington State Dept. of Ecology v. James J. Acquavella, et al.

13. The source of water for this water right is the total water supply available, defined in the 1945 Consent Judgment as "that amount of water available in any year from the natural flow of the Yakima River and its tributaries, from storage in various Government reservoirs on the Yakima watershed and from other sources."

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 find the change of water right as recommended will not be detrimental to existing rights.

Therefore, I ORDER the requested change of point of diversion to a point of withdrawal under Surface Water Change Application No. CS4-02276CTCL@1, subject to existing rights and the provisions specified above.

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
- Facts that demonstrate the appellant is entitled to obtain judicial review;
- The appellant's reasons for believing that relief should be granted; and
- A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed**. The appeal must be filed in the same manner as described above.

Signed at Yakima, Washington, this 14th day of April, 2011.


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

INVESTIGATOR'S REPORT

BACKGROUND

Description and Purpose of Requested Change

On April 21, 2006, Frank W. Payne of Federal Way, Washington, filed an application for change of water right from a point of diversion to a point of withdrawal of 0.4 cubic feet per second (cfs) or 179.5 gpm and an annual maximum quantity of 160 acre-feet per year from the Yakima River. It's important to note here that the United States filed a Motion to correct what they believed to be a mathematical error in the instantaneous rate (Qi) of 0.4 cfs to 0.8 cfs on November 6, 2008. This was heard by the court and a Qi of 0.8 cfs (359 gpm) was granted on December 11, 2008. This proposed change is south of Ellensburg located in Kittitas County. The application was accepted as complete and assigned identifier CS4-02276CTCL@1.

Kittitas County Conservation District worked with the United States Bureau of Reclamation and the applicant on this project to create a sustainable fish rearing habitat in the upper portion of Fogarty Ditch. The Yakima River diversion structure that feeds water to Fogarty Ditch is a full span structure that has no screen to prevent entrainment of fish into the irrigation system and is not passable by juvenile fish. Water for the Payne property is diverted into "Greer Ditch" from Fogarty Ditch. Through implementation of this project the diversion structure on the Yakima River will be removed, allowing the upper portion of Fogarty Ditch to provide a sustainable rearing habitat.

WAC 173-152-050(2) provides that water right change applications may be processed prior to application submitted at an earlier date, provided that the proposed change would substantially enhance the quality of the natural environment. As stated by a Kittitas County Conservation District letter dated March 20, 2006 submitted to Department of Ecology, "In order for this section of Fogarty Ditch to be safe and accessible for rearing habitat, all diversions from Fogarty Ditch, including Mr. Payne's, must be passable and properly screened."

Attributes of the Court Claim No. 2276 and Proposed Change

Table 1
Summary of Proposed Changes to Court Claim No. 2276

<i>Attributes</i>	<i>Existing</i>	<i>Proposed</i>
Name	US Bureau of Reclamation, Warren Act contract 112708	No change
Priority Date Date of Application for Change	May 10, 1905	No change
Instantaneous Quantity	0.8 cfs	359 gpm (no change)
Annual Quantity	160 acre-feet	No change
Source	Yakima River	Ring Well
Point of Diversion/Withdrawal	NW ¼ SE ¼ of Section 10, T 17N, R 18 E.W.M.	SW ¼ NW ¼ of Section 14, T 17N, R 18 E.W.M.
Purpose of Use	Irrigation of 40 acres	No change
Period of Use	May 1 – September 15	No change
Place of Use	SW¼ NW¼ of Section 14, T 17N, R 18 E.W.M	NW¼SW¼, W½ NW¼ lying west of Riverbottom Road of Section 14, T 17N, R 18 E.W.M.

Legal Requirements for Proposed Change

Statement of Authorities

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.

Tentative Determination/Extent and Validity

Ecology cannot adjudicate a claim to a water right; only the superior courts have this authority. However, 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*.

Public Notice

Notice of the application was published in Kittitas County newspaper Daily Record on July 14 and July 21, 2006. No comments or protests were received during the 30-day comment period. Due to a mistake in the description of place of use a second publication was needed. The second publication was also published in Kittitas County newspaper Daily Record on March 20 and March 27, 2009. No comments or protests were received during the 30-day comment period.

State Environmental Policy Act (SEPA)

According to RCW 43.21C.035, environmental review under SEPA is categorically exempt for this project. The appropriation of 50 cfs or less of surface water used for irrigation or of 2,250 gpm or less for groundwater is categorically exempt from SEPA.

INVESTIGATION

History of Water Use

The Payne property is located in the Yakima Basin, Shushuskin Canyon, subbasin No. 12, Water Resource Inventory Area (WRIA) 39, tributary of the Columbia River. The subject property is located south of Interstate 90 on Riverbottom Road, off the west bank of the Yakima River, approximately 15 miles south of Ellensburg, Washington. **See vicinity map on page 6.** The United States Bureau of Reclamation (USBR) filed a motion seeking recognition of USBR's water right in all Yakima Project return flows and the legal right to recapture and redistribute those return flows to meet contract obligations, maintain fish life, and other purposes. To satisfy their obligations to the Payne Warren Act Contract, the USBR filed a court claim for an instantaneous rate (Q_i) of 0.4 cfs and an annual amount (Q_a) of 160 acre-feet per year for the purpose of irrigating 40 acres from May 1 through September 15 each year. This claim was later authorized by the Superior Court of the State of Washington for Yakima County. A Conditional Final Order (CFO) signed on February 14, 2007, authorized a diversion of 0.4 cfs, 160 acre-feet per year for the purpose of irrigating 40 acres from May 1 through September 15, each year.

However, by pumping 0.4 cfs continuously for the duration of the irrigation season, the water right would never be fully utilized. The USBR believed this was a mathematical error contained in the CFO. The United States filed a Motion to correct what they believed to be a mathematical error from a Q_i of 0.4 cfs to 0.8 cfs on November 6, 2008. This was heard by the court and a Q_i of 0.8 cfs was granted on December 11, 2008.

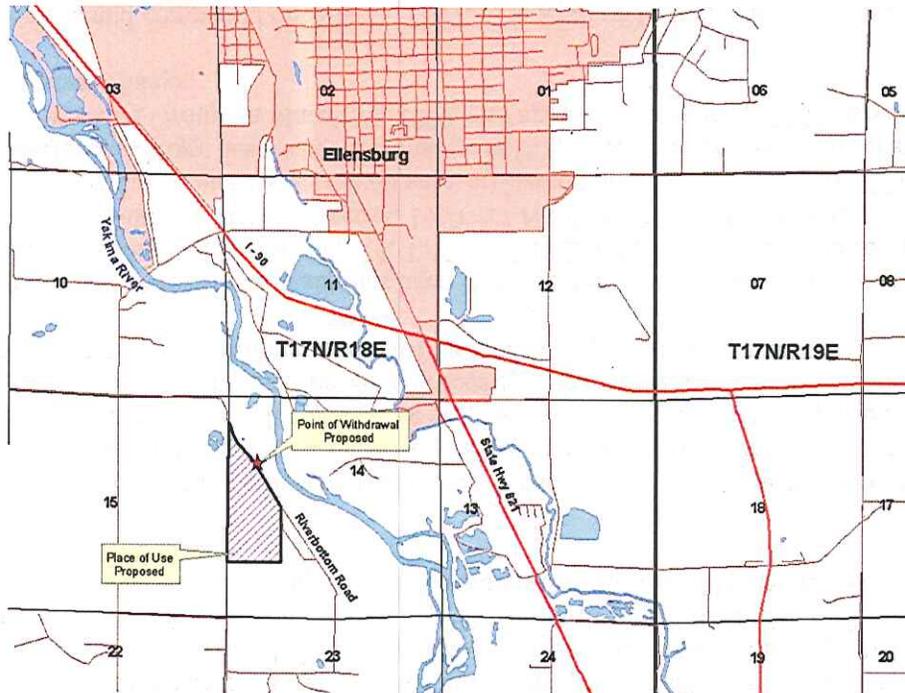
A site visit was conducted by Breean Zimmerman, Candice Graff, and Erin Gutierrez of the Department of Ecology Central Region Office on January 4, 2007 at the Frank Payne property, parcel number 17-18-14020-0003. Frank Payne, applicant, John Greer, lessee of Payne property, and Mark Crowley, with Kittitas County Conservation District was present at the site visit. According to Mark Crowley, all diversions on Fogarty Ditch have all been properly screened to prevent entrainment of fish into the irrigation systems and to be passable by juvenile fish with the exception of Frank Payne's Greer Ditch diversion.

Water is diverted from the Yakima River into Fogarty Ditch at a point approximately 2500 feet north and 1610 feet west of the southeast corner of Section 10, T.17 N., R. 18 E.W.M. The water then travels south in Fogarty Ditch approximately 2950 feet and is diverted into Greer Ditch at a point approximately 62 feet north and 611 feet east of the southeast corner of section 10, T.17 N., R.18E.W.M. The land was originally flood irrigated until 1996 when Mr. Payne installed two wheel lines. This is the current irrigation system used to date.

Aerial photos from 2000, 2002, and 2005 confirm approximately 40 acres have been irrigated with the Payne water right, Court Claim No. 2276. According to Frank Payne the new well will have a 20 horse power pump, produce 360 gpm at build out, and have a 6" mainline. The mainline will connect the proposed well to the current pump used on the property and locate approximately 100 feet due west of the proposed well location. The proposed well will be located approximately 2410 feet south and 785 feet east of the northwest corner of Section 14, T. 17 N., R.18E.W.M.

The 40 acres of alfalfa and orchard grass historically has been irrigated and continues to be irrigated within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ lying west of Riverbottom Road of Section 14, T.17 N., R18E.W.M. The existing place of use (POU) was described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, T. 17 N., R18E.W.M. This quarter, quarter section (SWNW) contains 40 acres. However, for unknown reasons the 40 acres irrigated under Court Claim No. 2276 were located outside the authorized POU. Therefore, Ecology has treated the change in POU a de facto change. This change application went before the Water Transfer Working Group on March 30, 2009, and again on October 19, 2009, where the group did not have any concerns with the proposed change.

This new ring well was drilled and completed on July 13, 2009, to a depth of 16 feet, Unique Well ID Tag No. BAT 475.



Other Rights Appurtenant to the Place of Use

There are no other rights appurtenant to the place of use.

Hydrologic/Hydrogeologic Evaluation

Below is information extracted from a Technical review report for subject water right change by Anna Hoselton, dated April 2009. Please refer to this application file for further information on this report.

“To change a point of diversion for a surface water right to a point of withdrawal from a well, the well should be in direct hydraulic continuity with the original surface water source. Direct hydraulic continuity exists when, as a result of pumping the proposed well, additional water from the original surface water source will flow into and recharge the aquifer where it can eventually be captured as ground water.”

“To maintain a direct connection to the Yakima River, the proposed well will be restricted to the unconfined and unconsolidated alluvial aquifer unit that is in direct hydraulic connection with the Yakima River. With the aquifer and depth restrictions, the proposed well and the original POD exercised under CS4-02276CTCL@1 for purposes of the change can be regarded as the same source. If water is not withdrawn at the original surface water diversion, it will be available at the proposed well.”

“The proposed ground water withdrawal appears to create a lag effect that was not present in the management of the originally authorized POD. Because of the lag effect, irrigation season pumping effects may not reduce to within 95% of the total pumping rate sometime between early January and late February following the end of the previous irrigation season.”

Impairment Considerations

The information below was taken from a Technical review report for subject water right change by Anna Hoselton, date April 2009. Please refer to this application file for further information on this report.

“Well density in the area of the proposed well, as discussed above, is low. Sediment coarseness, soil types and shallow groundwater levels of the upper unconsolidated unit suggest a limited to fair saturated thickness and a likely medium to high range transmissivity. The proposed well site is within approximately 500 feet of the Yakima River. The Yakima River is expected to function as a recharge boundary that will restrict expansion of pumping effects as water is induced to flow toward the well from the River. The well, if authorized will also be limited to the unconfined water table aquifer and to a total depth to no more than 100 feet in order to facilitate a direct relationship with the surface water (see discussion below in Relationship between the Original Source and Proposed Source). While the maximum pumping rate allowed is 359 gpm, the actual pumping rate will be controlled by the 160 acre feet maximum extent of the annual quantity and the 138 day irrigation season. Since pumping at the maximum rate of 359 gpm would exhaust the annual quantity in approximately 101 days, it is more reasonable to assume that pumping rates will be somewhat lower and intermittent. As a result of these characteristics and restrictions, well interference, also referred to as composite drawdown, which may occur as a result of the change is not expected to result in conditions of impairment.” See Appendix A of this report for additional information on Impairment, qualifying ground water withdrawal facilities, and well interference.

Consideration of Protests and Comments

No protests or comments have been received regarding this change. There will be no detriment to public interest due to the resulting change promoting sustainable fish rearing habitat on Fogarty Ditch.

CONCLUSIONS

Based upon my investigation, I conclude that the following requirements have been met:

1. It is tentatively determined the permit is in good standing and eligible for change.
2. There will be no impairment to existing water rights.
3. There will be no enlargement of the existing right.
4. The ring well is in hydraulic continuity with the Yakima River.
5. There is no detriment to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to point of withdrawal be authorized in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, et seq.

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.

359 gpm, 160 acre-ft/yr for May 1 through September 15.

Point of Withdrawal

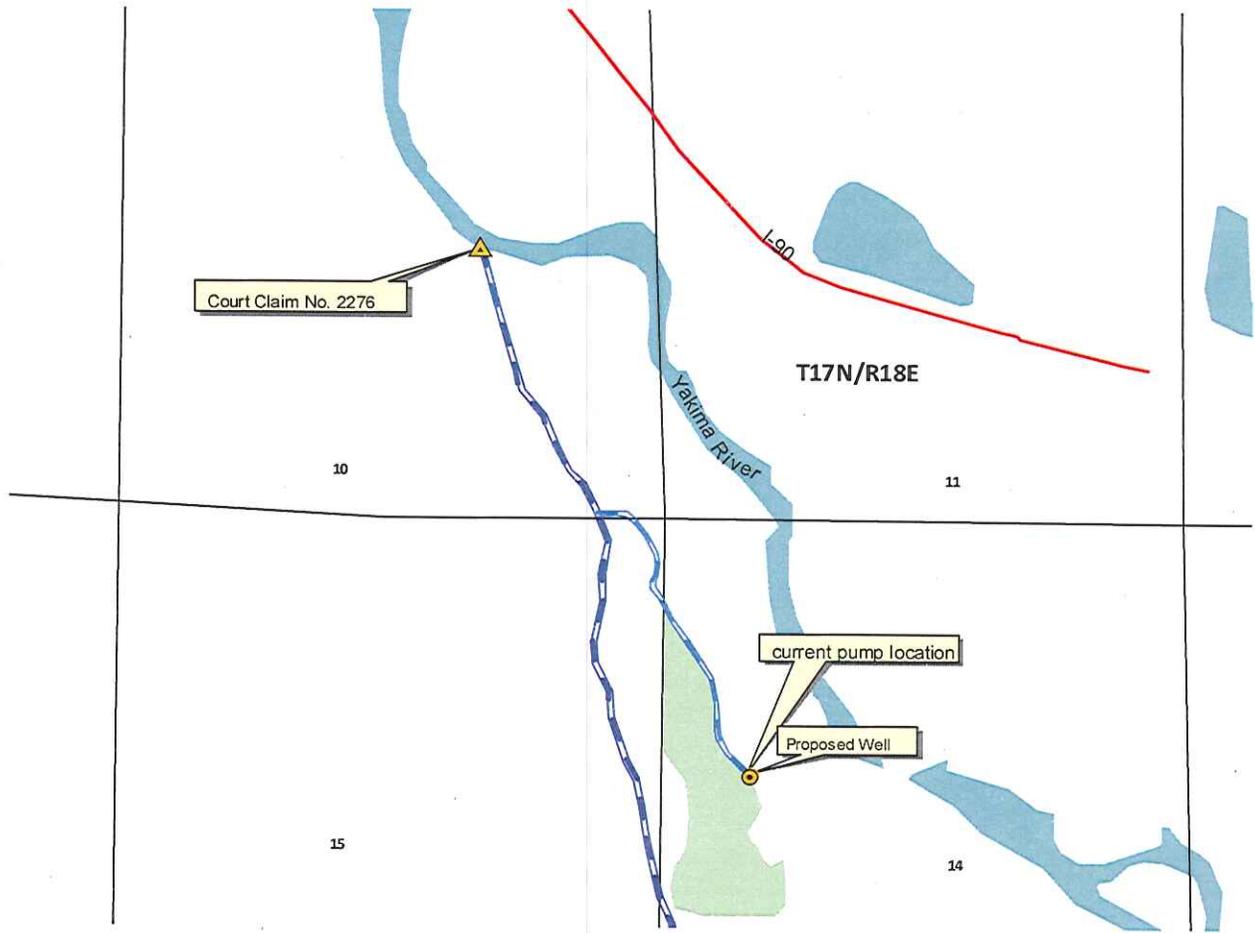
SW¹/₄, NW¹/₄, Section 14, Township 17 North, Range 18 East W.M.

Place of Use

NW¹/₄SW¹/₄, W¹/₂ NW¹/₄ lying west of Riverbottom Road of Section 14, T 17N, R 18 E.W.M.

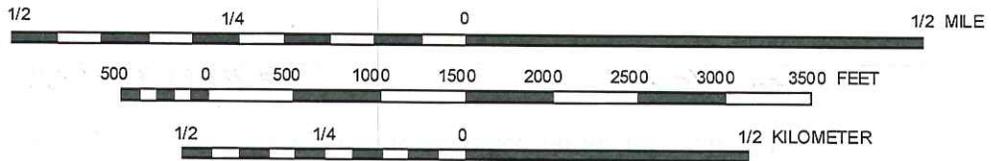
Report by: Brean Zimmerman
Brean Zimmerman, Water Resources Program

4/13/2011
Date



-  Road
-  Fogarty Ditch
-  Greer Ditch
-  Sections
-  40 irrigated acres

SCALE 1:12,000



1 inch equals 1,000 feet