DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Added and Changed Point of Diversion

PRIORITY DATE	WATER RIGHT NUMBER
The Year 1926 (Class 64)	Walla Walla River Surface Water Adjudicated Certificate No. 862, with Certificate of Change Vol. 1, Pg. 482

MAILING ADDRESS
Michael Buckley
11537 West Highway 12
Walla Walla, WA 99362

Total Quantity Authorized for Diversion

MAXIMUM DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.60	CFS	150

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE	ANNUAL QUANTITY (AF/YR)
Irrigation	0.4 CFS from 04/01 to 07/01 0.3 CFS from 07/01 to 10/01 0.6 CFS from 10/1 to 04/01*	150

*when allowed in accordance with the Walla Walla Adjudication

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
30			

Source Limitations

SOURCE FACILITY/DEVICE	PERIOD OF USE
1) Diversion	June - February
2) Diversion	March - May

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Walla Walla	Walla Walla River	Columbia River	32-WALLA WALLA

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Diversion No. 1	340735220002	07N	34E	35	SE¼NW¼	46.0430	-118.5255
Diversion No. 2	340729440005	07N	34E	29	SE¼SE¼	46.05062	-118.57881
						Datum:	NAD83/WGS84

Diversion No. 1) 2200 feet East and 500 feet North from the W¼ corner of Sec. 35
Diversion No. 2) 500 feet North and 1900 feet East from the S¼ corner of Sec. 29

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

340732510009, 340729510006, 340729440005

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Beginning on the south line of the Louis Dauney Donation Claim No. 38 a distance of 1,000 feet east of the southwest corner thereof: thence north parallel to the west line thereof 2,167.2 feet; thence east parallel to the said south line 613 feet; thence south to the south line to a point 613 feet east of the beginning; thence west along said south line 613 feet to the place of beginning, being a part of Section 33, Township 7 N., Range 34 E.W.M. Located in the Louis Dauney Donation Claim No. 38, Section 29, T. 7 N., R. 34 E.W.M., Walla Walla County

Beginning on the southwest corner of the Louis Dauney Donation Claim No. 38; thence east on the south line thereof to a point 1,000 feet east of said southwest corner; thence north at right angles 4,114 feet to a point to the intersection of the Walla Walla River; thence meandering northerly and westerly along said Walla Walla River to a point where the river intersects the west line of said Dauney Donation Claim, which point is 4,482 feet north of the said southwest corner; thence south on the west line of said claim a distance of 4,482 feet to the point of beginning. Also, that part of Lot 2 lying south of the Walla Walla River, said lot being situated in Section 29, T. 7 N., R. 34 E.W.M., located in the Louis Dauney Donation Claim No. 38, Section 29, T. 7 N., R. 34 E.W.M., Walla Walla County

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	Completed	In Full Use

Measurement of Water Use

How often must water use be measured?	Weekly
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 (gpm or cfs)

Provisions

Measurements, Monitoring, Metering and Reporting

An approved measuring device must 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 Eastern Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Eastern Regional Office for forms to submit your water use data.

Department of Fish and Wildlife Requirement(s)
The intake(s) must be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). 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/about/contact/

Easement and Right-of-Way
The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change 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.

Water Use Efficiency
Use of water under this authorization will 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.

Schedule and Inspections
Department of Ecology personnel, upon presentation of proper credentials, will 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.

General Provisions
When the supply of water for irrigation purposes from April 1 to October 1 is insufficient in the Walla Walla Valley to fill any right contained in the foregoing schedule (4.2 acre-feet per acre), the owner of such right is entitled to divert water during the period of October 1 to April 1 (up to 5 acre-feet per acre).

By virtue of the decree in the case of the Lowden Co. et al. vs. the Walla Walla Irrigation Co., records of the above-entitled court, this right is prior to that of the Walla Walla Irrigation Co. in Class 30 of the decree referred to in line 1 of this certificate. This references Walla Walla Adjudicated Certificate No. 406, currently owned by Gardena Irrigation District.

Ground Water Certificate Nos. 7157-A and G3-27042C shall be less any water diverted under Walla Walla Adjudicated Certificate No. 862.

Surface Water Certificate Nos. 862 and 1748 shall be limited to 2.0 cfs from April 1 to July 1, 1.3 cfs from July 1 to October 1, when allowed, 2.6 cfs October 1 to April 1; 545 acre-feet for the irrigation of 124 acres.

The amount of water granted is a maximum limit that shall not be exceeded and the water user shall be entitled only to that amount of water within the specified limit that is beneficially used.

Findings 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 the change Application to Walla Walla Adjudicated Certificate No. 862, subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. 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 the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order 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 Order 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.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW Ste 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this 18th day of January, 2012.

Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: http://www.eho.wa.gov. To find laws and agency rules visit the Washington State Legislature Website: http://www1.leg.wa.gov/CodeReviser.

INVESTIGATOR'S REPORT
Dan Tolleson, Department of Ecology
Water Right Control Number CS3-*28862J
Walla Walla River Adjudicated Surface Water Certificate No. 862, with Chg. Vol. 1 Pg. 482

BACKGROUND

Mr. Buckley has filed changes concurrently under Surface Water Certificate Nos. 427, 862 and 1748. Each application will have decisions based on its own respective findings.

Description and Purpose of Proposed Change

An application for change/transfer was submitted by Michael Buckley of Walla Walla, Washington, to Ecology on September 26, 2011. Mr. Buckley proposes to change the authorized point of diversion and add a second point of diversion as granted under Walla Walla Adjudicated Surface Water Certificate No. 482 together with Certificate of Change Vol. 1 pg. 482 (WWAC 427). The change to the authorize point of diversion is intended to correct the certificate to point of diversion actually being used. The proposed second point of diversion is intended to be the only source for March-May, with the changed original source being used for the remainder of the irrigation season. This proposed schedule of use is intended to provide mitigation water for the Bergevin –Williams and Old Lowden irrigation efficiency project.

Attributes of the Existing Water Right and Proposed Change

	Existing	Proposed
Name	Floyd King	Michael Buckley
Priority Date	The year 1926 (class 64)	
Change Application Date		09/26/2011
Instantaneous Rate	Up to 0.6 cfs	Up to 0.6 cfs
Annual Quantity	150 af/yr	150 af/yr
Purpose(s) of Use	Irrigation of 30 acres	Irrigation of 30 acres
Period of Use	Continuously	Continuously
Place(s) of Use	Approximation: Portions of Section 28, 29, 32 and 33 within, T. 7 N., R. 34 E.W.M.	Approximation: Portions of Section 28, 29, 32 and 33 within, T. 7 N., R. 34 E.W.M.

Proposed Sources of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
1) Walla Walla River Diversion	340735220002	7N	34E	35	SE¼NW¼	46.0430	-118.5255
2) Walla Walla River Diversion	340729440005	7N	34E	29	SE¼SE¼	46.0495	-118.5870

Authorized Source of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Walla Walla River Diversion (Garden City Ditch)	340735220002	7N	34E	35	SW¼NW¼	46.0457	-118.5324

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change.

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in The Waitsburg Times during the weeks of December 1 and 8, 2011. No protests were received.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gallons per minute;
- It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

The proposed changes under Surface Water Certificate Nos. 427, 862 and 1748 are intended to be used for mitigation in a larger project. This larger project, if completed, will conduct a SEPA review evaluating the entirety of the project. In and of itself, this application does not meet any of the above listed conditions. It is categorically exempt from SEPA and a threshold determination is not required.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

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*

INVESTIGATION

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits, and claims; (3) USGS topographic maps and aerial photographs; (4) diversion works, ditch systems and place of use; (5) Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32 and Watershed Planning; (6) State of Washington Irrigation Guide (Natural Resources Conservation Service 1997); (7) Walla Walla River Adjudication; and (8) discussions with Department of Ecology regional program staff.

A field investigation was conducted by Dan Tolleson on November 6, 2011. The project is located to the southeast of Lowden, Washington. The water right is located in the Walla Walla Basin, which is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32.

The authorized place of use lies south of the Walla Walla River and north of Detour Road within the W½ of Louis Dauney Donation Claim within, T. 7 N., R. 34 E.W.M. This place of use is approximately 135 acres of relatively flat land, on which 30 acres of irrigation are authorized under WWAC 862. The irrigation system consists of a pump to pressurize a handline sprinkler system.

The authorized point of diversion was the Garden City Ditch, which has been abandoned. This authorized point of diversion is proposed to be changed to the currently used point of diversion. The currently used point of diversion (Diversion No. 1) is a gravity feed unlined ditch system. This ditch diverts water directly from the Walla Walla River by way of head gate with associated dam and integrated fish screen. This system, which is called the Lowden No. 2 Ditch, provides water to multiple water rights and water users. The proposed second point of diversion (Diversion No. 2) is an existing pressurized pumping station, with associated fish screen located on the Walla Walla River.

History of Water Use

Aerial photographs were used to help verify the extent of development, historical and beneficial use of this project. Historically, it appears that entire place of use was irrigated, with approximately 124 acres being irrigated in recent years. Of this, 30 acres are irrigated under Walla Walla Adjudicated Certificate No. 862, leaving a remaining 94 acres, irrigated under Surface Water Certificate No. 1748. This reduction in acres is the result of a combination of factors including changes in the Walla Walla River channel, growth of riparian vegetation and modern farming practices, which require more instantaneous quantities on a per acre basis. It is estimated that the maximum instantaneous quantities authorized under each right is still used despite the fact that some of the authorized acres under GWC 1748 are no longer irrigated. In addition, several alternate source water rights overlap this place of use.

The maximum authorized water duty of this certificate is 5 acre-feet per year, per acre. According to the adjudication, 4.2-acre-feet per acre is the maximum allowed when water is available during the regular irrigation season, which is authorized from April 1 to October 1. If a full quantity of water is not available during the regular irrigation season, then water may be diverted from October 1 to April 1 up to a maximum of 5 acre-feet per acre. Historically, this right has been used to irrigate alfalfa seed and wheat. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that 2.7 acre-feet, per acre, for alfalfa hay is required in the Walla Walla area. Alfalfa seed growers generally apply more water in the winter and spring on seed than on alfalfa hay, which makes up a bit for the non-use in summer. The period of time they are down in the summer varies (generally speaking, 1 to 2 months in mid July to mid September), depending on what varieties of alfalfa are grown and the practices that follow harvest, such as planting new seedlings. In years that they follow up harvest with new seeding (3 to 5 years), their use would be similar to the irrigation of alfalfa hay. At a 70% efficiency rate of application, the approximate maximum water duty, for crops listed above, is up to a maximum of 3.9 acre-feet per year, per acre. In addition, since water is diverted some distance down an unlined ditch, some water is lost in conveyance. Considering this conveyance loss, it is estimated that a total of 4.2 acre-feet per acre have been put to beneficial use under this right in years when water is available during the regular season. According to the adjudication, if a full water duty of 4.2-acre-feet per acre is not available from April 1 to October 1, than water may be diverted from October 1 to April 1 up to a total of 5-acre-feet per acre. This results in an allocation of 150 acre-feet per year for the irrigation of 30 acres.

In the 1950s, Certificate of Change Vol. 1 Page481 was issued for Ground Water Certificate No. 1748 and Certificate of Change Vol. 1 Page 482 was issued for Walla Walla Adjudicated Certificate No. 862. The result of these Certificates of Change is that both rights end up being authorized a shared place of use. This place of use was derived from combining the original place of use of each water right into one large place of use. There is no delineation as to which right was used on which acres, but if regulation is required, a portion of the place of use shall be designated for the junior right during that irrigation year.

Proposed of Change and Mitigation

The primary purpose of this change is to provide mitigation for the Bergevin -Williams and Old Lowden irrigation efficiency project. The intent of this proposed irrigation efficiency is to pipe and upgrade the Bergevin -Williams and Old Lowden ditch systems. This upgrade will result in a change in operation of the systems that must be mitigated. This mitigation is proposed to be accomplished by adding a second point of diversion (Diversion No. 2) under WWAC 862, which is to be used only from March-May. For the remainder of the season the presently used point of diversion (Diversion 1) will be retained. The presently used point of diversion is not the authorized point of diversion but is proposed to be corrected with this change application. This proposed schedule of use in conjunction with the proposed points of diversion are intended to leave water within the Walla Walla River from River Mile 31 to 28 during a critical flow time.

Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing water right certificates, permits, and claims in the surrounding area of the Buckley Project. The search focused primarily on Sections 28, 29, 32 and 33, T. 7 N., R. 34 E.W.M. The review of Ecology records shows four water rights appurtenant to the authorized place of use, which are as follows:

Ground Water Certificate No. 7157-A authorizes 1220 gallons per minute, 570 acre-feet for the irrigation of 190 acres. This certificate is an alternate right and is non-additive to GWC 1748.

Ground Water Certificate No. G3-27042C authorizes 800 gallons per minute, 785-acre-feet per year for the irrigation of 169 acres. This certificate is an alternate right and is non-additive to GWC 1748.

Walla Walla Adjudicated Certificate No. 648 authorizes 0.020 cubic feet per second for stockwater and domestic supply. This water right is not associated with this project.

Walla Walla Adjudicated Certificate No. 874 authorizes up to 0.20 cubic feet per second for the irrigation of 10 acres. The authorized source is Mud Creek, which is often unreliable but is used as an alternate source when required.

(The validity and extent of the above listed water rights and claims are not determined in this 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, not including earlier filed applications (HB 1832); 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 flow 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 applicant is requesting authorization to change the authorized point of diversion and add a second point of diversion to Walla Walla Adjudicated Certificate No. 862. The change to the authorized point of diversion is an upstream move of approximately 2,000 feet to an existing diversion structure (Diversion No. 1). The originally authorized diversion (Garden City ditch) was abandoned five years ago and water has been diverted from the proposed diversion without issue. There are no significant changes in the stream or major diversions between the authorized and proposed point of diversion. The proposed second point of diversion (Diversion No. 2) is located approximately 3 miles downstream from the authorized point of diversion. Water is proposed to be diverted from March –May, which is during a time of year when regulation does not occur, so there is adequate water available for the existing right. Therefore, no impairment is anticipated by changing the authorized point of diversion and adding a second point of diversion. The proposed change will not increase the amount of water withdrawn from the Walla Walla River, nor will it increase or expand the right.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

In conclusion, there is a water right available for change under Walla Walla Adjudicated Certificate No. 862. In accordance with Chapters 90.03 RCW, approval of this application to change the authorized point of diversion and add a second point of diversion will not enlarge the quantity of water historically authorized, nor will it impair existing rights provided the terms and conditions above are followed.

The amount of water recommended is a maximum limit that shall not be exceeded, and the water user may only use that amount of water within the specified limit that is reasonable and beneficial. This authorization does not increase in any way the original amounts authorized by the certificate.

RECOMMENDATIONS

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

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

0. 4 CFS from 04/01 to 07/01
0. 3 CFS from 07/01 to 10/01
0. 6 CFS from 10/1 to 04/01 (when allowed)
150 acre-feet per year
Irrigation of 30 acres

Points of Diversion

Diversion No. 1- SE¼NW¼ of Sec. 35, T. 7 N., R. 34 E.W.M. (June-February)
Diversion No. 2- SE¼SE¼ of Sec. 29, T. 7 N., R. 34 E.W.M. (March –May)

Place of Use

See Page 2, and following.

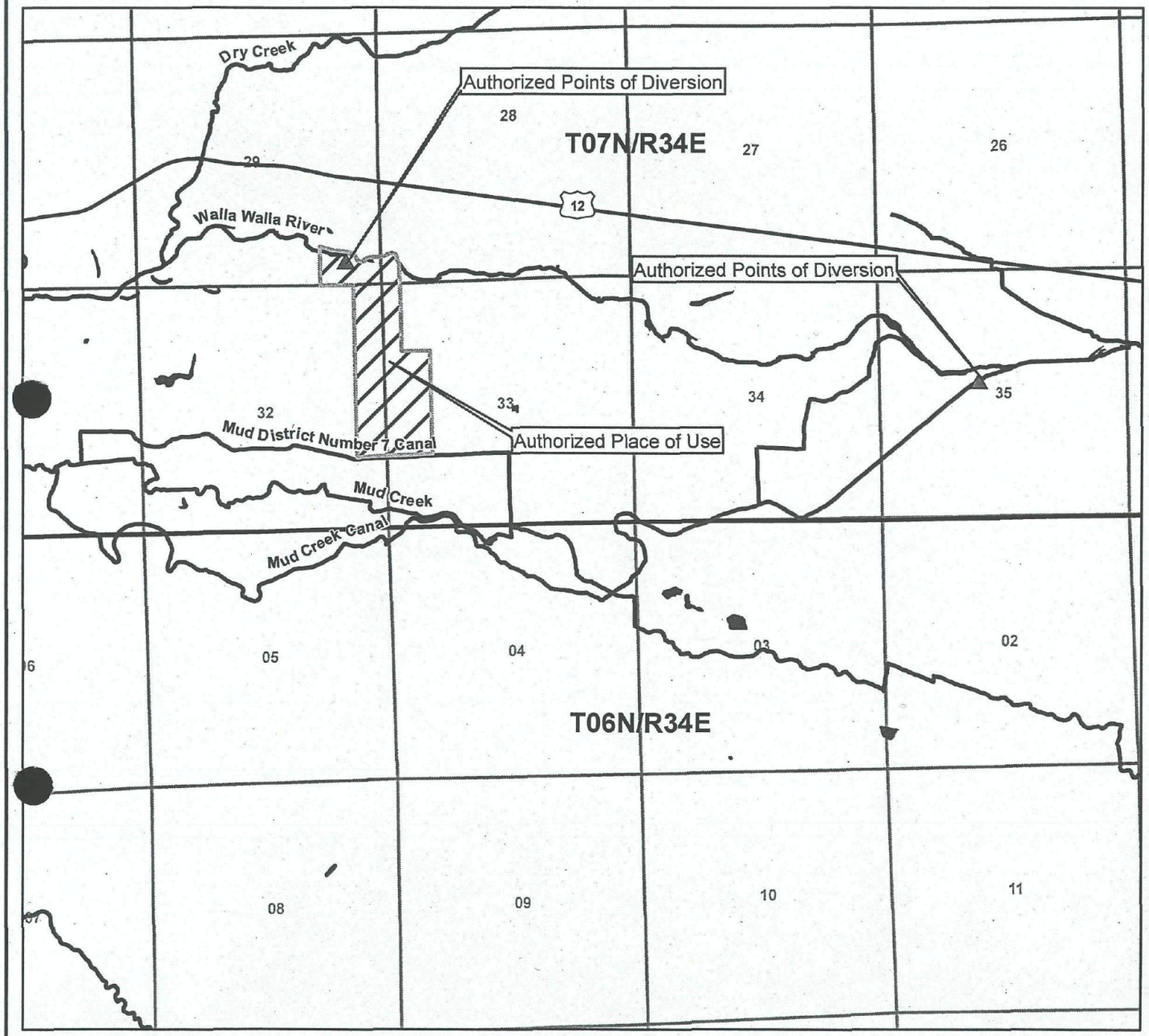
Dan Tolleson 1-18-2012

Dan Tolleson, Report Writer *Date*

If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Michael Buckley
Adjudicated Certificate No. 862
Certificate of Change Vol. 1, Pg. 482
T07N/R34E.W.M.
WRIA 32 - Walla Walla County

DEPARTMENT OF ECOLOGY State of Washington



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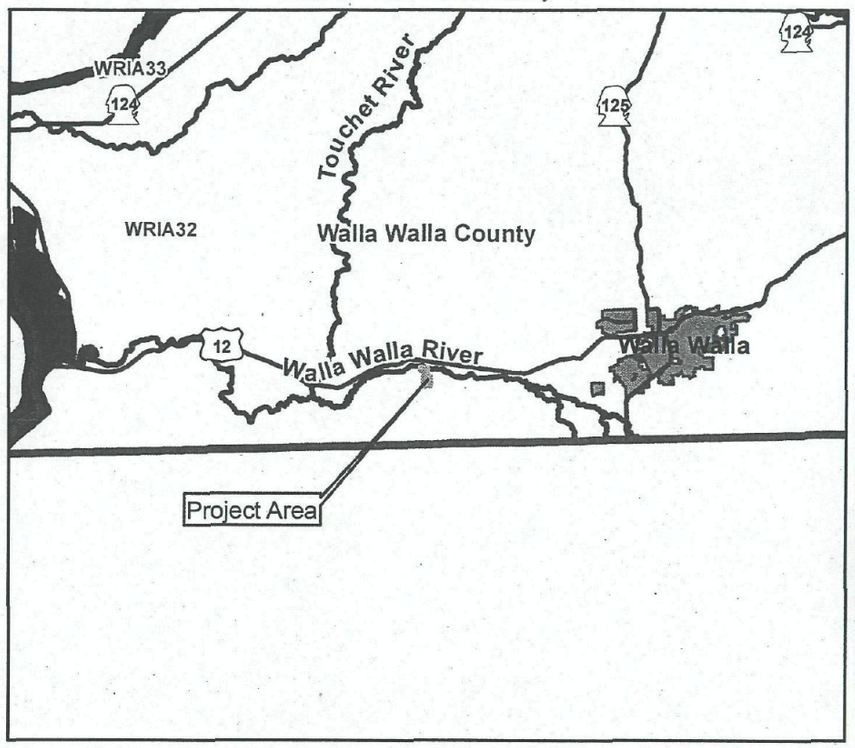

6 3 0 6 12 Miles

Legend

- County
- WRIA
- Cities
- Local Roads
- Highways
- Townships
- Sections
- Authorized Point of Diverison
- Authorized Point of Withdrawal
- Authorized Place of Use

Comments:

Attachment 1