



State of Washington
**REPORT OF EXAMINATION
 FOR WATER RIGHT CHANGE**

Added Point of Diversion

| | |
|--|---|
| PRIORITY DATE The Year 1892 (Class 32) | WATER RIGHT NUMBER Walla Walla River Surface Water Adjudicated Certificate No. 427 |
|--|---|

| |
|---|
| 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) |
| 0.18 | CFS | 45 |

| Purpose | | |
|------------|-------------------------------|-------------------------|
| PURPOSE | WITHDRAWAL OR DIVERSION RATE | ANNUAL QUANTITY (AF/YR) |
| Irrigation | 0.120 CFS from 04/01 to 07/01 | 45 |
| | 0.090 CFS from 07/01 to 10/01 | |
| | 0.180 CFS from 10/1 to 04/01* | |

*when allowed in accordance with the Walla Walla Adjudication

| IRRIGATED ACRES | | PUBLIC WATER SYSTEM INFORMATION | |
|-----------------|--------------|---------------------------------|-------------|
| ADDITIVE | NON-ADDITIVE | WATER SYSTEM ID | CONNECTIONS |
| 9 | | | |

| 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)

340604210002

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Government Lot Nos. 3, 4 and the S½NW¼ of Section 4, Township 6 N., Range 34E.W.M.

Development Schedule

BEGIN PROJECT

Started

COMPLETE PROJECT

Completed

PUT WATER TO FULL USE

In Full Use

Measurement of Water Use

How often must water use be measured?

Weekly

How often must water use data be reported to

Annually (Jan 31)

Ecology?

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).

Ground Water Certificate Nos. 4885-A and G3-25090C shall be less any water diverted under Walla Walla Adjudicated Certificate No. 427.

In the event of a water short year, upon request by Ecology, the acres authorized under Walla Walla Adjudicated Certificate No. 427 shall be identified within the place of use for the purpose of regulation.

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. 427, 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).

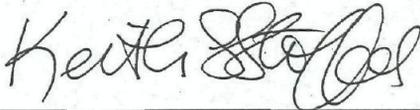
To appeal you must do the following within 30 days of the date of receipt of the Order.

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 Road 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-*28427J

Walla Walla River Adjudicated Surface Water Certificate No. 427

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 add a point of diversion as granted under Walla Walla Adjudicated Surface Water Certificate No. 427 (WWAC 427). The proposed second point of diversion is intended to be the only source for March-May, with the 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 projects.

Attributes of the Existing Water Right and Proposed Change

| | Existing | Proposed |
|--------------------------------|--|--|
| Name | Rohn, A. C. | Michael Buckley |
| Priority Date | 01/01/1892 | |
| Change Application Date | | 09/26/2011 |
| Instantaneous Rate | Up to 0.18 cfs | Up to 0.18 cfs |
| Annual Quantity | 45 af/yr | 45 af/yr |
| Purpose(s) of Use | Irrigation of 9 acres | Irrigation of 9 acres |
| Period of Use | Continuously | Continuously |
| Place(s) of Use | Lot 3, Lot 4 and S½NW¼ of Section 4, T. 6 N., R. 34 E.W.M. | Lot 3, Lot 4 and the S½NW¼ of Section 4, T. 6 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 |
|--------------------------------|--------------|-----|-----|-----|--------|----------|-----------|
| 1) Walla Walla River Diversion | 340735220002 | 7N | 34E | 35 | SE¼NW¼ | 46.0430 | -118.5255 |

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 Mud Creek and north of the Gardena Ditch within the NW¼ of Section 4, T. 6 N., R. 34 E.W.M. This place of use comprises approximately 160 acres of land sloping upward toward the south, on which 9 acres of irrigation are authorized under WWAC 427. The irrigation system consists of a pump to pressurize a handline sprinkler system.

The authorized point diversion (Diversion No. 1) is a gravity feed unlined ditch system that diverts water directly from the Walla Walla River by way of a head gate with associated dam and integrated fish screen. This ditch system, which is called the Lowden No. 2 Ditch, provides water to multiple water rights and water users. The proposed 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, the entire place of use has been irrigated, with a total of nine acres being irrigated under this right and the remainder from other water rights.

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 that 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, then 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 45 acre-feet per year for the irrigation of 9 acres.

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 427, which is proposed to be used only from March-May. The originally authorized point of diversion is proposed to remain as the point of diversion (Diversion No. 1) for the remainder of the season. This proposed schedule of use in conjunction with the proposed additional point of diversion is 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 Section 4, T. 6 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. 188-D authorizes 17 gallons per minute, 2 acre-feet for domestic supply, irrigation and dairy use. Although this certificate has an overlapping place of use, it appears that the actual use occurred outside the place of use of WWAC 427 and is not associated with this project.

Ground Water Certificate No. 4885-A authorizes 400 gallons per minute, 320-acre-feet for the irrigation of 284 acres. This certificate was issued as supplemental to existing rights and as an alternate supply right to WWAC 427.

Ground Water Certificate No. G3-25090C authorizes 750 gallons per minute, 1200 acre-feet per year for the irrigation of 286 acres. This certificate issued as an alternate supply right to WWAC 427.

Walla Walla Adjudicated Certificate No. 406 authorizes up to 140 cubic feet per second to provide water for the Gardena Irrigation District. The authorized place of use described for WWAC 427 is fairly large but only authorizes nine acres. Gardena Irrigation District provides water for the remainder of the place of use not covered by WWAC 427. 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.

(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 add a second point of diversion to WWAC 427. This right has been exercised and beneficially used. The proposed point of diversion (Diversion No. 2) is located approximately three miles downstream from the authorized point of diversion (Diversion No. 1). The applicant proposed to divert water 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 moving the point of diversion to the proposed site during March- May. 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. 427. In accordance with Chapters 90.03 RCW, approval of this application to add a 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 for change to add a point of diversion be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, and following.

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. 120 CFS from 04/01 to 07/01
0. 090 CFS from 07/01 to 10/01
0. 180 CFS from 10/1 to 04/01 (when allowed)
45 acre-feet per year
Irrigation of 9 acres

Points of Diversion

Diversion No. 1- SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 35, T. 7 N., R. 34 E.W.M. (June-February)
Diversion No. 2- SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 29, T. 7 N., R. 34 E.W.M. (March -May)

Place of Use

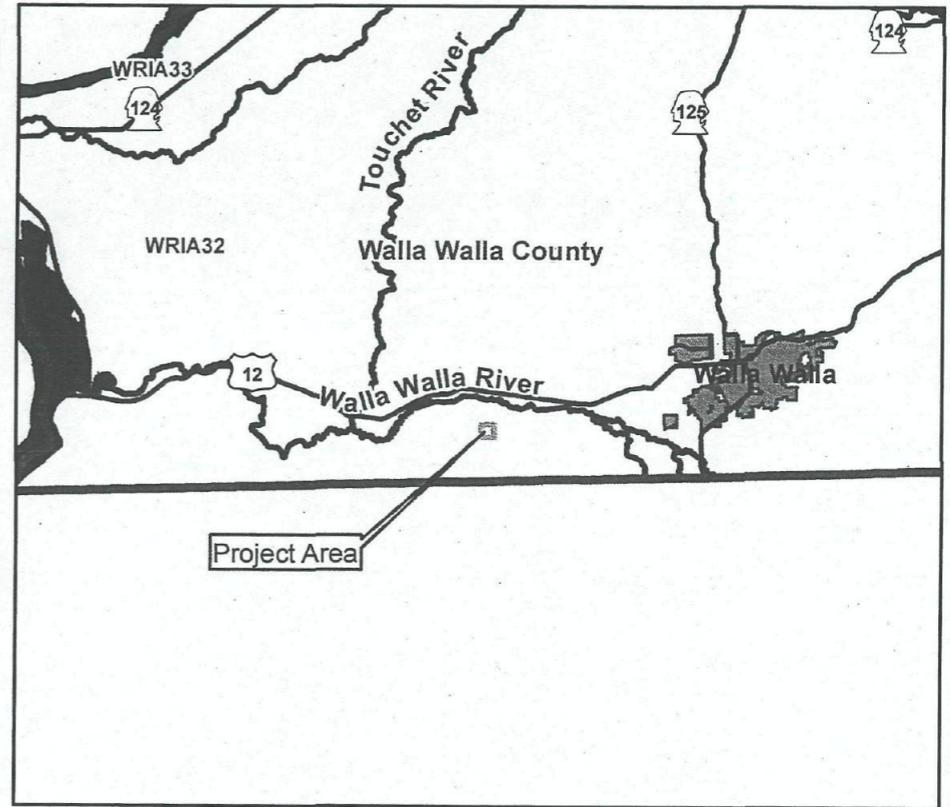
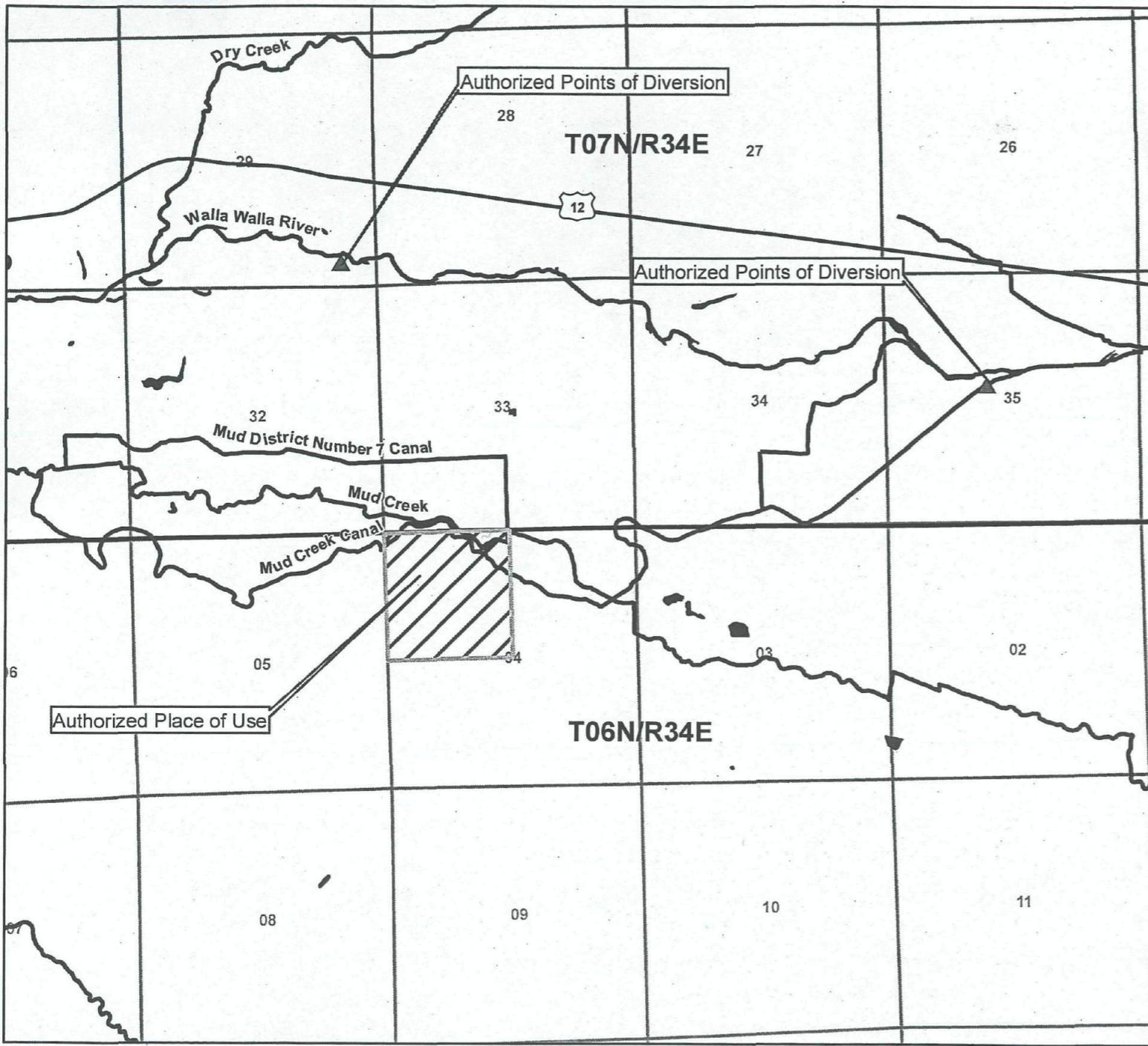
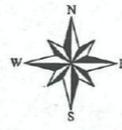
Government Lot Nos. 3 and 4 and the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4, Township 6 N., Range 34 E.W.M.

Dan Tolleson
Dan Tolleson, Report Writer

1-18-2012
Date

If you need this publication in an alternate format, please call the 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. 427
 T07N/R34E.W.M.
 WRIA 32 - Walla Walla County



Legend

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

Comments:

