



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

January 29, 2013

Mr. Scott Byerley
501 W. Langdon Road
Walla Walla, WA 99362

Dear Mr. Byerley:

Re: Walla Walla County Water Conservancy Board Record of Decision on 833(A) WALL-12-05

On November 16, 2012, our office received from the Walla Walla County Water Conservancy Board a Record of Decision and Report of Examination for the above referenced application for change/transfer of Walla Walla Adjudicated Surface Water Certificate No. 833(A). In accordance with RCW 90.80.080 the Department of Ecology has reviewed the Record of Decision and Report of Examination and all comments, protests, objections and other relevant information submitted by the Walla Walla County Water Conservancy Board for the above referenced application for change/transfer.

The Department of Ecology has reversed the decision of the Board and the proposed change/transfer of water right is denied.

Walla Walla Adjudicated Surface Water Certificate No. 833(A) authorizes 0.425 cubic feet per second, 106.25 acre-feet per year for the irrigation of 21.25 acres. The certificate currently authorizes two (2) points of diversion. The points of diversion are both located in the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 36, T. 7 N., R. 34 E.W.M.

Application for Change/Transfer under Certificate No. 833(A) was filed with and accepted by the Walla Walla Water Conservancy Board on April 4, 2012. The application requested to change/transfer the place of use of 20 acres only.

On April 26 and May 3, 2012, a public notice was advertised in The Times newspaper located in Waitsburg, Washington. The notice states that the applicant proposes on all three rights to change the place of use for 80 acres. As stated above the application for change/transfer requested to change the place of use of 20 acres only. The public notice also states that the applicant proposes to add a well located within SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 7 N., R. 34 E.W.M. to all three (3) water rights. The two (2) surface water applications for change/transfer did not request to add a well to the surface water rights.

WAC 173-153-080(1)(e) states;

(e) A description of the proposed transfer(s) to be made, including, when applicable, the proposed location of point(s) of diversion or withdrawal; the proposed place(s) of use; the proposed purpose(s) of use; if for irrigation purposes, the total number of acres to be irrigated;



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and the instantaneous rate and annual quantities of water associated with the proposed water right transfer including the description of a transfer that includes only a portion of a water right.

The board failed in giving proper public notice as required in the WAC 173-153-080(1)(e) as stated above.

The public notice does not depict what the intent of the application for change/transfer requested. This public notice has substantial errors which would require the Board to republish the public notice. WAC 173-153-080(5) states:

(5) The public notice must be republished in all newspapers of original publication when an applicant substantively amends an application for a transfer of a water right subsequent to publication of the notice, or when the publication contains a substantive error or omission occurs in the publication. All parties who were sent the original application as required by WAC 173-153-070(22) and/or the original public notice must be sent corrected copies of any amended transfer application and/or an amended public notice. For the purposes of this subsection, the term "substantive error or omission" for publication purposes, refers to any item identified in subsection (1) of this section that is omitted from or inadequately characterized in the public notice. An application is considered substantively amended if it expands the intent of the original proposal or results in a substantial change, such as an alteration to the proposed point of diversion or withdrawal, proposed purpose(s) of use, or to the proposed place of use.

Looking forward, the improper notice could be used to argue that a replacement well under RCW 90.44.100(3) maybe be installed to exercise both surface water certificates.

For these reasons the department reverses the decision of the Walla Walla County Water Conservancy Board and the Application for Change/Transfer under Walla Walla Adjudicated Surface Water Certificate 833(A) is denied.

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

- File your appeal and a copy of this document 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 document on Ecology in paper form - by mail or in person. (See addresses below.) Email is not accepted.

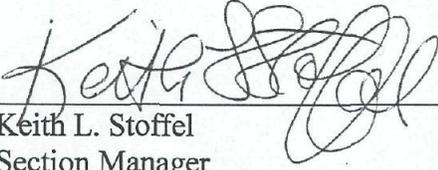
You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

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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 Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

*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>.*

DATED this 29th day of January, 2013, at Spokane, Washington.



Keith L. Stoffel
Section Manager
Water Resources Program
Eastern Regional Office

KLS:HS:ka

By Certified Mail 7011 3500 0001 8626 3726

cc: Walla Walla County Water Conservancy Board

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501 W. LANGDON ROAD
 City, State, ZIP+4 **WALLA WALLA, WA 99362**

PS Form 3800, August 2006 See Reverse for Instructions

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1. Article Addressed to:

MR. SCOTT BYERLEY
501 W. LANGDON ROAD
WALLA WALLA, WA 99362

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