



STATE OF WASHINGTON
 DEPARTMENT OF ECOLOGY
IRRIGATION EFFICIENCIES PROGRAM
TRUST WATER RIGHT
REPORT OF EXAMINATION
Change of Purpose and Place of Use

PRIORITY DATE June 30, 1873	CLAIM NO. Aquavella Court Claim No. 00411	PERMIT NO.	CERTIFICATE NO.
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NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM
 John P. Wheatley, Jr.

ADDRESS/STREET PO Box 190	CITY/STATE Ellensburg, WA	ZIP CODE 98926
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TRUST WATER RIGHT ATTRIBUTES

SOURCE
Taneum Creek

TRIBUTARY OF (IF SURFACE WATERS)
Yakima River

MAXIMUM CUBIC FEET PER SECOND 0.47	MAXIMUM GALLONS PER-MINUTE	MAXIMUM ACRE FEET PER YEAR 48.94
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QUANTITY, TYPE OF USE, PERIOD OF USE
 48.94 acre-feet per year for the purpose of instream flows within Taneum Creek from February 20, 2008 through February 20, 2028 at the following diversionary rates (in cubic feet per second (cfs)):

May 16-31	June	July	August	September	October
0.47	0.32	0.13	0.06	0.04	0.03

*Instantaneous quantities listed above are the maximum amounts saved during each period of time as calculated by Mr. Wheatley's shares of the Taneum Canal Company.

PLACE OF USE and AFFECTED REACHES
 [See Attachment for map of the trust water right location]

APPROXIMATE LOCATION OF HISTORIC DIVERSION

Taneum Creek Canal Point of Diversion: Approximately 300 feet north and 1000 feet east of the west quarter corner of Section 5, T. 18 N., R. 17 E. W.M.

GPS: 47.080836° N., 120.746998° W. (Datum: NAD83)

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) SW¼NW¼	SECTION 5	TOWNSHIP 18 N.	RANGE [E. or W.] W.M. 17 E.	WRIA 39	COUNTY Kittitas
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Taneum Creek: Approximately 2.35 river miles to the confluence of the Yakima River.

PROJECT SUMMARY

This irrigation efficiencies project consists of the conversion of 52.6 acres of rill irrigation practices to a partial pivot irrigation system. Saved water from this project, three prior irrigation efficiencies projects, and a permanent purchase of winter stockwater will increase flows within Taneum Creek resulting in increased habitat functions benefiting fish.

TRUST WATER RIGHT TERM

BEGIN DATE February 20, 2008	END DATE February 20, 2028
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**PORTION OF WATER RIGHT
NOT PLACED INTO TRUST**

PRIORITY DATE June 30, 1873	CLAIM NO. Aquavella Court Claim No. 00411	PERMIT NO.	CERTIFICATE NO.
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NAME Teaneum Canal Company (TCC)		
ADDRESS/STREET 320 E. Taneum Road	CITY/STATE Thorp, WA	ZIP CODE 98946-9517

WATER RIGHT ATTRIBUTES

SOURCE Taneum Creek		
TRIBUTARY OF (IF SURFACE WATERS) Yakima River		
MAXIMUM CUBIC FEET PER SECOND 80	MAXIMUM GALLONS PER-MINUTE	MAXIMUM ACRE- FEET PER YEAR 9571.06

QUANTITY, TYPE OF USE, PERIOD OF USE

9571.06 acre-feet per year for irrigation through 8/24/2024 at the following diversionary rates (in cfs):

February 20 – May 15	May 16-31	June	July	August	September	October	November 1-15
80	79.53	79.68	79.87	79.94	79.96	79.97	80

These quantities reflect existing IEGP projects and cumulative trusted water through August 24, 2024 when the first IEGP project contract expires. Quantities will change according to the amounts available after each of the existing contracts expires. See Tables 2, 3, 4 and 5 of this report for subsequent changes in authorized quantities as each contract expires.

***Instantaneous quantities listed above are the maximum amounts used during any point in time and fluctuate according to irrigation system management. The quantities above include that portion for the remaining water right not included in the irrigation efficiencies project and are separated within this report.**

LOCATION OF DIVERSION

APPROXIMATE LOCATION OF DIVERSION
Taneum Creek Canal Point of Diversion: Approximately 300 feet north and 1000 feet east of the west quarter corner of Section 5, T. 18 N., R. 17 E. W.M.

GPS: 47.080836° N., 120.746998° W. (Datum: NAD83)

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) SW¼NW¼	SECTION 5	TOWNSHIP 18 N.	RANGE [E. or W.] W.M. 17 E.	WRIA 39	COUNTY Kittitas
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PARCEL NUMBER
N/A

RECORDED PLATTED PROPERTY

LOT N/A	BLOCK N/A	OF (GIVE NAME OF PLAT OR ADDITION) N/A
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LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED
[See Attachment for map of the place of use and point of diversion]

See Page 3 for Legal Description

Beginning at the intersection of the downstream end of the fishscreen and Teanum Canal being in the NW¼ of Section 5, T. 18 N., R. 17 E.W.M.; thence following in a generally southeast direction along the Teanum Canal to a point approximately six and one-half miles downstream of the canal to a point which is 1,000 feet west of the SW corner of the NE¼ of Section 25, T. 18 N., R. 17 E.W.M., in the County of Kittitas; thence running east to the SE corner of the SW¼NE¼ of said Section 25; thence north to the intersection with the West Side Canal; thence following the canal in a northwesterly direction to a point immediately north of the Thorp Highway and immediately north of the West Side Canal; thence due N 750 feet; thence on a line N 30° W 1,000 feet more or less to the intersection of the Thorp Highway; thence on a line approximately N 60° W 750 feet more or less to the west boundary line of the West Side Canal; thence following the West Side Canal northwesterly to its point of diversion in the Yakima River; thence southwesterly along the south bank of the Yakima River to the confluence with Taneum Creek; thence following Taneum Creek upstream to the point opposite the point of beginning; thence southwesterly to the point of beginning.

DESCRIPTION OF WATER SYSTEM

Teanum Canal Company diverts their water right, split into 3998.5 shares, into an irrigation canal from Taneum Creek delivering water to all the shareholders within their place of use to be used for irrigation purposes.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Begun	Complete	December 31, 2009

PROVISIONS

TRUST WATER RIGHT provisions:

INSTREAM FLOW

Consistent with RCW 90.38.040(3) and 90.42.080(1)(a), this trust water right shall be managed by Ecology as an instream flow right for Taneum Creek, as described in this trust water report.

Provisions related to PORTION OF WATER RIGHT NOT PLACED INTO TRUST:

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.

WATER AVAILABILITY

Water is limited to the authorized quantities of the Teanum Canal Company's Water Right Court Claim less the amounts placed into the trust program over the duration of each project contract.

METER INSTALLATION

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", chapter 173-173 WAC. <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

RECORD WEEKLY, REPORT ANNUAL TOTALS

Water use data shall be recorded weekly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to Ecology by January 31st of each calendar year.

FISH SCREENING CRITERIA

This authorization is subject to Washington Department of Fish and Wildlife fish screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Fish screening criteria are attached to this Report of Examination. Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://wdfw.wa.gov/hab/engineer/habeng.htm>

AUTHORITY TO ACCESS DATA AND MEASURING DEVICE

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above provisions, and to inspect at reasonable times any measuring device used to meet the above provisions.

AUTHORITY TO ACCESS PROJECT

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 wells or diversions and associated distribution systems for compliance with water law.

CONSERVATION

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 and facility capabilities.

FINDINGS OF FACT AND ORDER

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 or detrimental to the public interest.

Therefore, I ORDER the requested change of place and purpose of use for a portion of Surface Water Court Claim No. 00411 under Trust Water Application No. CS4-00411CTCL@4 be approved, 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 day of 2008.

Tom Tebb, L.E.G.
Section Manager
Water Resources Program
Central Regional Office

INVESTIGATOR'S REPORT

BACKGROUND

Applications: A Trust Water Application through the Irrigation Efficiencies Grant Program (IEGP) for Surface Water Court Claim No. 00411 (CC No. 00411) was submitted by Mark Crowley of the Kittitas County Conservation District on behalf of John P. Wheatley Jr., property owner and Taneum Creek Canal (TCC) shareholder, to the Department of Ecology on October 15, 2007. The application number was assigned as No. CS4-00411CTCL@4 in the Water Right Tracking System. The applicant proposes to temporarily place a portion of the water right into the state's Trust Water Rights Program (TWRP) for the purpose of instream flow to be used exclusively for instream flows within Taneum Creek.

Water right change applications may be processed prior to applications submitted at an earlier date when the proposed water use, if approved, would substantially enhance or protect the quality of the natural environment (WAC 173-152-050(3)(a)). This application has been determined to meet WAC 173-152-050(3)(a) criteria and has therefore been afforded priority processing.

Historically, Taneum Creek has supported summer steelhead, spring Chinook and Coho salmon. The creek is essential to recovery of the Endangered Species Act (ESA) listed (threatened) steelhead as a spawning and juvenile rearing area in the Yakima Basin. Steelhead adults migrate into Taneum Creek in the winter and early spring. Bull trout, listed as threatened under ESA, are also present in Taneum Creek. Taneum Creek is listed on the Department of Ecology's (Ecology) 303(d) list (Water Quality Limited Streams) because minimum flows are not being met. One hundred percent of the saved water from this project will be placed into trust to increase flows and habitat restoration within Taneum Creek.

This is the fourth IEGP project on Taneum Creek from Court Claim No. 00411. A permanent trust water purchase from Court Claim No. 00411 was completed to eliminate stockwater use from Taneum Creek during non-irrigation months and convert stockwater use to 63 wells in the TCC service area. The trust savings is the conveyance loss during the non-irrigation months. In addition to the those projects, a permanent trust water purchase from the U.S. Bureau of Reclamation (for Heart K Ranch) under Surface Water Court Claim No. 00284 added 11.03 cfs and 1316.44 acre-feet to trust water savings on Taneum Creek. The cumulative water savings from all projects add value to fish habitat and needed instream flows.

Summarized below are the quantities of water placed into the trust water program from the completed projects for Court Claim No. 00411. Note that the terms of the trust are all different and cumulative savings will vary through the last few years of the contracts. Savings and remaining water for use are summarized in Table 1 and Table 2 of this report.

Application No.: CS4-00411CTCL
 Landowner: Jack Wheatley
 Term of Trust: through July 25, 2029

Period	5/16 to 5/31	6/1 to 6/30	7/1 to 7/31	8/1 to 8/31	9/1 to 9/30	10/1 to 10/31	Total
Diversion Rate (cfs)	1.19	0.91	0.26	0.12	0.13	0.14	---
Acre-feet	37.7	54.0	16.1	7.6	7.9	8.9	132.2

Application No.: CS4-00411CTCL@1
 Landowner: Vern Meyer
 Term of Trust: through August 24, 2024

Period	5/16 to 5/31	6/1 to 6/30	7/1 to 7/31	8/1 to 8/31	9/1 to 9/30	10/1 to 10/31	Total
Diversion Rate (cfs)	0.81	0.62	0.18	0.08	0.09	0.10	---
Acre-feet	25.7	37.0	11.0	5.2	5.4	6.1	90.4

Application No.: CS4-00411CTCL@3
 Landowner: John Wheatley (d.b.a. Level Best Land, Inc.)
 Term of Trust: through April 26, 2025

Period	5/16 to 5/31	6/1 to 6/30	7/1 to 7/31	8/1 to 8/31	9/1 to 9/30	10/1 to 10/31	Total
Diversion Rate (cfs)	1.0	0.76	0.22	0.10	0.11	0.12	---
Acre-feet	31.6	45.4	13.5	6.4	6.6	7.5	111

Application No.: CS4-00411CTCL@2

Landowners: Taneum Creek Canal stockwater diverters

Term of Trust: Permanent (purchase of winter stockwater)

Period	11/16 to 2/19
Diversion Rate (cfs)	28.8
Acre-feet	Not quantified

Description and Purpose of Proposed Change for the Irrigation Efficiencies Project

The project site is located approximately 8.5 miles northwest of Ellensburg, along Thorp Cemetery Road within Section 10, Township 18 N., Range 17 E.W.M. within Water Resource Inventory Area (WRIA) 39. This irrigation efficiencies project consists of the conversion of 52.6 acres of rill irrigated farmland to center pivot irrigation systems. This is the third phase of on-farm irrigation efficiencies program projects on Taneum Creek, identified as a high priority stream for instream flow restoration. Saved water from this project will increase flows within Taneum Creek resulting in increased habitat functions benefiting fish and water quality for approximately 2.35 miles from the TCC diversion point located within the SW¹/₄NW¹/₄ of Section 5, Township 18, Range 17 E.W.M. and ending at the confluence of the Yakima River located within the SE¹/₄SE¹/₄ of Section 33, T. 19 N., R. 17 E.W.M.

Attributes of the Certificate and Proposed Change for the Irrigation Efficiencies Project

Mark Crowley from the Kittitas County Conservation District calculated per acre historical water use assessments and projected water use from the new irrigation system as requested by John P. Wheatley, Jr. All calculations are computed from a 'per share' basis of the TCC water right. The annual quantity for TCC is limited to 9,620 acre-feet. Instantaneous quantity is limited to 61.7 cfs for consumptive use and 18.3 cfs for conveyance loss, totaling 80 cfs available to divert for all TCC water users. This does not account for the permanent purchase of winter stockwater portion of the water right. Winter stockwater has been changed to ground water wells through that trust water project. There are 3998.5 shares for TCC of which 374 5/6 belong to Mr. Wheatley, Jr. and are appurtenant to the 517 acres he owns within the TCC place of use. Prior to this project, Mr. Wheatley, Jr. was authorized to use 0.59 cfs during the irrigation season and up to 91.73 acre-feet as calculated for the 52.6 acres.

The agreed upon plan for this irrigation efficiencies project, along with the three (3) previous projects, is that TCC operate as normal until May 16th and then reduce their diversion rate so that they will not use any TCC water for those shares covering their respective project areas. *See trust water calculations further in this report and project file for calculations per share of Water Right Court Claim.*

After this irrigation efficiencies project is complete, based on the new irrigation system requirements and the reduction of water use for shares of TCC water on Mr. Wheatley, Jr.'s 52.6 acres, up to 0.59 cfs and 42.79 acre-feet from February 20 to May 15 and November 1 to November 15, will be authorized from TCC. Kittitas Reclamation District (KRD) supplies water for the remaining irrigation season on the 52.6 acres. These calculations exclude the remaining shareholders of the TCC water right and are not included in this irrigation efficiencies project.

When Taneum Creek stream flow drops below 97.47 cfs (the total for the TCC water right and other water right holders on Taneum Creek), irrigators are entitled to a percentage of that flow. To avoid potential impairment to existing water rights, the percentage affected by reduction in flow will be the subtracted out of the amount of water available to the 52.6 acres quantity of water placed into trust from this irrigation efficiencies project. The quantities placed into trust are the maximum quantities when the stream flow is above 97.47 cfs. When the stream flow drops below 97.47 cfs the quantities in trust will drop according to the percentage of that flow. Regardless of the total quantity that is available to be exercised, the quantity of water placed into trust will remain the same every year as a maximum savings.

Table 1 Summary of Attributes and Proposed Changes to TCC Court Claim No. 00411.

Attributes	Documented (does not include the quantities already in trust)	Proposed Trust Water
Name	TCC	John P. Wheatley, Jr. (TCC shareholder)
Priority Date:		

Date of Final Application for Trust	June 30, 1873	October 15, 2007
Instantaneous Quantity	61.7 cfs for stock & irrigation from Feb. 20 to Nov. 15, 18.3 cfs for conveyance loss from Feb. 20 to Nov. 15, and 1.2 cfs for stock water from Nov. 16 – Feb. 19; 28.8 cfs for conveyance loss from Nov. 16 to Feb. 19 ¹	0.47 cfs May 16-31 0.32 cfs June 1-30 0.13 cfs July 1-31 0.06 cfs August 1-31 0.04 cfs September 1-30 0.03 cfs October 1-31
Annual Quantity	9620 acre-feet for irrigation and 30 acre-feet for stock water Feb. 20 – Nov. 15; 10 acre-feet for stock water Nov. 16 – Feb. 19	15.05 acre-feet May 16-31 19.03 acre-feet June 1-30 7.90 acre-feet July 1-31 3.71 acre-feet August 1-31 2.33 acre-feet September 1-30 0.92 acre-feet October 1-31 Total: 48.94 acre-feet
Source	Taneum Creek (Feb. 20 – Nov. 15) 63 wells (Nov. 16 – Feb. 19)	Taneum Creek
Point of Diversion	300 feet north and 1000 feet east of the west quarter corner of Section 5, T. 18 N., R. 17 E.W.M.	N/A
Purpose of Use	Irrigation 3700 acres, stock and conveyance water	Instream Flow
Place of Use	<i>See Court Claim and first page of this report</i>	Taneum Creek

¹ 28.8 cfs for conveyance loss from November 16 to February 19 was placed into trust permanently. The 1.2 cfs used for stockwater was converted to 538.6 gallons per minute and authorized from 63 wells within the TCC service area. The associated 10 acre-feet for stock water outside the irrigation season are appurtenant to the authorized 63 wells.

The following tables summarize the amount of water placed into trust and the amount of water available through the ending date of this IEGP project (CS4-00411CTCL@4) and the three (3) previous IEGP projects (CS4-00411CTCL, CS4-00411CTCL@1, CS4-00411CTCL@3). *See file for entire spreadsheet of calculations.*

Table 2 Quantities for trust and water available as authorized through **August 24, 2024** when the first IEGP contract expires for TCC Court Claim No. 00411 under trust water application No. CS4-00411CTCL@1.

Date	CFS in trust	CFS available	Total
Jan. 1 to Feb. 19	0	0	0
Feb. 20 to May 15	0	80	80
May 16 to May 31	3.47	76.53	80
June 1 to June 30	2.61	77.39	80
July 1 to July 31	0.79	79.21	80
Aug. 1 to Aug. 31	0.36	79.64	80
Sept. 1 to Sept. 30	0.37	79.63	80
Oct. 1 to Oct. 31	0.39	79.61	80
Nov. 1 to Nov. 15	0	80	80
Nov. 16 to Dec. 31	0	0	0
Acre-feet:	382.54	9237.46	9620

Table 3 Instantaneous quantities (in cfs) placed in trust as authorized through **August 24, 2024** when the first IEGP contract expires for TCC Court Claim No. 00411 under trust water application CS4-00411CTCL@1.

IEGP Project: Contract Expires:	CS4-00411CTCL@1 August 24, 2024	CS4-00411CTCL@3 April 26, 2025	CS4-00411CTCL@4 February 19, 2028	CS4-00411CTCL July 25, 2029	Total
Jan. 1 to Feb. 19	0	0	0	0	0
Feb. 20 to May 15	0	0	0	0	0
May 16 to May 31	0.81	1.0	0.47	1.19	3.47
June 1 to June 30	0.62	0.76	0.32	0.91	2.61
July 1 to July 31	0.18	0.22	0.13	0.26	0.79
Aug. 1 to Aug. 31	0.08	0.1	0.06	0.12	0.36
Sept. 1 to Sept. 30	0.09	0.11	0.04	0.13	0.37
Oct. 1 to Oct. 31	0.1	0.12	0.03	0.14	0.39
Nov. 1 to Nov. 15	0	0	0	0	0
Nov. 16 to Dec. 31	0	0	0	0	0

Table 4 Annual quantities (in acre-feet) placed in trust as authorized through **August 24, 2024** when the first IEGP contract expires for TCC Court Claim No. 00411 under trust water application CS4-00411CTCL@1.

IEGP Project: Contract Expires:	CS4-00411CTCL@1 August 24, 2024	CS4-00411CTCL@3 April 26, 2025	CS4-00411CTCL@4 February 19, 2028	CS4-00411CTCL July 25, 2029	Total
Jan. 1 to Feb. 19	0	0	0	0	0
Feb. 20 to May 15	0	0	0	0	0
May 16 to May 31	25.7	31.6	15.05	37.7	110.05
June 1 to June 30	37	45.4	19.03	54	155.43
July 1 to July 31	11	13.5	7.9	16.1	48.5
Aug. 1 to Aug. 31	5.2	6.4	3.71	7.6	22.91
Sept. 1 to Sept. 30	5.4	6.6	2.33	7.9	22.23
Oct. 1 to Oct. 31	6.1	7.5	0.92	8.9	23.42
Nov. 1 to Nov. 15	0	0	0	0	0
Nov. 16 to Dec. 31	0	0	0	0	0
Total Acre-ft:	90.4	111	48.94	132.2	382.54

Table 5 Summary of remaining water use for irrigation through the ending date of this IEGP project (CS4-00411CTCL@4) and the three (3) previous IEGP projects (CS4-00411CTCL, CS4-00411CTCL@1, CS4-00411CTCL@3). See file for entire spreadsheet of calculations. As each contract expires the quantities change and are summarized in this table. The quantities in the table are the amounts available up to the date of contract expiration. After July 25, 2029 the quantities revert back to 80 cfs from February 20 through November 15 with an annual quantity of 9620 acre-feet.

Table 5

IEGP Project: Contract Expires:	CS4-00411CTCL@1 August 24, 2024	CS4-00411CTCL@3 April 26, 2025	CS4-00411CTCL@4 February 19, 2028	CS4-00411CTCL July 25, 2029
Jan. 1 to Feb. 19	0 cfs	0 cfs	0 cfs	0 cfs
Feb. 20 to May 15	80 cfs	80 cfs	80 cfs	80 cfs
May 16 to May 31	76.53 cfs	77.34 cfs	78.34 cfs	78.81 cfs
June 1 to June 30	77.39 cfs	78.01 cfs	78.77 cfs	79.09 cfs
July 1 to July 31	79.21 cfs	79.39 cfs	79.61 cfs	79.74 cfs
Aug. 1 to Aug. 31	79.64 cfs	79.72 cfs	79.82 cfs	79.88 cfs
Sept. 1 to Sept. 30	79.63 cfs	79.72 cfs	79.83 cfs	79.87 cfs
Oct. 1 to Oct. 31	79.61 cfs	79.71 cfs	79.83 cfs	79.86 cfs
Nov. 1 to Nov. 15	80 cfs	80 cfs	80 cfs	80 cfs
Nov. 16 to Dec. 31	0 cfs	0 cfs	0 cfs	0 cfs
Acre-ft Available:	9237.46	9327.86	9438.86	9487.8

Statement of Authorities

Trust water rights are governed state-wide by RCW 90.42 and in the Yakima River Basin, by RCW 90.38. The statutes¹ limit the portion of a water right eligible for transfer to the TWRP to the extent the water right was exercised in the five years prior to application. A water right accepted into the TWRP may not be enlarged. When a portion of a water right is accepted in the TWRP, the portion remaining with the landowner and the portion in trust combined may not exceed the greatest amount exercised within the last five years before application. Any trust water right found to impair an existing water right will be modified to prohibit impairment.

Legal Requirements for Proposed Change for the Irrigation Efficiencies Project

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

- **Public Notice**
A notice of application was duly published in accordance with RCW 90.38.040(5)(b) in the Ellensburg Daily Record on June 26 and July 3, 2008. No protests or objections were received.
- **State Environmental Policy Act (SEPA)**

This application is not exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21 RCW, due to the fact that the cumulative quantities of water for this project under all water rights, including those proposed for trust water herein, constitute a diversion of more than one (1) cubic foot per second. The Department of Ecology (Ecology), acting as lead agency, determined that the subject action does not have a significant adverse impact on the environment and an environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). A final Determination of Non-Significance was issued by Ecology on June 26, 2008.
- **Water Resources Statutes and Case Law**

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*.

¹ RCW 90.38.020(4), 90.38.020(6), 90.42.080(4) and 90.42.080(8)
Report of Examination for Change Page 9 of 13

INVESTIGATION

In considering this application, the investigation included, but was not limited to, research and/or review of:

- The State Water Code, administrative rules, and policies
- Other recorded water rights in the vicinity
- A site visit conducted on October 8, 2007, by Department of Ecology staff Jim Lyerla and Laurie Dahmen
- Correspondence and conversations with Mark Crowley of the Kittitas County Conservation District
- Correspondence and conversations with Jack Myrick of the Conservation Commission
- Conversations with Ecology staff
- Correspondence with Paul LaRiviere and Johnathan Kohr of the Department of Fish and Wildlife
- Correspondence with Jon Culp of the Conservation Commission
- Topographic and local area maps
- Aerial photographs of the site

History of Water Use

Historic use data and irrigation system requirements were calculated by Mark Crowley from the Kittitas County Conservation District. Mr. Crowley used meter data in the years 2003 through 2007 for the TCC diversion for the historic use evaluation. An extent and validity determination of water rights, including aerial photograph review, was conducted by Jim Lyerla from the Department of Ecology. Water rights and project review was conducted by Laurie Dahmen from the Department of Ecology. As described in a letter from Jim Lyerla to Jon Culp (dated December 17, 2007), Mr. Wheatley, Jr.'s water right embodied in the 374.8 shares of the Taneum Canal Company's adjudicated water right are valid and have been used to the full extent during the 2007 irrigation season for the irrigation of 517 acres. Mr. Wheatley, Jr.'s 52.6 acres are included in the 517 irrigated acres authorized in the water right.

Taneum Creek Canal carries water to three (3) delivery ditches: Mann Ditch, Bruton Ditch and Taneum Ditch. Taneum Ditch carries water to TCC and to one other water right holder (Craig George). A total of 97.47 cfs (TCC has 80 cfs) are authorized and all water rights share in equal priority. When the flow drops below 97.47 cfs the irrigation water right holders are entitled to a percentage of the flow.

Proposed Use

The purpose of instream flow is to enhance instream flows for fish maintenance and enhancement within Taneum Creek.

Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing surface and ground water rights in the surrounding area.

In order to evaluate the pending trust water applications, it is necessary to review all water rights appurtenant to the place of use (POU) described under Court Claim No. 00411. The entire TCC service area has supplemental water provided by KRD at an amount up to four (4) acre-feet per acre annually. KRD, under a cooperative agreement with the Bureau of Reclamation, turns out up to 20 cfs of Yakima Project water that KRD carries in the KRD canal when excess canal capacity is available, down the Taneum Chute, and into Taneum Creek just above the Taneum Creek Canal diversion point, for instream flow enhancement in Taneum Creek, and ultimately for delivery to downstream Yakima Project water users.

Department of Fish and Wildlife Project Evaluation

Paul LaRiviere and Johnathan Kohr with the Washington State Department of Fish and Wildlife assessed the project for benefits to Taneum Creek. In a letter to Jim Lyerla (Department of Ecology) dated December 17, 2007, Mr. LaRiviere states that water savings from this project is small and difficult to measure but is important in a cumulative fashion that will benefit fish and habitat over time and also improve water quality.

Hydrologic/Hydrogeologic Evaluation

Ron Dixon, Department of Ecology Hydrogeologist, provided the following analysis for the Taneum Creek area:

The project area is located in the Kittitas Valley northwest of the City of Ellensburg and southwest of the Yakima River. Taneum Creek forms the northern boundary of the project area and flows from the southwest to the northeast in the vicinity of the project before draining into the southeasterly flowing Yakima River. Water is diverted into the TCC ditch from a diversion on Taneum Creek located in Section 5, T. 18 N., R.17 E.W.M. The

Taneum ditch runs southeasterly from the diversion point and forms the southwestern boundary of the project area. The West Side Canal which forms the northeastern boundary of the project area, diverts water from the Yakima River in Section 33, T. 19 N., R. 17 E.W.M.

In this region the Yakima River flows in a southeasterly direction, generally coincident with the synclinal axis. The synclinal feature plunges to the southeast and is bound by anticlinal structures; Naneum Ridge to the north and Manastash Ridge to the south. Within the structurally framed valley, glacial deposits, mainstream and sidestream alluvial deposits, exposures of remnant Thorp Gravels and an occasional thin veneer of loess overlie weakly to moderately indurated sedimentary rocks of the Ellensburg Formation. Grande Ronde basalt forms a bedrock boundary below the Ellensburg Formation, as depicted in cross section on the USGS 1:100,000 Wenatchee Quadrangle geologic map and seen outcropping to the south in Manastash Ridge and to the north in Naneum Ridge.

Don Watt, with the Department of Ecology Environmental Assessment Program, provided miscellaneous stream flow measurements for Taneum Creek taken at the gauging station located near Brain Ranch (approximately 1.25 river miles upstream from the TCC point of diversion). Limited information exists for this gauging station from April 2005 through April 2008. Flows peak approximately between 400 to 500 cfs from mid-March to late May and generally drops below 50 cfs in June, however stream flow dropped below 50 cfs in the 2005 drought year. In comparison, during mid-June 2008 stream flows remained over 90 cfs due to a high precipitation year.

Trust Water Right Calculations

While an entire water right, or portion thereof, may be accepted into trust, the extent to which that water right may be exercised is based on the highest water use within the last five (5) years that will be foregone for the period of trust. The calculation for the extent to which a water right may be exercised as a Trust Water Right is not a tentative determination of the water right and is not a finding of relinquishment or abandonment. Water use records indicate that the subject water right has been used to the full extent during the last five (5) years. Therefore, the entire quantity of water savings may be exercised during the period of trust.

Court Claim No. 00411 has been evaluated for available instantaneous and annual quantities based on historical use. Mr. Wheatley Jr.'s instantaneous quantities of water were calculated from the amount of shares (374 5/6 shares) he has from the TCC water right and converted to cfs per acre. The annual quantity was calculated by using the converted cfs from shares over the irrigation season. The saved water was calculated by taking a monthly average cfs diverted by TCC multiplied by the percentage of savings. To calculate acre-feet savings, continuous cfs savings were multiplied by the number of days in the month and converted to acre-feet. The distribution of acre-feet per month is based on the recommendation of irrigation requirements for the new irrigation systems and the amount of cfs available each month. The instantaneous and annual quantities available for trust for this project are summarized in Table 1 and in conjunction with the other IEGP projects in Table 2 of this report.

After this project is complete, the agreed upon water use scenario for the 52.6 acres is that Mr. Wheatley, Jr. will not use TCC water from May 16 through October 31. The quantities for trust summarized in Table 1 are Mr. Wheatley Jr.'s share of TCC water for the 52.6 acres. There are up to 0.59 cfs and 42.79 acre-feet (48.94 acre-feet for trust subtracted from the 91.73 acre-feet calculated from per acre/per share of Court Claim No. 00411) available to use from February 20 to May 15 and November 1 to November 15 of Taneum Creek water from TCC.

Trust Water Place of Use

Trust Water use for instream flow are generally split into primary and secondary reaches in order to distinguish the contribution of return flows from a water use and the benefits of any reduction in consumptive water use. The annual quantity placed into Trust is calculated differently for the primary reach and secondary reach due to the effects of return flows. The primary reach of a stream is the portion that benefits from both the reintroduction of return flows and any reduced consumptive water use. It is considered to be the reach starting at the point of diversion for the subject right, and extending downstream to a point on the stream where return flows from the irrigated lands have rejoined the stream. The secondary reach is that portion of the stream that benefits by the reintroduction of water that would otherwise be lost to consumptive use and extends from the end of the primary reach to such point downstream as it is practical and feasible to regulate for the subject right. Because this irrigation efficiency project did not reduce consumptive use for this water right, there is no benefited secondary reach of the stream.

Primary Reach

The trust water right for the primary reach is approximately 2.35 miles of Taneum Creek beginning at the TCC point of diversion and ending at the confluence with the Yakima River.

Secondary Reach

There is no secondary reach in this trust water right.

Trust Water Management

Consistent with RCW 90.38.040(1) and 90.42.080(1)(a), this Trust Water Right shall be managed by Ecology as an instream flow right for Taneum Creek, as described in this Trust Water Report.

Impairment Considerations

“Impair” or “impairment” means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, and/or 2) to prevent the beneficial use of the water to which one is entitled, and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flows levels established by rule (POL-1200), and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

The proposed trust water has been evaluated as to the potential for impairment to existing water rights in the area. The water retained instream from this Trust Water Right will be available to other water rights in accordance with seniority and no impairment of any water right will occur. Additionally, the primary reach has been designated in part to avoid potential impairment to existing water rights.

No Enhancement of the Original Certificate

No diversion of water over and above what has been historically put to beneficial use would be authorized through approval of this change. Total water between trust and that portion remaining with the right holder will not exceed the greatest use within the last five (5) years of water use nor will the total exceed the historical extent of the water right.

Consideration of Protests and Comments

No protests or comments were received.

CONCLUSIONS

It is the conclusion of this examiner that, in accordance with Chapter 90.38 and 90.42 RCW, the applications for trust water through an irrigation efficiencies project under Surface Water Court Claim No. 00411 (CS4-00411CTCL@4) will not impair existing rights provided the terms and conditions below are followed.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change in purpose of use and place of use to Surface Water Court Claim No. 00411 be approved, in the amounts and within the limitations listed below and subject to the Provisions Section of this report.

The instantaneous and annual quantities during the periods as noted in the table below shall be transferred to the Trust Water Rights Program for the purpose of instream flow in Taneum Creek from May 16 to October 31 annually through February 19, 2028.

Table 6: Trust Water Right Attributes

Period	cfs	acre-feet
May 16-31	0.47	15.05
June 1-30	0.32	19.03
July 1-31	0.13	7.90
August 1-31	0.06	3.71
September 1-30	0.04	2.33
October 1-31	0.03	0.92
		Total: 48.94 acre-feet

The primary reach begins at the TCC point of diversion site located approximately 300 feet north and 1000 feet east of the west quarter corner (SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 5, T. 18 N., R. 17 E.W.M. and ending approximately 2.35 miles downstream at the confluence of the Yakima River, located approximately in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T. 19 N., R. 17 E.W.M.

There is no secondary reach in this project for this water right.

Portion of Water Right Not Placed into Trust:

This is the balance of Court Claim No. 00411 remaining as confirmed by the Yakima County Superior Court after subtracting out this Irrigation Efficiencies Project trust water savings from application No. CS4-00411CTCL@4 and the permanent purchase of winter stock water from application No. CS4-00411CTCL@2. **This does not reflect the cumulative trust quantities under other projects as described earlier in this report. For actual quantities through July 25, 2029 when the final series of contracts for IEGP projects expire, see Tables 2, 3, 4 and 5 of this report.**

Table 7: The portion of water available is 9571.06 acre-feet for irrigation at the following diversion rates:

Period	cfs
January 1 - February 19	0
February 20 - May 15	80
May 16-31	79.53
June 1-30	79.68
July 1-31	79.87
August 1-31	79.94
September 1-30	79.96
October 1-31	79.97
November 1-15	80
November 16 - December 31	0

Point of Diversion:

Teaumum Creek Canal: approximately 300 feet north and 1000 feet east of the west quarter corner of Section 5, T. 18 N., R. 17 E.W.M. (within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5).

Place of Use:

Beginning at the intersection of the downstream end of the fishscreen and Teaumum Canal being in the NW $\frac{1}{4}$ of Section 5, T. 17 N., R. 18 E.W.M.; thence following in a generally southeast direction along the Teaumum Canal to a point approximately six and one-half miles downstream of the canal to a point which is 1,000 feet west of the SW corner of the NE $\frac{1}{4}$ of Section 25, T. 18 N., R. 17 E.W.M., in the County of Kittitas; thence running east to the SE corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 25; thence north to the intersection with the West Side Canal; thence following the canal in a northwesterly direction to a point immediately north of the Thorp Highway and immediately north of the West Side Canal; thence due N 750 feet; thence on a line N 30° W 1,000 feet more or less to the intersection of the Thorp Highway; thence on a line approximately N 60° W 750 feet more or less to the west boundary line of the West Side Canal; thence following the West Side Canal northwesterly to its point of diversion in the Yakima River; thence southwesterly along the south bank of the Yakima River to the confluence with Teaumum Creek; thence following Teaumum Creek upstream to the point opposite the point of beginning; thence southwesterly to the point of beginning.

Report by: Laurie Dahmen Date _____
 Water Resources Program