



File NR: S4-35701
WR Doc ID: 6262089

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE June 10, 2014	CHANGE APPLICATION NUMBER S4-35701
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MAILING ADDRESS
Indian Creek Cabin Owners
c/o Renee Bouchey
6290 Larue Rd.
Toppenish, WA 98948

REMARKS: This water right will be mitigated by a water right held in trust with a pre-1905 priority date.

Total Quantity Authorized Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.28	CFS	0.56

Purpose

PURPOSE	DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Group Domestic Supply for 8 cabins (part-time)	0.28		CFS	0.56		Continuous

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
YAKIMA	UNNAMED SPRINGS	RIMROCK LAKE	38 – NACHES

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Spring 1	13130699992		13N	13E	6	SE SW	46°38'24.739"N	121°15'24.751"W
Spring 2	13130699992		13N	13E	6	NE SW	46°38'30.429"N	121°15'19.605"W
Spring 3	13130699992		13N	13E	6	NE SW	46°38'34.743"N	121°15'15.061"W
Spring 4	13130699992		13N	13E	6	NE SW	46°38'38.043"N	121°15'8.512"W
Spring 5	13130699992		13N	13E	6	NW SE	46°38'40.068"N	121°15'3.675"W

Datum: NAD83/WGS84

Place of Use (See Attachment 1)

PARCELS
13130611021, 13130611022, 13130611019, 13130611017, 13130611016, 13130611018, 13130611015, 13130611026, and 13130611028.

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Within the Indian Creek Summer Home Site, in un-surveyed Section 6, T. 13 N., R. 13 E.W.M., Yakima County.

Proposed Works

Water is diverted from 5 small improved springs, and distributed directly to 8 adjacent cabins. Return flow to Indian Creek and/or Rimrock Lake occurs through septic.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Complete	Complete	January 1, 2019

Measurement of Water Use

How often must water use be measured?	Monthly
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

A. Mitigation

Water use under this authorization is mitigated by a contract between Ecology and the applicant for an equal or greater amount of the consumptive use from trust water rights held by Ecology as part of the Washington State Trust Water Right Program (TWRP).

The Department of Ecology may assign a portion of its trust water to the United States Bureau of Reclamation (USBR)-Ecology Water Storage and Exchange Contract No. 09XX101700 to mitigate for operational impacts to the Yakima Irrigation Project. The applicant shall pay Ecology, as part of your mitigation agreement, for storage and delivery of water under paragraph 15(a) of the exchange contract.

During periods of water shortages, priority calls against the source trust water right providing mitigation for this project may be made. If that priority call for water is found to be valid, water use under this authorization may be temporary curtailed until the priority call for water ends.

B. Measurements, Monitoring, Metering and Reporting

An approved measuring device shall 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 and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.

C. Easement and Right-of-Way

If the water source and/or water transmission facilities are not wholly located upon land owned by the applicant, issuance of a water right authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

D. Water Use Efficiency

Use of water under this authorization shall 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.

E. Certification

A permit may issue to appropriate surface water based on the quantities described on Page 1 of this report following the appeal period for this decision, and would remain in permit status through the pendency of the Yakima County Superior Court Adjudication Proceedings *State of Washington v. Acquavella*. A final certificate would issue only after the Court’s Final Decree is entered and all matters (i.e. appeals) in the Adjudication Proceedings are settled.

F. Schedule and Inspections

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.

G. Fish Screening

The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria. See: <http://wdfw.wa.gov/about/contact/>

Finding of Facts

Upon reviewing the investigator’s report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I 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. S4-35701, subject to existing rights and the provisions specified above.

YOUR RIGHT TO APPEAL

You have a right to appeal this Decision to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Decision. 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 all of the following within 30 days of the date of receipt of this Decision:

- File your appeal and a copy of this Decision 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 Decision 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.

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

Signed at Yakima, Washington, this _____ day of _____, 2015.

 Sage Park, Section Manager
 Water Resources Program/CRO

DRAFT

If you need this document in a format for the visually impaired, call the Water Resources Program at 509-575-2490. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

INVESTIGATOR'S REPORT

BACKGROUND

Project Description

On June 10, 2014, Renee Bouchey (on behalf of Indian Creek Cabin Owners) filed Application No. S4-35701 with the Washington State Department of Ecology (Ecology) requesting an appropriation of public surface water. The applicant proposes to divert an instantaneous rate (Qi) of 0.28 cubic feet per second (cfs) and a cumulative annual diversion volume (Qa) of 0.56 acre-feet per year (ac-ft/yr). The purpose of use is for continuous part-time indoor group domestic supply.

The subject application qualifies for processing as part of Ecology's Cabin Owner Mitigation Program. As directed by Senate Bill 6861, Ecology is providing banking opportunities for Yakima Basin Cabin Owners with junior claims (post-1905) to purchase senior mitigation credits to offset the consumptive use of water during years of rationing by the U.S. Bureau of Reclamation (USBR). The program is also available to some unauthorized water users when specific suitability criteria are met. In these cases, the program allows Ecology to issue new mitigated permits and water budget neutral determinations.

Consumptive use will be mitigated through purchase of mitigation credits from Ecology's Cabin Owner Mitigation Program (Trust Water Right Nos. CS4-00195CTCL(A)sb6, CS4-00195CTCL(B)sb6, and CS4-00195CTCL(C)sb6) – collectively known as Bruton Ditch. The application is therefore water budget neutral with respect to Total Water Supply Available (TWSA). Out-of-season and/or carry over impacts to instream flows will be managed with use of Water Storage and Exchange Contract No. 09XX101700 between Ecology and USBR.

Table 1. Summary of Application No. S4-35701

<i>Attributes</i>	<i>Proposed</i>
Applicant	Renee Bouchey (on behalf of Indian Creek Cabin Owners)
Application Received	June 10, 2014
Instantaneous Quantity	0.28 cubic feet per second
Source	Unnamed Springs
Points of Diversion	5 springs located in the S½ Section 6, T. 13 E., R. 13 E.W.M., Yakima County
Purpose of Use	Group Domestic supply (indoor only)
Period of Use	Continuous part-time
Place of Use	S½ Section 6, T. 13 E., R. 13 E.W.M., Yakima County

Legal Requirements for Application Processing

The following requirements must be met prior to processing a water right application:

- **Public Notice**

Notice of the proposed appropriation was published in the Yakima Herald Republic on July 31 and August 7, 2014. No comments were received during the 30-day comment period.

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

The subject application is categorically exempt under SEPA (WAC 197-11-305 and WAC 197-11-800(4)) because the instantaneous quantity is less than the 1.0 cfs threshold.

- **Water Resources Statutes and Case Law**

RCW 90.42.100(1) states that Ecology is authorized to use the Trust Water Rights Program (TWRP) in the Yakima River basin for water banking purposes. RCW 90.42.100(2)(a) states that water banking may be used to mitigate for any beneficial use under chapter 90.03, 90.44 or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users. RCW 90.42.100(2)(b) states that water banking may be used to document water right transfers to and from the TWRP.

- **Expedited Processing**

This application qualifies for expedited processing under WAC 173-152-050(2)(g), which states that within each regional office and among applications processed under chapter 90.90 RCW, the department may prioritize applications that propose a water budget neutral project as defined in WAC 173-152-020(18) ahead of all other competing applications.

INVESTIGATION

In consideration of this application, Ecology reviewed available documents pertaining to the historic use of water, site conditions, and the potential effect on existing water rights. This included information submitted by the applicant and pertinent Ecology records including adjudication and water rights records and water resource policy and guidance documents.

A site visit was conducted by Tyson Carlson (Aspect Consulting) and Johnathan Kohr (WDFW) on October 2, 2013. The visit included observation of low-flow conditions and conversation with the applicant to inspect the points of diversion, places of use, and answer questions regarding estimates of total and consumptive use.

This project was presented at the Water Transfer Working Group (WTWG) on March 2, 2015. This group represents private, federal, state and tribal groups interested in water right changes in the Yakima Basin. Ecology presented the proposed use for the cabins to the group and indicated that a portion of Ecology's trust water rights equal to the proposed consumptive use will be assigned to the USBR-Ecology Storage Contract. Since Indian Creek is not in the same basin as the mitigating trust water rights, the WTWG reminded Ecology that the mitigation for this project only offsets impacts to TWSA. There were no objections to the project going forward as long as the project water is assigned to the contract.

In light of the USBR's withdrawal of all remaining unappropriated waters of the Yakima River – including all tributaries and groundwater in continuity (RCW 90.40), Ecology consulted with the USBR about new appropriations for cabin owners. The USBR granted a release for these types of projects that are mitigated and water budget neutral with respect to TWSA in a letter dated May 25, 2012.

Site Description

The proposed points of diversion are located as follows:

Diversion 1: located approximately 600 feet above Rimrock Lake, in the southeast quarter of the southwest quarter of Section 6, Township 13 E., Range 13 East of the Willamette Meridian, in the Naches Water Resource Inventory Area (WRIA 38).

Diversion 2: located approximately 1066 feet above Rimrock Lake, in the northeast quarter of the southwest quarter of Section 6, Township 13 E., Range 13 East of the Willamette Meridian in the Naches Water Resource Inventory Area (WRIA 38).

Diversion 3: located approximately 1470 feet above Rimrock Lake, in the northeast quarter of the southwest quarter of Section 6, Township 13 E., Range 13 East of the Willamette Meridian in the Naches Water Resource Inventory Area (WRIA 38).

Diversion 4: located approximately 1720 feet above Rimrock Lake, in the northeast quarter of the southwest quarter of Section 6, Township 13 E., Range 13 East of the Willamette Meridian in the Naches Water Resource Inventory Area (WRIA 38).

Diversion 5: located approximately 1736 feet above Rimrock Lake, in the northeast quarter of the southwest quarter of Section 6, Township 13 E., Range 13 East of the Willamette Meridian in the Naches Water Resource Inventory Area (WRIA 38).

The proposed points of diversion are from 5 unnamed springs, then distributed directly to an adjacent cabin. Return flow to Indian Creek and/or Rimrock Lake occurs through septic.

Other Water Rights Appurtenant to the Place of Use

There are two other water rights located near the Indian Creek cabins (listed in the table below). The U.S. Forest Service is the current water right holder for both water rights. Both rights are used for domestic supply (Lots 12, 18, and 20) within the community.

Table 2: Water Rights Appurtenant to the Place of Use

Water Right Document No.	Priority Date	Instantaneous Quantity (CFS or GPM)	Annual Quantity (AF/YR)	Purpose(s) of Use	Point of Diversion or Withdrawal
S4-84370-J	April 24, 1962	0.007 cfs	0.5	Domestic	Diversion
S4-84372-J	January, 1963	0.01 cfs	1.0	Domestic	Diversion

Domestic Water Use

Senate Bill 6861 directed Ecology to facilitate the purchase of senior mitigation credits to offset the consumptive use of out-of-priority or unpermitted water use. In response, Ecology (2006) completed a survey to identify the number of water users that rely on surface water, how they use water (in-house and/or outside irrigation), and how much water they use. Ecology received 285 completed surveys from water users with and without water rights. Ecology estimated annual water use by multiplying the gallons per day identified on the survey by the number of days the cabin was occupied. In cases where a water duty was not provided, Ecology used criteria developed for mitigation during the 2005 drought and/or procedures outlined in the Washington State Department of Health (2009) Water System Design Manual.

Based on the available data, Ecology determined that the average year round recreational cabin uses no more than 100 gallons per day (gpd) for up to 210 days per year. For consistency, Ecology has assumed the same consumptive use defined by rule (WAC 173-539(A)-050(3)) in upper Kittitas County as 30 percent of total use (Qa), or 0.02 ac-ft/yr per cabin.

There are currently 8 cabins that divert water from springs, but have no water right to do so. These 8 cabins must also purchase 0.16 ac-ft/yr to mitigate for their consumptive use. The 0.16 ac-ft/yr has

been broken down by month and summarized in Table 3. Because most cabins are rustic and use very little water, and few are occupied year-round, the numbers are considered to be a liberal estimate of actual use.

Table 3: Schedule of Estimated Total and Consumptive Use.

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Total Use (acre-feet)	0.046	0.046	0.046	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.046	0.56
Consumptive Use (acre-feet)	0.013	0.013	0.013	0.013	0.014	0.014	0.014	0.013	0.013	0.013	0.013	0.013	0.16

Four Statutory Tests

This Report of Examination (ROE) evaluates the application based on the information presented above and in referenced documents. To approve the application, Ecology must issue written findings of fact and determine that each of the following four requirements of RCW 90.03.290 has been satisfied:

1. The proposed appropriation is a beneficial use;
2. Water is available for appropriation;
3. The proposed appropriation would not impair existing water rights; and
4. The proposed appropriation would not be detrimental to the public welfare.

Beneficial Use

In accordance with RCW 90.54.020(1), the proposed appropriation for group domestic indoor use is a beneficial use of water. As detailed on the Application for Permit and observed during the site visit, the points of diversion are supported by the necessary infrastructure to deliver the full appropriation of water to the cabin community.

Availability

The appropriation proposed under the subject application will be water budget neutral by dedicating 0.16 ac-ft/yr of consumptive use available from Ecology’s Cabin Owner Mitigation Program. Month-by-month mitigation is offered to account for the project’s indoor only use during the irrigation season (April 1 – October 31). Out-of-season (November 1 – March 31) use and/or potential carry over impacts to instream flows will be mitigated through the USBR-Ecology Water Storage and Exchange Contract.

Potential for Impairment

The proposed uses that are the subject of this application will be water budget neutral with respect to TWSA by dedicating 0.16 ac-ft/yr from Ecology’s water bank used for the Cabin Owner Mitigation Program. Month-by-month scheduling accounts for the project’s indoor-only use during the irrigation season (April 1 – October 31). Out-of- season indoor-only use (November 1 – March 31) and potential carry over impacts to instream flows will be mitigated through the USBR-Ecology Storage Contract. This mitigation water will be managed to offset any impacts to TWSA and to Rimrock Lake.

The proposed diversions from the unnamed springs are less than one percent of the respective critical low flow. Therefore, the requirements associated with the USBR-Ecology Storage Contract are met and assignment of 0.16 acre-feet is appropriate since flow reduction resulting from the new uses is below the consultation threshold in paragraph 18(b) of the contract.

The Yakama Nation holds a time immemorial water right in its usual and accustomed hunting and fishing areas. While this time immemorial water right was not quantified by the Acquavella Adjudication, if flows drop to a point where fish and other aquatic life are affected, the Yakama Nation could make a call for their time immemorial water right. A call based on local impairment could not be mitigated by assignment of Ecology's mitigation and water use under the subject application would be regulated.

Public Welfare

The proposed appropriation will provide legal access water for indoor domestic supply to the rural cabin community, and is not detrimental to the public welfare as provisioned.

CITATIONS

Ecology 2006. 2006 Report to the Legislature, Potential Water Solution for Domestic Surface Water Users, Yakima Basin Camps & Cabin Owners. Publication No. 06-11-044. December 2006.

Reclamation, 2005. Phase I Assessment Report, Storage Dam Fish Passage Study, Yakima Project, Washington. Revised April 2005

WDFW. SalmonScape. <http://wdfw.wa.gov/mapping/salmonscape/index.html>

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CONCLUSIONS

The conclusions based on the above investigation are as follow:

1. The proposed appropriation for single domestic use (indoor only) is a beneficial use of water;
2. The quantity of water requested is made available by purchase of mitigation credits;
3. The proposed appropriation will not impair senior water rights or local habitat; and
4. The proposed appropriation will not be detrimental to the public welfare.

RECOMMENDATION

Based on the information presented above, the author recommends that a temporary permit be authorized (until the Yakima Superior Court Adjudication is complete) to appropriate surface water in the amounts described, limited, and provisioned on page 1 through 3 of this report.

Purpose of Use and Authorized Quantities

0.28 cfs, 0.56 ac-ft/yr (0.16 ac-ft/yr consumptive use) for continuous part-time, group domestic use.

Points of Diversion

- 1: SE¼SW¼, Section 6, T. 13 E., R. 13 E.W.M., Yakima County.
- 2: NE¼SW¼, Section 6, T. 13 E., R. 13 E.W.M., Yakima County.
- 3: NE¼SW¼, Section 6, T. 13 E., R. 13 E.W.M., Yakima County.
- 4: NE¼SW¼, Section 6, T. 13 E., R. 13 E.W.M., Yakima County.
- 5: NW¼SE¼, Section 6, T. 13 E., R. 13 E.W.M., Yakima County.

Place of Use

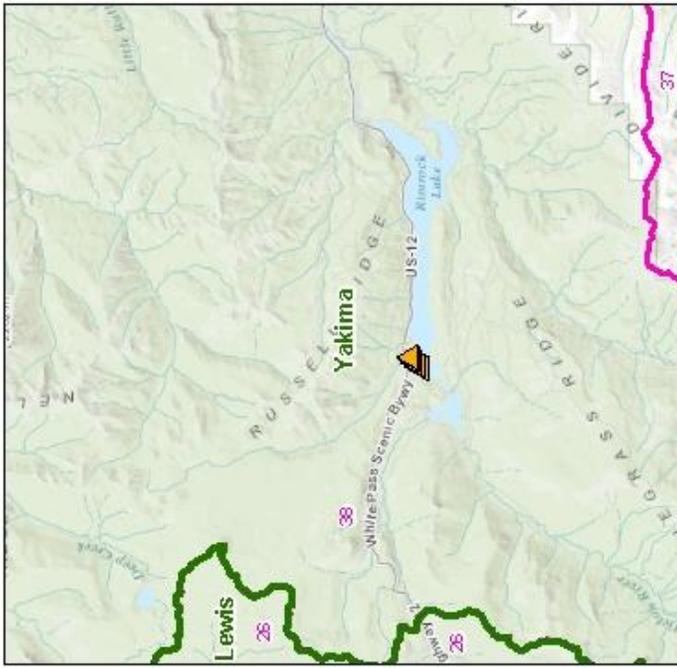
Within the Indian Creek Summer Home Site, in un-surveyed Section 6, T. 13 N., R. 13 E.W.M., Yakima County.

Report by: _____
Jacquelyn M. Metcalfe, Permit Writer

_____ Date

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Indian Creek Cabins
 S4-35701
 T13N/R13E
 WRIA 38 - Yakima County



Basemap ESRI US Topographic Maps

0 445 890 1,780 2,670 3,560 Feet

Map Date: 8/27/2015

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.