



**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

**SECOND AMENDED REPORT OF EXAMINATION FOR CHANGE
TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON**

This Second Amended Report of Examination for Change No. CS4-00402CTCL **SUPERSEDES** the previous Amended Report of Examination for Change, dated September 23, 2008.

This Second Amended Report is a result of the Stipulation and Agreed Order of Dismissal in *Roza Irrigation District and Kittitas Reclamation District v. Department of Ecology and City of Roslyn*, Pollution Control Hearings Board No. 09-043.

- Surface Water** (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)
- Ground Water** (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
April 30, 1875	CS4-00402CTCL		

NAME			
City of Roslyn			
ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
PO Box 451	Roslyn	WA	98941-0451

PUBLIC WATERS TO BE TRUSTED/PROTECTED

SOURCE	
Currier Creek	
TRIBUTARY OF (IF SURFACE WATERS)	
Yakima River	
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM ACRE -FEET PER YEAR
See "Quantity, Type of Use, Period of Use"	See "Quantity, Type of Use, Period of Use"

QUANTITY, TYPE OF USE, PERIOD OF USE

For Instream Flow in the Primary Reach:

3.0 cubic feet per second, to 864 acre-feet per year.

For Instream Flow in the Secondary Reach:

	April	May	June	July	August	September	October	Total
cfs ¹	0.00	0.32	0.72	0.96	0.76	0.45	0.13	--
acre-feet ¹	0.00	19.44	42.96	58.86	46.98	26.67	3.84	198.84

¹ These amounts are average values and would constitute the default quantities for the trust water right. If the US Bureau of Reclamation and Department of Ecology agree that climatic conditions and project flexibility warrant a larger quantities during a future drought year, then the trust water right may be adjusted upward to reflect the drought conditions, but in no case higher than 234.6 acre-feet per year.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL						
N/A						
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE, (E. OR W.) W.M.	W.R.I.A.	COUNTY	
N/A						

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

The **Primary Reach** begins at the historical diversion point on Currier Creek located 100 feet south and 50 feet east of the northwest corner located within the NW¹/₄NW¹/₄ of Section 34, T. 18 N., R. 18 E.W.M. and ends at a point on the Yakima River approximately 700 feet north and 2500 feet west of the southeast corner, located within the SW¹/₄SE¹/₄ of Section 3, T. 17 N., R. 18 E.W.M.

The **Secondary Reach** begins at a point on the Yakima River located approximately 700 feet north and 2500 feet west of the southeast corner, located within the SW¹/₄SE¹/₄ of Section 3, T. 17 N., R. 18 E.W.M. and ends at the confluence of the Yakima and Columbia rivers in Wallula Lake located approximately 2130 feet north and 770 feet east of the southwest corner, located within the NW¹/₄SW¹/₄ of Section 19, T. 9 N., R. 29 E.W.M.

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DESCRIPTION OF PROPOSED WORKS

N/A

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:

N/A

COMPLETE PROJECT BY THIS DATE:

N/A

WATER PUT TO FULL USE BY THIS DATE:

N/A

REPORT

BACKGROUND INFORMATION

On March 25, 2005, the City of Roslyn (the City), Washington, filed an application to change the period and purpose of use, and to transfer water authorized under confirmed Court Claim No. 00402 into the Washington State Trust Water Right Program (TWRP) to be used as mitigation against the City's municipal use of its Domerie Creek water right when such use is regulated. The application was accepted and assigned identifier No. CS4-00402CTCL. Notice of the application was published in the Ellensburg *Daily Record* on April 28 and May 5, 2005. Errors in the original notice necessitated an amended Public Notice of the application which was published in the *Daily Record* on June 30 and July 7, 2005. There were no letters of protest or concern received during either 30-day comment period.

The City's Domerie Creek municipal water right, confirmed Court Claim No. 01474 is subject to regulation (pursuant to Yakima Superior Court Order dated March 10, 2005) in favor of senior water right holders when the water supply for the Yakima River Basin Project are not sufficient to satisfy water rights with priority dates of May 10, 1905 and earlier.

This application qualifies for expedited processing under WAC 173-152-050(2)(a) whereby water right change applications may be processed prior to applications submitted at an earlier date when immediate action is necessary for the preservation of public health and safety.

State Environmental Policy Act (SEPA) Considerations

In accordance with Chapter 43.21C RCW and acting as lead agency, the City determined that the subject action does not have a probable significant adverse impact on the environment, therefore, an environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). A Determination of Nonsignificance (DNS) issued April 29, 2005, with a 14-day comment period.

Attributes of Claim No. 00402

Name of Claimant:	P.L.P
Priority Date:	April 30, 1875
Instantaneous Quantity:	3.0 cubic feet per second (cfs)
Source:	Currier Creek
Annual Quantity:	864 acre-feet per year (acre-ft/yr)
Point of Diversion:	100 feet south and 50 feet east of the northwest corner of Section 34, being within the NW ¹ / ₄ NW ¹ / ₄ NW ¹ / ₄ of Section 34, T. 18 N., R. 18 E.W.M.
Purpose of Use:	Irrigation of 72 acres
Period of Use:	April 1 to October 15
Place of Use:	That portion of the NW ¹ / ₄ of Section 34, T. 18 N., R. 18 E.W.M. lying southwesterly of the Burlington Northern R.R. right-of-way. Except the county road (Cascade Way) right-of-way; ALSO EXCEPT that portion described as follows: Commencing at the west quarter corner of said section; thence east 795 feet, more or less, to the point of beginning; thence east 570 feet, more or less; thence north 107.08 feet; thence northwesterly 40 feet, more or less; thence west 30 feet, more or less; thence N 60° 30' W 127.05 feet; thence N34° W 90.35 feet; thence west 130.63 feet; thence southwesterly 9.75 feet; thence south 85 feet, more or less; thence west 195.35 feet; thence south 161 feet to the point of beginning.

Proposed Change

Name of Applicant:	City of Roslyn
Date of Trust Water Application:	March 25, 2005
Instantaneous Quantity:	3.0 cfs
Annual Quantity:	864 acre-ft/yr in the primary reach. 245 acre-ft/yr in the secondary reach.
Source:	Currier Creek
Purpose of Use:	Instream flow augmentation and mitigation for the City's out-of-priority diversions from Domerie Creek under Court Claim No. 01474
Period of Use:	April 15 – October 30
Affected Reaches:	Currier Creek and the Yakima River from the historical point of diversion to Wallula Lake at the confluence of the Yakima and Columbia Rivers.

INVESTIGATION

The following information was obtained from documentation submitted with the application, research of department records, and conversations with the applicant's attorney and Department of Ecology (Ecology) staff.

Water right transfers to the TWRP in the Yakima River watershed are guided by Chapters 90.38 and 90.42 RCW. RCW 90.38.020(4), 90.38.020(6), and 90.42.080(8), require that the water right eligible for placement in the TWRP is limited to the extent of the beneficial use of the water right was during the five years prior to acquisition.

History of Water Use

In order to make a water right change decision, Ecology must make a tentative determination on the extent and validity of the right. Under RCW 90.14.160 any portion of a water right or water right claim not exercised for a period of five successive years, without sufficient cause, shall be relinquished and revert to the state.

A water right with attributes described in the table above was confirmed under Court Claim No. 00402 to P.L.P. in the Yakima River Basin Water Rights Adjudication for Subbasin No. 7, the Reecer Creek drainage basin, with a Conditional Final Order (CFO) signed on October 25, 2001.

Water use by P.L.P. under Court Claim No. 00402 was analyzed by WestWater Research, LLC (WestWater). In lieu of water measurement data, WestWater reported crop yields to establish water use history from 1999 to 2000 in which commercial timothy hay was harvested at approximately 200 and 80 tons respectively. No records were reportedly available for 2001, and in 2002 and 2003 the property was irrigated as pasture for stock. In 2004 the land was "idle".

Historical irrigation methods practiced on the property utilized the flood irrigation method. P.L.P. applied water by way of four irrigation applications per year; the first of the four applications began approximately mid-April and the fourth began in late September.

The water right was leased and temporarily placed into the TWRP by Ecology during the 2005 irrigation season for instream flow purposes and to mitigate for approximately 60 acre-feet of estimated consumptive use by various domestic water users with post-1905 water rights. This temporary transfer to instream flow was approved by Yakima Superior Court Order Pendente Lite dated April 25, 2005.

Project Proposal

The City was confirmed a continuous municipal supply from Domerie Creek in the Yakima River Basin Water Rights Adjudication for Subbasin No. 1, Lake Cle Elum under Court Claim No. 01474. Court Claim No. 01474, which authorizes the diversion of 3.14 cfs, up to 446.7 acre-ft/yr, has a relatively junior priority of September 2, 1908 that requires regulation in favor of senior rights when the USBR imposes prorationing among the May 10, 1905 Yakima Project water rights. The City has had its use of Court Claim No. 01474 curtailed during portions of the 2001, 2004, and 2005 irrigation seasons. The City's primary reason for acquiring Court Claim No. 00402 is to mitigate for the consumptive impact of its out-of-priority use of the Domerie Creek right during periods of future regulation. To accomplish this, the City proposes to fallow the subject 72 acres, and place the entire right into the TWRP for instream flow purposes. The requested transfer of Court Claim No. 00402 to the TWRP for instream flow purposes will be implemented by the City of Roslyn and Ecology entering into a trust water right agreement.

During periods when the City has the full use of its 1908 Domerie Creek right, this trust water right will be used for instream flow purposes from the historic point of diversion downstream to the confluence of the Yakima River with the Columbia River and contribute to the US Bureau of Reclamation's (USBR) Total Water Supply Available measured at Parker, Washington.

The City also proposes to shift the period of use under Court Claim No. 00402 by two weeks from the historical period confirmed by the Court (April 1 to October 15) to April 15 to October 30.

The City requests a four-inch drought-year allowance be added to the transferred instantaneous and annual quantities to reflect the severe climate that generally is coincident with years of prorationing of Yakima project water supplies.

Other Water Rights Appurtenant to the Property

No other water rights were found to be appurtenant to the property with appurtenant rights to Court Claim No. 00402.

Water Use and Estimated Consumptive Amounts

The Washington Irrigation Guide (WIG) Crop Irrigation Requirement (CIR) for clover in Ellensburg is 33.14 inches (2.76 feet) per acre for an average May to October irrigation season. The total average seasonal CIR then for the 72-acre project area is 198.84 acre-feet. While Reecer Creek adjudicated water rights were confirmed irrigation water for the month of April, and the WestWater report indicates that irrigation historically began in mid-April, the WIG data show no CIR for April.

In the absence of water use records, Ecology uses various estimation methods such as the WIG, the Modified Blaney-Criddle methods and Washington State University's Public Agricultural Weather System (PAWS) to estimate the amount of water used. The WIG method estimates the amount of water required by a crop above that which might be met by antecedent moisture in the root zone and indicates that under average climatic conditions there is no consumptive use requirement until May. PAWS data for a grass crop in the Ellensburg area in 2001, a year of severe drought, is used to estimate of the maximum consumptive use under Court Claim No. 00402.

Table 1
MONTHLY AND SEASONAL CROP REQUIREMENTS BASED
WIG AND PAWS DATA FOR THE ELLENSBURG, WASHINGTON AREA

	April	May	June	July	August	September	October	Total
WIG CIR (inch/acre)	0.00	3.27	7.16	9.81	7.83	4.46	0.46	33.14
Total WIG CIR (acre-ft/yr)	0.00	19.44	42.96	58.86	46.98	26.76	3.84	198.84
PAWS CU (inch/acre)	3.83	6.36	5.96	8.37	7.12	5.06	2.40	39.37
Total PAWS CU (acre-ft/yr)	22.98	38.16	35.76	50.22	42.72	30.36	14.4	234.6

Table 1 lists WIG data for clover (an accepted proxy for timothy hay) in inches per acre and the total required for a 72-acre field. PAWS data for grass is shown in inches per acre and as the total required for a 72-acre field.

Trust Water Right Calculations

RCW 90.38.020(4) and 90.42.080(4) require that the amount of a water right eligible for transfer to the TWRP is limited to the extent the water right was exercised in the five years prior to the donation or acquisition. The CFO was signed within the five years prior to this application, and the supporting documents attest to full use of Court Claim No. 00402 within the last five years. The trust water monthly instantaneous rates and annual quantities for the secondary reach are based on the WIG average estimated consumptive use (CIR) during the past five years, as shown in Table 1.

Primary and Secondary Reaches

The **Primary Reach**, that portion of a stream that benefits from the reduced diversion, begins at the historical point of diversion and continues downstream to the point on the stream where any return flows resulting from the water use, have returned to the stream. In this case the primary reach begins at a point on Currier Creek located 100 feet south and 50 feet east of the northwest corner and located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T. 18 N., R. 18 E.W.M. and ends at a point on the Yakima River approximately 700 feet north and 2500 feet west of the southeast corner, located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M.

The trust water right for the primary reach is 3.0 cfs and 864 acre-ft/yr.

Downstream of the primary reach, flow in the **Secondary Reach** is increased by the consumptive amount of water normally lost by irrigating the crop. The secondary reach for this project begins at a point on the Yakima River located approximately 700 feet north and 2500 feet west of the southeast corner, located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M. and ends at the confluence of the Yakima and Columbia rivers in Wallula Lake located approximately 2130 feet north and 770 feet east of the southwest corner, located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T. 9 N., R. 29 E.W.M. Table 3 shows the monthly instantaneous quantities and cumulative amounts available for instream flow in the secondary reach.

Table 3
CONSUMPTIVELY USED QUANTITIES
AVAILABLE FOR USE IN THE SECONDARY REACH

	April	May	June	July	August	September	October	Total
cfs ¹	0.00	0.32	0.72	0.96	0.76	0.45	0.13	--
acre-feet ¹	0.00	19.44	42.96	58.86	46.98	26.67	3.84	198.84

Impairment Analysis

A trust water right may be exercised only if it does not impair existing water rights. There are no authorized points of diversion from the point of diversion of Court Claim No. 00402 downstream on Currier Creek to its confluence with the Yakima River.

Using the water right for instream flow purposes will increase flows from the historic point of diversion downstream to Parker. At that point, it can be added to the target flow, but only to the extent that it is not required for mitigation of Roslyn's out-of-priority use when curtailment of post-1905 users is in effect.

Using Court Claim No. 00402 as mitigation for the City's upstream diversions and with potential differences in the consumptive impact during the April-October period, a small flow deficit for a 40-mile reach of the Cle Elum and Yakima rivers can occur. If the USBR does not have sufficient operational flexibility to manage Total Water Supply Available (TWSA) without negatively affecting Yakima Project water users, then the mitigation would not be fully effective and the exercise of the trust water right must be altered pursuant to RCW 90.38.020(4) and 90.38.902 to eliminate the impairment.

CONCLUSIONS

The author finds that Court Claim No. 00402 has been fully exercised within the last five years and that in accordance with Chapters 90.38 and 90.42 RCW is eligible for transfer to the TWRP.

Approval of the requested transfer of Court Claim No. 00402 to the TWRP for instream flow purposes and change in period of use will not cause impairment to existing water rights nor will be contrary to the public interest.

The use of Court Claim No. 00402 to maintain TWSA water budget neutrality during the City's out-of-priority use of its Domerie Creek water right will not cause impairment to existing rights, provided that USBR has sufficient project operational flexibility and that the secondary reach for the trust water right does not extend below the Yakima River at Parker.

RECOMMENDATIONS

For use in the Primary Reach from April 15 to October 30:

3.0 cfs, up to 864 acre-ft/yr.

The **Primary Reach** begins at the historical diversion point on Currier Creek located 100 feet south and 50 feet east of the northwest corner located within the NW¼NW¼ of Section 34, T. 18 N., R. 18 E.W.M. and ends at a point on the Yakima River approximately 700 feet north and 2500 feet west of the southeast corner, located within the SW¼SE¼ of Section 3, T. 17 N., R. 18 E.W.M.

For use in the Secondary Reach from April 15 to October 30:

	April	May	June	July	August	September	October	Total
cfs ¹	0.00	0.32	0.72	0.96	0.76	0.45	0.13	--
acre-foot ¹	0.00	19.44	42.96	58.86	46.98	26.67	3.84	198.84

¹ These amounts are average values and would constitute the default quantities for the trust water right. If the US Bureau of Reclamation and Department of Ecology agree that climatic conditions and project flexibility warrant a larger quantities during a future drought year, then the trust water right may be adjusted upward to reflect the drought conditions, but in no case higher than 234.6 acre-feet per year.

The **Secondary Reach** begins at a point on the Yakima River located approximately 700 feet north and 2500 feet west of the southeast corner, located within the SW¼SE¼ of Section 3, T. 17 N., R. 18 E.W.M. and ends at the confluence of the Yakima and Columbia rivers in Wallula Lake located approximately 2130 feet north and 770 feet east of the southwest corner, located within the NW¼SW¼ of Section 19, T. 9 N., R. 29 E.W.M.

Provisions

This Report of Examination relates solely to the City of Roslyn’s application to change Court Claim No. 00402. Nothing in this Report of Examination shall be deemed to waive, abrogate, diminish, define or interpret either the Treaty or other rights of the Yakama Nation or the rights of any other party other than the City of Roslyn.

This water right proposed as mitigation to avoid curtailment under the Yakima County Superior Court’s ORDER LIMITING POST-1905 DIVERSIONS DURING PERIODS OF SHORTAGE, and to ensure no impairment of other water rights, is located downstream from Roslyn’s Court Claim No. 01474. To prevent impairment to existing diversionary and non-diversionary water rights located on (1) the Cle Elum River, (2) the Yakima River between the confluence of the Cle Elum River and the point of diversion of the Ellensburg Water Company, and (3) TWSA water users throughout the Yakima River basin, the following five conditions shall apply to this change of water right:

1. At all times, whether or not post-May 10, 1905 priority date water rights in the Yakima Project are curtailed, Roslyn may rely on this trust water right to continue to use its Domerie Creek water pursuant to Court Claim No. 01474 (hereinafter the “Roslyn Municipal Right”) only if stream flows in the Cle Elum River meet or exceed flow levels set pursuant to the Yakama Nation’s Treaty water right for fish and other aquatic life.
2. Whether or not post-May 10, 1905 priority date water rights in the Yakima Project are curtailed, Roslyn may rely on this trust water right to continue to exercise its water right under the Roslyn Municipal Right ONLY when and if the water right which is the subject of this transfer is exercised through the Long-Term Water Storage and Exchange Agreement Between the United States and the State of Washington, Department of Ecology, dated January 2009 (Exchange Contract), or through another suitable mechanism(s), that will provide for a public process including notice and an opportunity to comment, that will ensure Roslyn’s diversion of water from Domerie Creek pursuant to the Roslyn Municipal Right will not cause a reduction in flow of the Yakima River when the Bureau of Reclamation engages in “flip flop”¹ operation in the Yakima River Basin Project. To exercise the water right which is the subject of this transfer through the Exchange Contract, Roslyn must (a) transfer this water right to the TWRP by entering into a Trust Water Right Agreement with Ecology substantially in the form attached as Exhibit B to the Stipulation and Agreed Order of Dismissal in PCHB No. 09-043;

¹ “Flip-flop” for this purpose means and includes the process late in the irrigation season each year of reducing flows in the Cle Elum and Yakima Rivers by ramping down flows from irrigation season reservoir releases to those instream flows set pursuant to court order and statute to protect fish and other aquatic life in the Upper Yakima Basin.

(b) Ecology must accept this water right into the TWRP; (c) Ecology must assign this water right to the Bureau of Reclamation; (d) the Bureau of Reclamation must accept the assignment under the terms of the Exchange Contract; and (e) Roslyn must obtain from Ecology a secondary use permit associated with the assignment of this water right to the Bureau of Reclamation.

3. When post-May 10, 1905 water rights are curtailed and/or holders of May 10, 1905 water rights are subject to prorationing of water supplies, Roslyn may continue to exercise the Roslyn Municipal Right, its Domerie Creek diversion, by relying on this trust water right to divert water out of priority ONLY when the consumptive water quantity associated with this trust water right that stays instream is equal to or greater than the consumptive water quantity associated with exercise of the Roslyn Municipal Right and the exercise of this trust water right shall not reduce the Total Water Supply Available as defined in *Ecology v. Acquavella* and the 1945 Consent Decree in *Kittitas Reclamation District v. Sunnyside Valley Irrigation District*, Civil No. 21.
4. When Court Claim No. 00402 trust water right is used to mitigate for the City of Roslyn's use of its Domerie Creek water right the secondary reach will end on the Yakima River at Parker Dam.
5. If water under this trust water right is proposed to be leased and used for other out-of-stream beneficial uses, it shall be the responsibility of the City of Roslyn to provide notice to Ecology of the lease and obtain any permits or approvals necessary to approve the transfer of the water right which is the subject of this transfer before that out-of-stream use can commence. Ecology shall provide notice to the proposed transfer as provided to it by Roslyn by posting it on its Web page or other suitable means calculated to notify members of the public. Any such proposed lease or out-of-stream use is beyond the scope of this authorization and would constitute a separate proposed action subject to such notice, application, and review procedure as provided by law. Specifically, under current law, Roslyn would need to seek a temporary authorization before an out-of-stream use will be considered.

Report by:


Robert F. Barwin, Water Resources Program

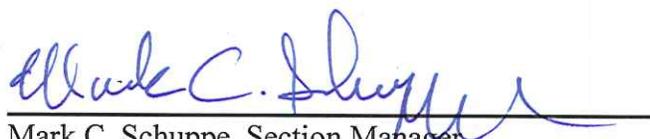
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Date

FINDINGS OF FACT AND DECISION

Upon reviewing the above report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the transfer as recommended will not be detrimental to existing rights or the public interest.

Therefore, I ORDER the requested change in the purpose and place of use to Court Claim No. 00402 under Application No. CS4-00402CTCL be approved, subject to existing rights and provisions specified in the foregoing report.

Signed at Yakima, Washington, this 3rd day of December 2009.


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