

WATER TRANSFER WORKING GROUP PROJECT DESCRIPTION

APPLICATION NO./COURT CLAIM NO.: Court Claim No. 00366		
APPLICANT NAME Washington State Department of Transportation (WSDOT)	CONTACT NAME Randy Giles, I-90 Project Director Brian White, Assistant Regional Administrator	TELEPHONE NO. 509-577-1879 509-577-1700
WATER RIGHT HOLDER'S NAME (if different) Richard A. Snowden/ Lakeside Town Center Development LLC/ WA Dept. of Transportation		EMAIL: GilesR@wsdot.wa.gov FreudeD@wsdot.wa.gov

DATE OF APPLICATION: 3/1/10	PRIORITY DATE: May 24, 1884
WATER SOURCE: Wilson Creek	CROP: Hay, grain, corn
INSTANTANEOUS QUANTITY: 1.75 cfs	ANNUAL QUANTITY: 350
PERIOD OF USE: April 1-October 31	
PLACE OF USE: That portion of the NE1/4 of Section 11, T.17 N., R. 18 E.W.M. known as Tax 27 and a portion of the N1/2SE1/4 of Section 11 T. 17 N., R. 18 E.W.M., both tracts west of the right-of-way of the Burlington Northern Railroad	PURPOSE OF USE: Irrigation of 35 acres
IRRIGATION METHOD: Flood and Rill Irrigation	

CONSUMPTIVE USE CALCULATION:

Consumptive use calculations are based on Washington Irrigation Guide (WIG) for clover (proxy crop for timothy hay), which represents the most recent historical use. The water right authorizes 350 AF/year authorized for 35 acres. This equals 10 AF per acre water duty (350 AF per year/35 acres) Consumptive use estimates are calculated as follows based on irrigation April 1 –October 31:

Net Irrigation Requirement (NIR) plus evaporation-based:

- NIR for Clover = 33.14 in/acre annually or 2.76 AF/acre
- 2.76 AF per acre x 35 acres = 96.6 AF/year NIR
- 5% (typical) evaporative loss typical for surface irrigation = 17.5 AF
(350 AF (total volume applied for water right) x 5%)

NIR of 96.6 AF/Y plus 17.5 AF from evaporative loss = Total CU of 114.16

NARRATIVE DESCRIPTION OF PROJECT:**Project update for Proposal 2010-04 WSDOT**

Washington State Department of Transportation (WSDOT) attended the Water Transfer Working Group (WTWG) on December 3, 2009 to request approval for the transfer of Court Claim #00366, Lakeside Towncenter Associates, LLC to the Trust Water Right Program and to seek approval for Temporary Water Right Applications, (S4-35263, S4-35264). These WTWG proposals (2010-04) were approved by the WTWG during that meeting.

WSDOT acquired 100 acre-feet CU in October 2009 and the purchase of the remaining non-consumptive/consumptive use is pending.

To prepare for the possibility that the Trust application and multi-year Temporary Application before Ecology is not processed in time for the 2010 construction season, WSDOT is requesting an Order Pendente Lite for a Trust Water Right from Superior Court for a proportion of water under Court Claim 00366 to be heard on March 11, 2010 (copy attached). Also, WSDOT will submit a Temporary Application for a Water Right Permit for the 2010 construction season to Ecology. WSDOT's proposed water need for 2010 are 60-acre feet CU and less than 1.0 cfs instantaneous demand with any unused portion will remain for instream flow.

The following table shows a proportion of Court Claim No. 00366 that relates to what WSDOT has purchased. We are requesting approval from the WTWG for this temporary change for 2010.

Quantity Transferred (CU)								Total
	April	May	June	July	August	September	October	
Acre Feet (CU)	6.45	8.06	20.97	20.97	16.12	19.35	8.06	99.98
CFS	0.11	0.13	0.35	0.34	0.26	0.33	0.13	n/a

Background

The background for this proposal was identified in the July and December 2009 WTWG applications. See maps and supplemental information in 2010 Proposal: 2010-04 which still applies to the proposal with one exception of adding Stampede Sand and Gravel site as a possible place of use (site is located between Crystal Springs Campground and Crystal Springs Sno-park which are shown on the maps provided in 2010-04). The purpose of use for the water is to facilitate highway construction (dust control, embankment compaction, road materials processing and equipment washout) for the I-90 Project which is located adjacent to Keechelus Lake.

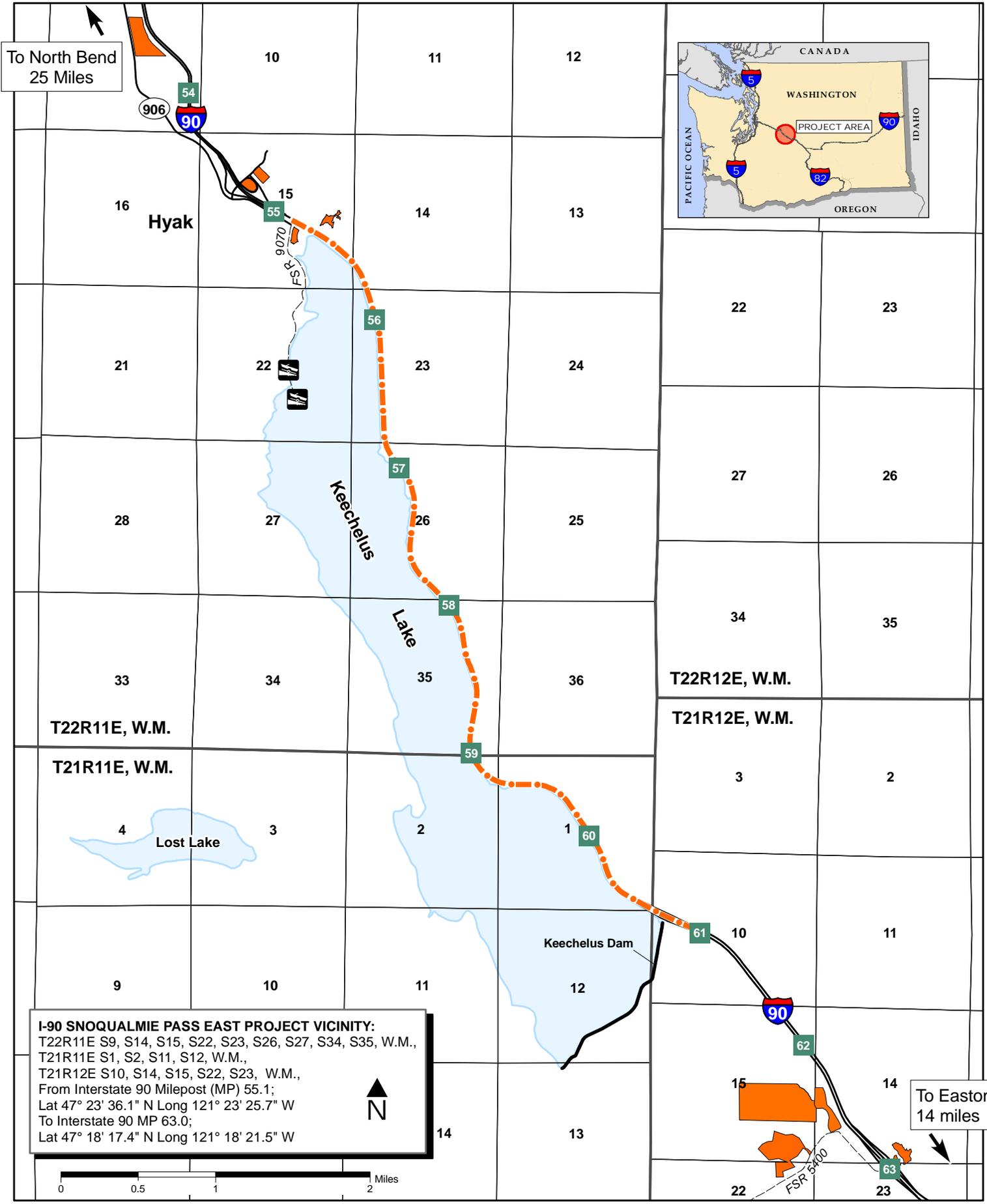
This proposal should not affect or change USBR ability to fulfill other water contract requirements or entitlements in its water storage and management. This proposal should not result in any impact or physical limitation to downstream (below dam) water users or supplies. The proposal will result in 'in-time' mitigation and is water budget neutral at Wilson Creek. The proposal does not negatively affect TWSA and in most years, results in a positive contribution to instream flows. WSDOT assumes and understands the risk should an extreme drought occur and diversion from the reservoir is reduced or not allowed.

See attached project vicinity maps for additional information. WSDOT's applications to Ecology can be found at [ftp://ftp.wsdot.wa.gov/incoming/I-90 Snoqualmie Pass East Water Rights](ftp://ftp.wsdot.wa.gov/incoming/I-90_Snoqualmie_Pass_East_Water_Rights)

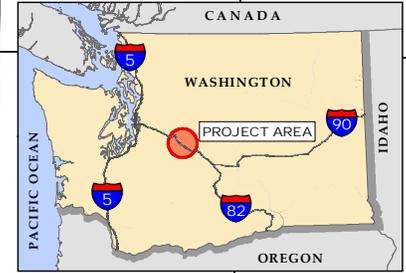
WTWG CHECKLIST

1. Validity	<i>WSDOT Response</i>
Is there continued beneficial use history sufficient to ensure that the right has not been relinquished or abandoned?	<i>Yes</i>
Is it free of any “cloud” or claim on the title of the water right?	<i>Yes</i>
2. Water Budget Neutrality	
Is the transfer water budget neutral?	<i>Yes</i>
Is the transfer TWSA (Total Water Supply Available) neutral?	<i>Yes</i>
Does the transfer of the right result in equal or less consumptive use?	<i>Yes</i>
Can the transfer be made without detriment or injury to existing rights? (RCW 90.03.380(1))	<i>Yes</i>
3. Timing and Availability	
Temporary Transfers: If a seasonal transfer, can the transfer be implemented in the time remaining in the season?	<i>n/a</i>
Permanent Transfers: Is there a map of the fallowed land or discontinued use and can it be confirmed?	<i>n/a</i>
4. Impairment of instream flow	
Does the transfer cause no adverse change to instream flows?	<i>Yes</i>
Is all the water accounted for at Parker and Prosser (if applicable)?	<i>Yes</i>
5. Operational Considerations	
If the transfer relies on space in existing Reclamation storage, is storage capacity available?	<i>Yes</i>
Can the transfer be “bucketed”, with different rate and timing, without adverse impacts on other users and fish and other aquatic life?	<i>Yes</i>
Does the transfer have no impermissible impact on Yakima Project operations?	<i>Yes</i>
6. For Transfers Between Surface Water and Ground Water	
Can the hydrologic impacts of the transfer be accurately evaluated?	<i>Yes</i>
7. Other considerations	
Is the transfer in agreement with public policy?	<i>Yes</i>
Is the transfer free of unacceptable secondary effects – economic, environmental, or cultural?	<i>Yes. The overall environmental benefits of the I-90 Project are extensive and significant.</i>
Does the transfer not rely on return flow?	<i>Yes</i>

I-90 Snoqualmie Pass East Project, Hyak to Keechelus Lake Dam Water Rights Vicinity



To North Bend
25 Miles

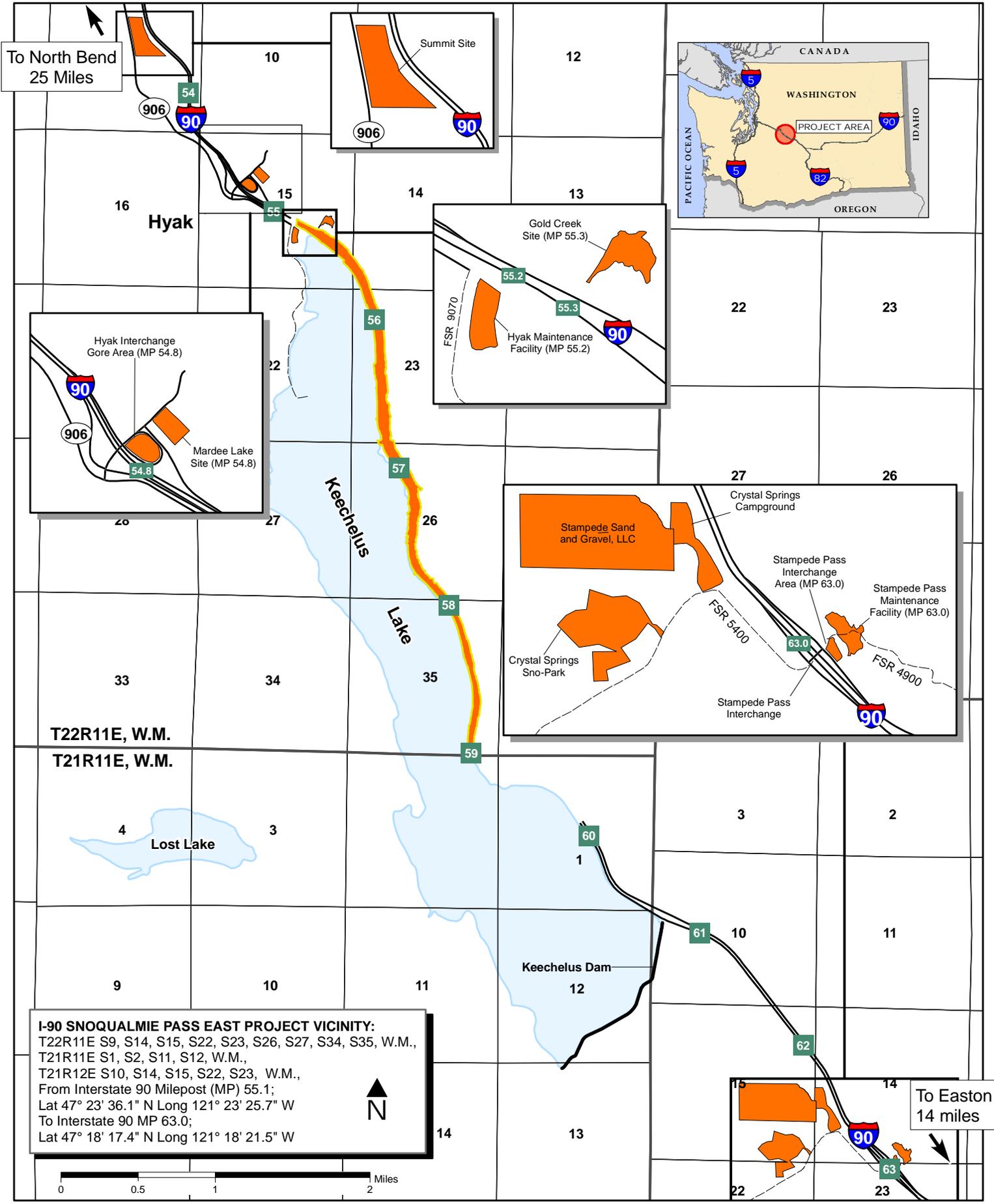


I-90 SNOQUALMIE PASS EAST PROJECT VICINITY:
 T22R11E S9, S14, S15, S22, S23, S26, S27, S34, S35, W.M.,
 T21R11E S1, S2, S11, S12, W.M.,
 T21R12E S10, S14, S15, S22, S23, W.M.,
 From Interstate 90 Milepost (MP) 55.1;
 Lat 47° 23' 36.1" N Long 121° 23' 25.7" W
 To Interstate 90 MP 63.0;
 Lat 47° 18' 17.4" N Long 121° 18' 21.5" W

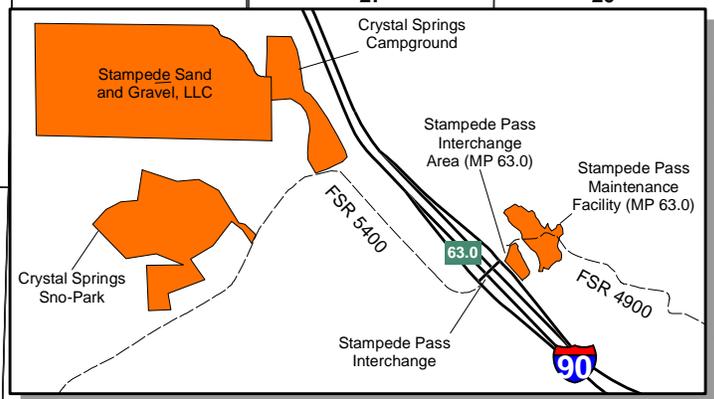
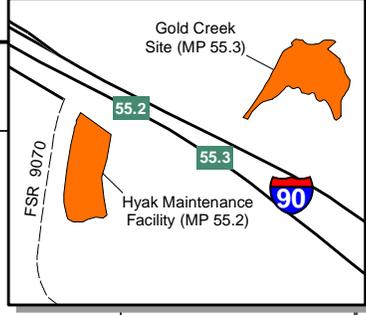
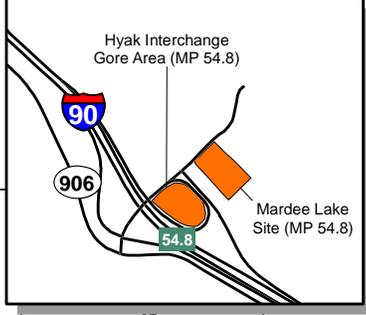
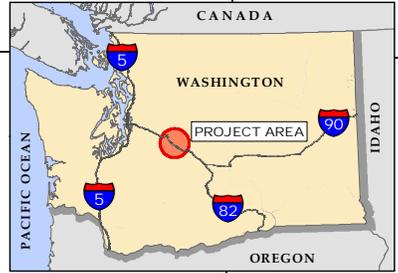


To Easton
14 miles

I-90 Snoqualmie Pass East Project, Hyak to Keechelus Lake Dam Place of Use



To North Bend
25 Miles

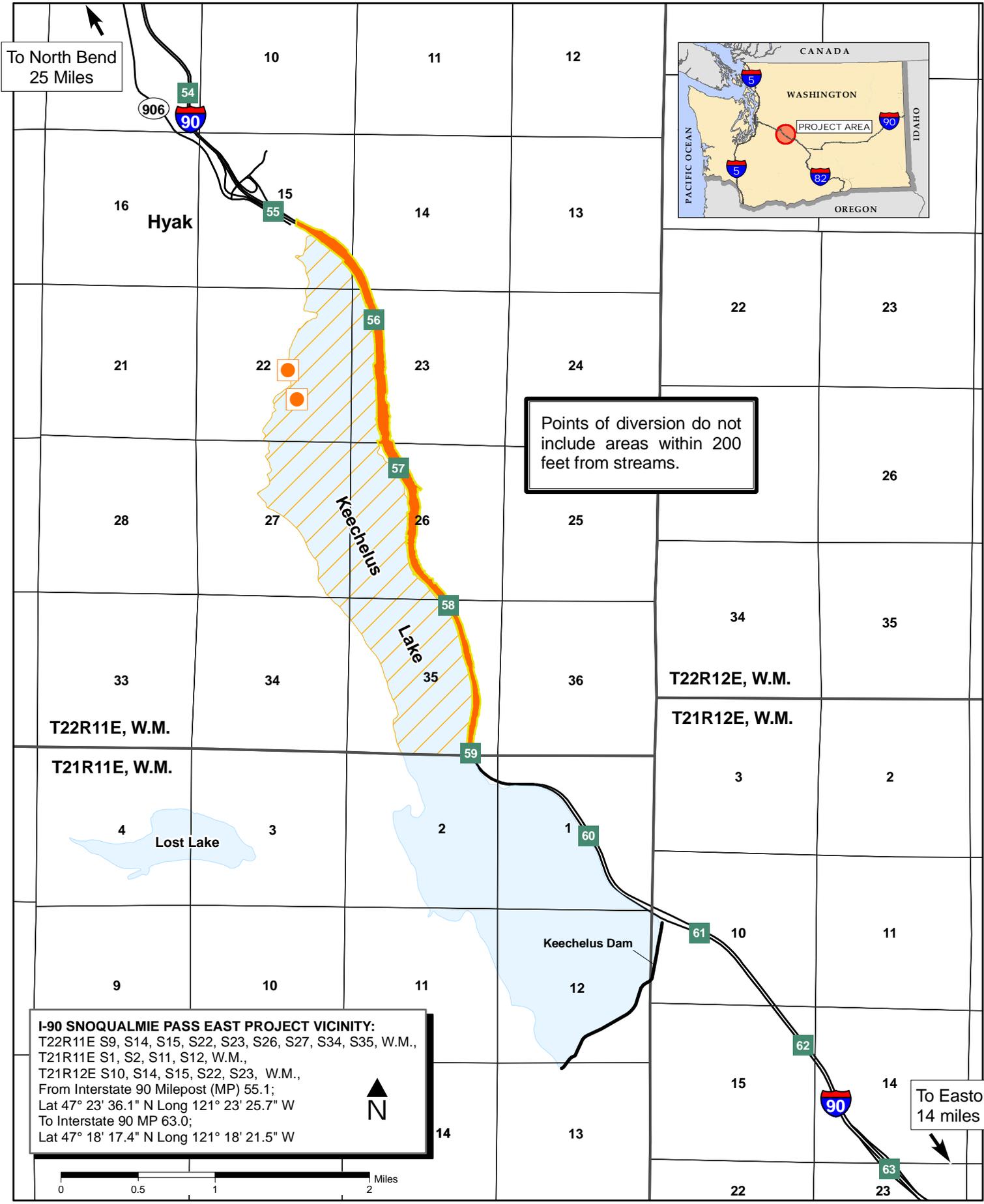


I-90 SNOQUALMIE PASS EAST PROJECT VICINITY:
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 T21R11E S1, S2, S11, S12, W.M.,
 T21R12E S10, S14, S15, S22, S23, W.M.,
 From Interstate 90 Milepost (MP) 55.1;
 Lat 47° 23' 36.1" N Long 121° 23' 25.7" W
 To Interstate 90 MP 63.0;
 Lat 47° 18' 17.4" N Long 121° 18' 21.5" W

To Easton
14 miles



I-90 Snoqualmie Pass East Project, Hyak to Keechelus Lake Dam Points of Diversion



I-90 SNOQUALMIE PASS EAST PROJECT VICINITY:
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 To Interstate 90 MP 63.0;
 Lat 47° 18' 17.4" N Long 121° 18' 21.5" W

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EXHIBIT
SUPERIOR COURT
YAKIMA WASHINGTON

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SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

IN THE MATTER OF THE DETERMINATION
OF THE RIGHTS TO THE USE OF THE
SURFACE WATERS OF THE YAKIMA
RIVER DRAINAGE BASIN, IN
ACCORDANCE WITH THE PROVISIONS OF
CHAPTER 90.03, REVISED CODE OF
WASHINGTON

No. 77-2-01484-5

**AMENDED PETITION FOR ORDER
PENDENTE LITE RE: Washington
State Department of Transportation
Water Right, TEMPORARY CHANGE
IN PURPOSE AND PLACE OF USE
FOR A PORTION OF
COURT CLAIM NO. 00366**

STATE OF WASHINGTON DEPARTMENT OF
ECOLOGY,

Plaintiff,

SUBBASIN NO. 9 (Wilson – Naneum)

v.

DATE: March 11, 2010

TIME: 9:00 a.m.

JAMES J. ACQUAVELLA, et al.

COURT: Hon. F. James Gavin

Defendants.

Petitioner Washington State Department of Transportation, pursuant to the provisions
of Section II of Pretrial Order Nos. 6 and 12, requests that the Court issue an Order Pendente
Lite authorizing the purpose of use for a portion of Court Claim No. 00366 confirmed by this
Court, to be temporarily transferred to the Washington State Trust Water Right Program,
RCW 90.38.020(1)(b) and RCW 90.42.080. In support of this motion, the Washington
Department of Transportation states the following:

1. Name of Petitioner: State of Washington, Department of Transportation
(WSDOT)

1 2. Subbasin Involved: This petition relates to Subbasin No. 9 (Wilson-Naneum).

2 3. Relief Requested: The petitioner requests that the Court issue an Order
3 Pendente Lite in relation to a portion of the Petitioner's water right identified as Cláim No.
4 00366, as approved in the Conditional Final Order for Subbasin No. 9 (Wilson-Naneum)
5 entered on April 17, 2006 (the "Claim"). The request seeks the temporary approval and
6 allowance for a change in purpose and place of use to instream flow under Washington State's
7 Trust Water Rights Program in Wilson Creek from the authorized point of diversion
8 downstream to the confluence with the Yakima River, downstream to the confluence of the
9 Yakima River with the Columbia River. The petitioner requests that the Court's order remain
10 in effect for the 2010 irrigation season.

11 4. The Court confirmed the Claim, originally filed by Richard A. Snowden as a
12 right to irrigate 35 acres, in the Conditional Final Order (CFO) for Subbasin No. 9 (Wilson-
13 Naneum) entered April 17, 2006. On February 28, 2007, the real property and water rights
14 related to the Claim were transferred by the Estate of Snowden to Caribou Land and Cattle
15 Company by Bargain and Sale Deed. On February 28, 2007, the real property and water
16 rights related to the Claim were transferred by Caribou Land and Cattle Company to Lakeside
17 Town Center Associates LLC by Statutory Warranty Deed. In August, 2009, WSDOT and
18 Lakeside Town Center Associates LLC entered into a purchase and sale agreement whereby
19 on October 28, 2009, one hundred (100) acre feet of consumptive use (CU) of the water rights
20 related to the Claim were transferred by Lakeside Town Center Associates LLC to WSDOT
21 by Special Warranty Deed. Purchase of the remainder of the water right is pending the
22 change approval. *See* Declarations of Guy M. Bowman and Lauris Mattsonin Support of
23 Petition for Order Pendente Lite.

24 The confirmed water right has the following attributes:

25 Source: Wilson Creek

26 Purpose of Use: Irrigation of 35 acres

27 Period of Use: April 1 through October 31 for irrigation

28 PETITION FOR ORDER PENDENTE LITE RE: CHANGE IN PURPOSE AND PLACE OF USE FOR
 PORTION OF WATER RIGHT RE: COURT CLAIM NO. 00366

Quantity Transferred	April	May	June	July	August	September	October	Total
Acre Feet (CU)	6.45	8.06	20.97	20.97	16.12	19.35	8.06	99.98
CFS	0.11	0.13	0.35	0.34	0.26	0.33	0.13	n/a

6. Statement of Reasons: WSDOT acquired Court Claim #00366 from Lakeside Town Center Associates LLC in 2009. The main purpose of the water right acquisition was to provide water for the I-90 Snoqualmie Pass East Project (I-90 Project) starting in April, 2010. The purpose of use for the water is to facilitate highway construction (dust control, embankment compaction, road materials and processing and equipment washout) and landscape watering for the I-90 Project which is located adjacent to Keechelus Lake. Another future purpose of the water right acquisition is to provide construction and / or mitigation water for other future WSDOT construction or maintenance activities within the Yakima Basin.

WSDOT has entered into a draft Memorandum of Conveyance Agreement with the Washington State Department of Ecology (Ecology) and on October, 27, 2009, submitted the trust application to put the water right into the Trust Water Rights Program (TWRP) for ten-years. To facilitate WSDOT's diversion at Keechelus Lake, it is anticipated that Ecology will assign, on an annual basis, all or a portion of the water right to the US Bureau of Reclamation (USBR) through the Water Storage and Exchange Contract No. 09XX101700 (Contract) established January 29, 2009. Decision by Ecology on the Trust application is pending. *See Declaration of Lauris Mattson in Support of Petition for Order Pendente Lite ("Mattson Declaration").*

To receive water through the Contract, WSDOT also submitted a Temporary Application for a Water Right Permit on October 27, 2009. The application requests approval for one

1 or more temporary points of diversion in Keechelus Lake above the dam for the multi-
2 year highway construction project. All points of diversion will be metered. WSDOT
3 requests the ability to store unused monthly CU water estimated after the storage control
4 date for the September-October water needs. Decision from Ecology on this application is
5 pending. *See Mattson Declaration.*

6 As indicated in the Temporary Application for a Water Right Permit dated October 27,
7 2009, WSDOT also entered into a Memorandum of Understanding with Lakeside Town
8 Center Associates LLC as a part of the purchase agreement allowing seasonal use of a
9 portion of the water right (.15 cfs and 30 acre-feet per year (with an estimated 10 acre-feet
10 CU)) at its existing place of use from April 1, 2010 to October 31, 2012. The water will
11 be used for plant and landscape watering at the original place of use in order to establish a
12 riparian corridor on that portion of the property that is bordered by Wilson Creek. The
13 water will be diverted from its original point of diversion and will also be metered. All
14 water remaining with Lakeside Town Center Associates will return to WSDOT in 2012
15 and will be available for WSDOT's use or available as a trust water right for instream
16 flow. This request for Order Pendente Lite does not include the 30 AF or 0.15 cfs
17 included as part of the purchase and sale agreement between WSDOT and Lakeside Town
18 Center Associates LLC. *See Mattson Declaration.*

19 Washington State Department of Transportation requests the court to authorize a
20 temporary change in purpose and place of use for 307 acre-feet, consisting of 100 acre
21 feet CU and an instantaneous flow as reflected above for 2010.

22
23 Subsequent to this Petition, WSDOT will also seek a one-year temporary permit for use in
24 the 2010 construction season. The quantities anticipated for use in 2010 will be less than
25 the 100 acre-feet CU and 1.75 instantaneous quantity purchased by WSDOT -- the permit
26 seeks 60 acre-feet CU and 1.0 cfs, respectfully, with the difference used for instream flow
27 purposes.

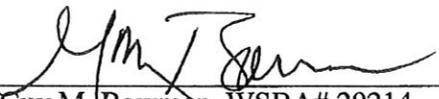
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7. Name of Parties Affected: WSDOT, Lakeside Town Center Associates LLC, State of Washington, Department of Ecology, US Bureau of Reclamation, Major Wilson-Naneum (Subbasin No. 9) Claimant Water Users, all subbasin water right holders from the above stated point of diversion of record and other interested parties.

8. Notice and Service: Petitioners certify that a copy of this petition and attachments, and the notice of the time and place of the hearing by the Court are being served on all affected parties through email, U.S. Mail, by personal service, by facsimile or by publication in the monthly Yakima River Basin Water Rights Adjudication Notice to all affected parties.

Dated this 1st day of March, 2010.

OFFICE OF THE ATTORNEY GENERAL

By 
Guy M. Bowman, WSBA# 29214
Assistant Attorney General, on behalf of
State of Washington