



State of Washington REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Changed Place of Use
Add and Changed Point of Diversion

PRIORITY DATE
1881 (Class 12)

WATER RIGHT NUMBER
Touchet River Adjudicated Certificate No. 103

MAILING ADDRESS
Mr. Abbas Sameh
Aurora Orchards Touchet Valley Farms Inc
108 Vernon Way
Dayton, Washington 99328

Total Quantity Authorized for Withdrawal or Diversion

MAXIMUM DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
1.6	CFS	323

Purpose

PURPOSE	DIVERSION RATE	ANNUAL QUANTITY (AF/YR)
Irrigation	1.066 CFS from 04/01 to 10/15 1.600 CFS from 10/15 to 04/01	323

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
80			

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Columbia	North Fork Touchet River	Touchet River	32-Walla Walla

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
1) Pump Station	2-009-39-003-2300	9N	39E	03	SW¼SE¼	46.2885	-117.9235
2) Pump Station	2-009-39-003-2300	9N	39E	03	SE¼NW¼	46.2886	-117.9201

Datum: NAD83/WGS84

- 1) 1400 feet west and 1000 feet north from the SE corner of Section 3
- 2) 1320 feet east and 2400 feet south from the NW corner of Section 3

Place of Use (See Attached Map)

PARCELS

2-009-39-003-2300 and 2-009-39-003-2310

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

The north 700 feet of the SW¼SE¼ and the N¼E½SW¼ of Section 3, all in T. 9N., R. 39 E.W.M. Also, those parts of the SE¼NW¼ and the NW¼SE¼ of Section 3, all in T. 9N., R. 39 E.W.M., lying south of the Touchet River. Also, beginning at the NW corner of the NW¼SW¼ of said Section 3, all in T. 9N., R. 39 E.W.M.; thence running due south of the west line of said section 30 rods; thence due east parallel to the north line of the SW¼ of said section 80 rods; thence due north parallel to the west line of said section, 30 rods to the north line of said SW¼; thence due west 80 rods on said line to the place of beginning. Also, beginning at a point 7.5 chains south from the quarter section former on the west side of Section 3, all in T. 9N., R. 39 E.W.M., running thence south 3.46 chains; thence 67° east 1.9 chains, thence south 82° east 1.33 chains; thence north 85° east 2.25 chains; thence south 60° east 2.66 chains; thence south 47° east 0.85 chains; thence south 40° east 2.83 chains; thence south 76° east 3.95 chains; thence south 67° east 3.5 chains; thence south 79° east 2.78 chains to the east side of the forty; thence north 11.28 chains; thence west 20 chains to the point of beginning, containing 14.78 acres, more or less, being a fraction of the W¼SW¼ of Section 3, all in T. 9N., R. 39 E.W.M. Also, the SW¼NW¼ of Section 3, all in T. 9N., R. 39 E.W.M. SAVING AND EXCEPTING the following described tract of land, to-wit: commencing at a point 21 rods north of the SE corner of the SW¼NW¼ of said Section 3, all in T. 9N., R. 39 E.W.M., thence running north 27 rods; thence west 20 rods; thence south 27 rods; thence east 20 rods to the point of beginning. All lying south of North Fork Touchet River Road.

ALSO EXCEPTING THEREFROM, the following described tract of and, to-wit: That part of the SW¼SE¼ of Section 3, all in T. 9N., R. 39 E.W.M., lying north of the Touchet River.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	Completed	January 1, 2014

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

This authorization is subject to the provisions set forth in the decree of the Superior Court of Walla Walla, State of Washington, made and entered on the 19th day of September, 1929, recorded in Volume 18 of the Superior Court Journal at Page 1, otherwise known as Touchet River Decree No. 22066.

After all rights scheduled in the Touchet River Decree No. 22066 are filled, the surplus water is allotted in the order of priority in amounts sufficient to increase the rate to the quantity allotted for the period from

September 15th to April 1st. The total diversion shall not exceed 323 acre-feet per acre for any one year beginning September 15th.

The water right holder shall ensure that the authorized diversion pumps do not exceed the maximum instantaneous quantity for each season which is as follows: 1.066 cfs from 04/01 to 10/15 and 1.600 cfs from 10/15 to 04/01.

Note: Water coming from drains in the NW¼ of the SW¼ of Sec. 2, Twp. 9 N., Rge. 39 E.W.M. is a developed supply (ponds), privately owned, and is not part of the Touchet River supply.

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/>

No dam or weir may be constructed in connection with this diversion.

Water Use Efficiency

The water right holder is required to maintain efficient water delivery systems and use up-to-date water conservation practices consistent with RCW 90.03.005.

Proof of Appropriation

The water right holder must file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the water right. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

A superseding certificate of water right will not issue until it has been verified that each flow meter is working properly.

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.

Real Estate Excise Tax

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477 Internet: <http://dor.wa.gov/>. E-mail: REETSP@DOR.WA.GOV.

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 Application for Change to Touchet River Adjudicated Certificate No. 103, 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 Hearings 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 8th day of January, 2013.



 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-*34103J
 Touchet River Adjudicated Certificate No. 103

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number CS3-*34103J, for Touchet River Adjudicated Certificate No. 103.

EXISTING Water Right Attributes

Water Right Owner:	Ryerson E S
Priority Date:	1881
Place of Use	Portions of Section 3 and 10 within Township 9 North, Range 39 E.W.M.

County	Waterbody	Tributary To	WRIA
Columbia	North Fork Touchet River	Touchet River	32-Walla Walla

Purpose	Maximum Rate	Unit	Ac-ft/yr
Irrigation	1.066 CFS from 04/01 to 10/15 1.600 CFS from 10/15 to 04/01	CFS	480

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
North Fork Touchet River		09N	39E	03	SE¼SE¼		

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

REQUESTED Water Right Attributes

Applicant Name:	Aurora Orchards Touchet Valley Farms Inc
Date of Application:	3/24/2006
Place of Use:	Reduce to portions of Section 3, Township 9 North, Range 39 E.W.M.

County	Waterbody	Tributary To	WRIA
Columbia	North Fork Touchet River	Touchet River	32-Walla Walla

Purpose	Maximum Rate	Unit	Ac-ft/yr
Irrigation	1.066 CFS from 04/01 to 10/15	CFS	480
	1.600 CFS from 10/15 to 04/01		

Source Name	Parcel		Twp	Rng	Sec	QQ Q	Latitude	Longitude
Touchet River No. 1	2-009-39-003-2300		9N	39E	03	SW¼SE¼	46.2885	-117.9235
Touchet River No. 2	2-009-39-003-2300		9N	39E	03	SE¼NW¼	46.2886	-117.9201

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

Legal Requirements for Requested 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 Dayton Chronicle on October 25, and November 1, 2006 and 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.

- (a) 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;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;

- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) 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);
- (e) 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.

Because this application does not meet any of these 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 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) Touchet River Adjudication; and (8) discussions with Department of Ecology regional program staff.

A field investigation was conducted by Dan Tolleson and Jeff MacLennan on November 7, 2012. The project is located approximately two miles to the southeast of Dayton, 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 project lies within the bottom-land, primarily south of the North Fork of the Touchet River within Section 3, T. 9N., R. 39 E.W.M. The area is an irrigated apple orchard with two houses, a large shop, refrigerated storage building and several out buildings. The irrigation system consists of two diversion pumps and a solid set sprinkler system.

The majority of the place of use lying north of the river is proposed to be removed from the water right since it is not irrigated. The only portion of the place of use, lying north of the river that is proposed to be retained is the portion that overlaps the lots owned by Ms. Roecks and Ms. Literal within the NE¼SW¼ of Section 3. Aurora Orchards owns the retained portion of the place of use lying south of the river and they propose to add a parcel of land to the place of use within the SE¼ of Section 3. In addition, no use occurs within the portion of the place of use lying within the extreme southern portions of Section 3 and Section 10. These undeveloped hill sides will be removed from the legal description.

The authorized point of diversion, which has been abandoned, was a ditch from the North Fork of the Touchet River. The authorized point of diversion is proposed to be moved to the currently used pumping stations. These currently used points of diversion are located directly downstream at two points on the river. Each point of diversion consists of a centrifugal pump, meter and fish screen. Reportedly, the water use meters are not reliable and will need to be repaired.

History of Water Use

Aerial photographs were used to help verify the extent of development, historical and beneficial use of this project. These photos indicate that 80 acres have been historically irrigated under this right. The majority of the right was put to use within the authorized place of use, with a small portion of the irrigation occurring on lands that were not authorized. This area of unauthorized irrigation is proposed to be added under this change which is located within the NW¼SE¼ of Section 3, lying south of the river.

It is estimated that the maximum instantaneous quantities authorized under this right have been used for this project. It is estimated that when both pumps are utilized during the spring/summer season (4/1 to 10/15) the instantaneous quantities may exceed the maximum authorized. Aurora Orchards shall meter these pumps and ensure that this maximum is not exceeded. Modification to the pumping system or irrigation schedule may be required to meet this requirement.

The maximum authorized water duty of this certificate is 6 acre-feet per year, per acre. According to the Adjudication, after all rights scheduled in the Touchet River Decree No. 22066 are filled, the surplus water is allotted in the order of priority in amounts sufficient to increase the rate to the quantity allotted for the period from September 15th to April 1st. Historically, this right has been used to irrigate apples with cover. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that 3.1 acre-feet per acre for an apple orchard is required in the Dayton area. The current pressurized sprinkler type irrigation system is estimated to be 75% efficient. At a 75% efficiency rate of application the water duty for the crop listed above is up to a maximum of 4.1 acre-feet per year, per acre. This results in an allocation of 323-acre-feet per year for the irrigation of 80 acres. This appears to be consistent with available pumping data.

The original certificate has the following note: "Water coming from drains in the NW¼ of the SW¼ of Sec. 2, Twp. 9 N., Rge. 39 E.W.M. is a developed supply, privately owned, and is not part of the Touchet River supply." This drain system is still utilized and provides water to several ponds within the place of use. The water from these ponds is used for orchard cooling, typically in August, when river supplies are inadequate.

Proposed Use

The primary purpose of this change is to correct the location of the point of diversion. The applicants propose to move the point of diversion downstream to the two existing pump stations. In addition, they propose to reduce and add to the place of use those lands generally irrigated under this right.

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 Aurora Orchards Project. The search focused primarily on Section 3, T. 9 N., R. 39 E.W.M. The review of Ecology records shows no other water rights appurtenant to the proposed place of use.

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 to Touchet River Adjudicated Certificate No. 103. The change to the authorized point of diversion is a downstream move of approximately 700 feet and 4000 feet to the existing diversion pump stations. The originally authorized diversion ditch was abandoned many years ago and water has since been diverted from the proposed diversions without issue. There is no significant change in the stream or major diversions between the authorized and proposed points of diversion. Therefore, no impairment is anticipated by changing the authorized point of diversion. The proposed change will not increase the amount of water withdrawn from the Touchet River nor will it increase or expand the right.

Consideration of Protest and Comments

No protests were filed against this application.

Conclusions

In conclusion, there is a water right available for change under Touchet River Adjudicated Certificate No. 103. In accordance with Chapters 90.03 RCW, approval of this application to change the authorized point of diversion and place of use 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 this request for a water right change be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

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:

1.066 cfs from 4/1 to 10/15
1.600 cfs from 10/15 to 4/1
323 acre-feet per year
Irrigation of 80 acres

Point of Diversion Withdrawal

Pump Station No. 1 - SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, Township 9 North, Range 39 E.W.M.
Pump Station No. 2 - SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 3, Township 9 North, Range 39 E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.



Dan Tolleson, Report Writer

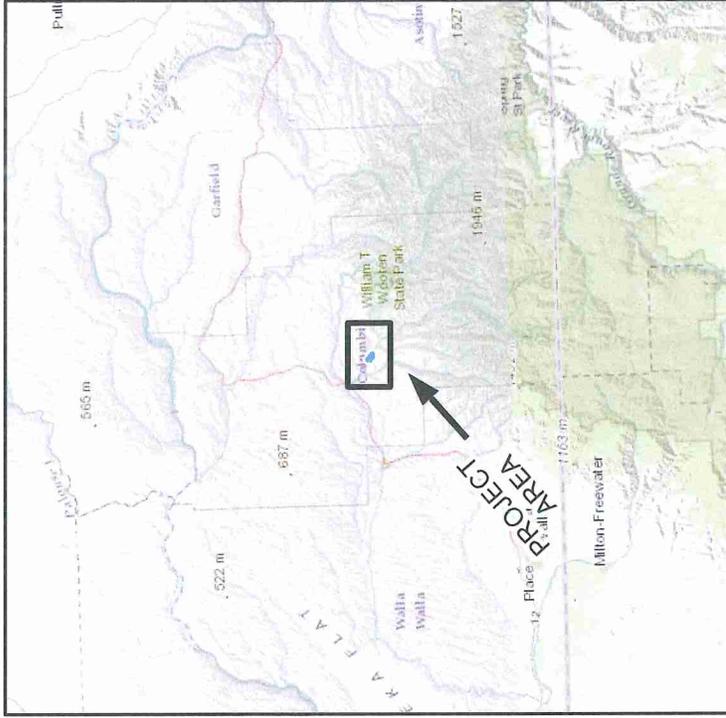


Date

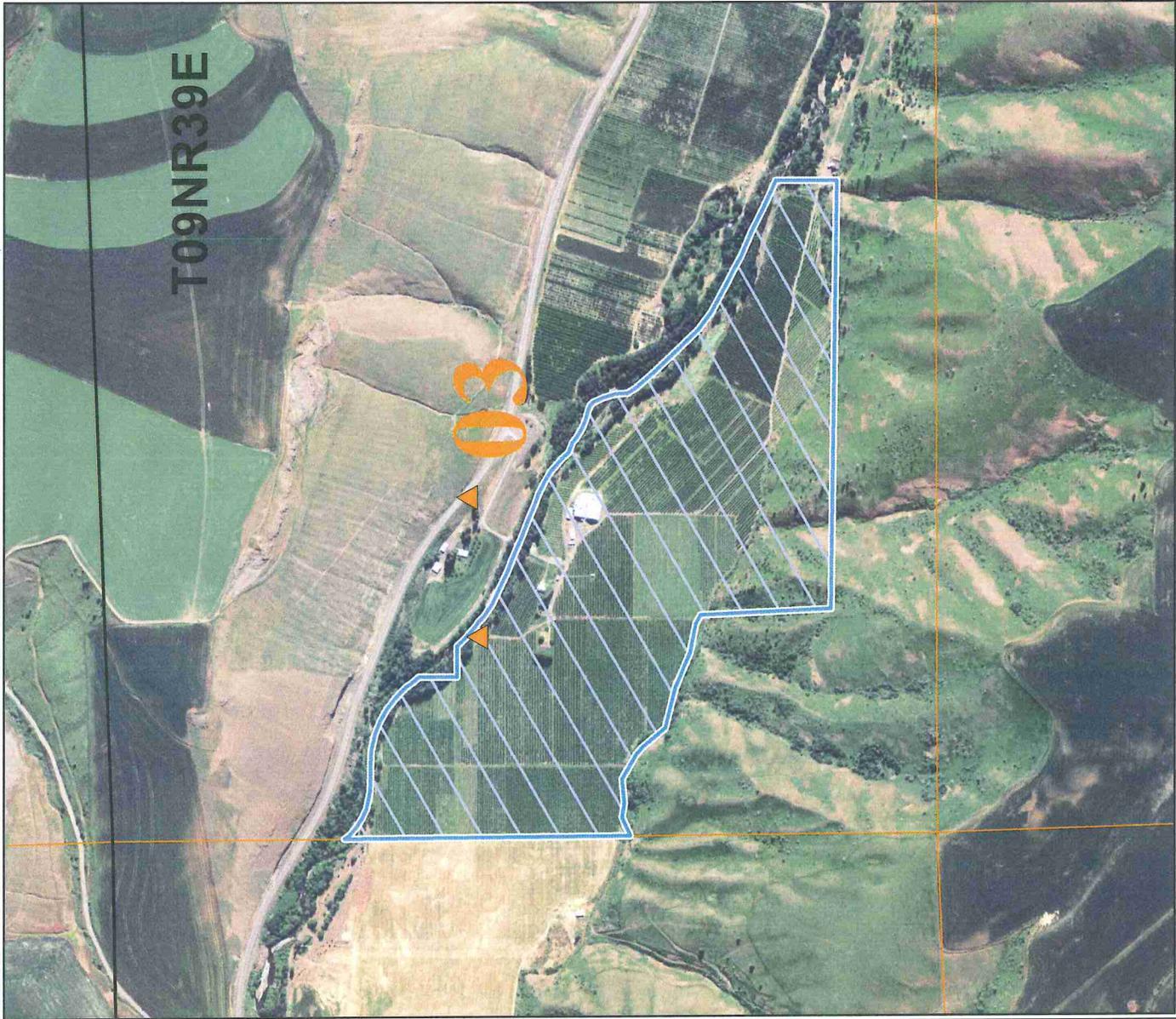
If you need this publication in an alternate format, please call the Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

ATTACHMENT 1

Abbas Sameh
 CS3- *34103J
 T09N/R39E



Authorized Point of Diversion



Comment:

Place of use and source locations are as defined within the Report of Examination cover sheet for the document identified in the header above.



Map Date: 12/3/2012