



State of Washington
DRAFT
REPORT OF EXAMINATION
FOR WATER RIGHT CHANGE

Changed Point of Diversion

PRIORITY DATE
January 1, 1873 (class 6)

WATER RIGHT NUMBER
Touchet River Adjudicated Certificate No. 89

MAILING ADDRESS
Dave and Kathy Reniff
1009 South 6th Street
Dayton, Washington 99328

Total Quantity Authorized for Diversion

MAXIMUM DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.01	CFS	0.88

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE	ANNUAL QUANTITY (AF/YR)
Irrigation	0.01 CFS from 04/01 to 10/15	0.88
	0.01 CFS from 10/15 to 04/01	

ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
	NON-ADDITIVE		WATER SYSTEM ID	CONNECTIONS
0.25				

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
Diversion	013-2-530-00-049-0000	10N	39E	32	NW¼SE¼	46.3005°	117.9555°

Datum: NAD83/WGS84

1050 feet east and 2000 feet north from the S¼ corner of Section 32

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

1130110080000, 1130110070000

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Lots 7, 8, Southerly 10 feet of Lot 9 in Block "C" of Mustard's Addition to Dayton. All within SW¼ of Section 29, T 10 N., R 39 E.W.M.

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?	Monthly
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

The water right holder is required to maintain efficient water delivery systems and use of 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.

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.

General 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 0.88 acre-feet per acre for any one year beginning September 15th.

Use under this authorization shall be limited by the rotation described in the water use agreement dated December 10, 2012. Any amended or new water use agreements for this ditch system shall be submitted to Ecology within 30 days of it being signed.

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 Touchet River Adjudicate Certificate No. 89, 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 RD SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this day of 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-*34089J
 Touchet River Adjudicated Certificate No. 89

BACKGROUND

Description and Purpose of Proposed Change

An application for change/transfer was submitted by Dave and Kathy Reniff of Dayton, Washington, to Ecology on July 21, 2008. They propose to add a point of diversion and change the place of use as granted under Touchet River Adjudicated Surface Water Certificate No. 89 (TR 89). The proposed change in point of diversion is not required and is no longer part of this change.

Attributes of the Existing Water Right and Proposed Change

	Authorized	Proposed
Name	Edward Smith	Dave and Kathy Reniff
Priority Date	The year 1873 (class 6)	
Change Application Date		7/21/2008
Instantaneous Rate	0.010 cfs	No change
Annual Quantity	1.5 af/yr	No change
Purpose(s) of Use	Irrigation of 0.25 acres	No change
Period of Use	Continuously	No change
Place(s) of Use	Lots 7 and A in Block C of Mustard Addition to Dayton and portions of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, within, T. 10 N., R. 39 E.W.M.	Lots 7, 8, Southerly 10 feet of Lot 9 in Block "C" of Mustard's Addition to Dayton. All within SW $\frac{1}{4}$ of Section 29, T 10 N., R 39 E.W.M.

Authorized Source of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
North Fork Touchet River	013-2-530-00-049-0000	10N	39E	32	NW $\frac{1}{4}$ SE $\frac{1}{4}$	46.3005°	117.9555°

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. A Notice of this application was published in the Dayton Chronicle on September 10th and 17th, 2008.

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, in combination with other water rights (East End Irrigation District), would entail the withdrawal of more than 1 cfs and has received public funds, it is subject to SEPA.

After review of a completed environmental checklist and other information on file with Ecology, this proposal was determined to not have a significant adverse impact on the environment. A final Determination of Non-Significance was issued by Ecology on December 18, 2012, stating that no environmental impact statement is 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 within the southeastern portion of the City of Dayton. 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 point of diversion is the East End Irrigation District Ditch, located on the North Fork of the Touchet River within NW¼SE¼ of Section 32, T. 10N., R. 39 E.W.M. This irrigation district provides water to portions of the southeastern area of Dayton. This irrigation district consists of a group of

individual water rights that use a common ditch. This diversion currently consists of an open channel from the river to a head-gate located on the Touchet River levee. Water flow is controlled at the head-gate, with a fishscreen located in channel. The system beyond the head gate was changed from an open ditch to a gravity feed piped system approximately five years ago. The piped system has turnouts to each of the water users within the system. Mr. Reniff's turnout is near the end of the system and does not always have water available.

The authorized and proposed place of use are city lots located in Dayton, within the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 29, T. 10 N., R. 39 E.W.M. The authorized place of use contains a small parcel of land adjacent to Lot A, Lot 7 and Lot A of Mustards addition. The proposed place of use is Lot Nos. 7, 8 and the south 10 feet of Lot 9. Lot No. 7, owned by Charles Lewis, consists of a house and yard irrigated from the East End Ditch. Lot No. 8 and the south 10 feet of Lot 9 are owned by Dave and Kathy Reniff. Their land also has a house and a yard irrigated from the East End Ditch. Two turnouts on the piped ditch system are utilized for this project with one being at the eastern edge of Lot 7 and the other at the eastern edge of Lot 8. Each of the houses obtains water for the remainder of their domestic supply needs from the City of Dayton.

History of Water Use

Aerial photographs were used to help verify the extent of development, historical and beneficial use of this project. The authorized place of use, which described approximately one-quarter acre of land includes two individual lots (Lots 7 and A) and a small parcel of land. These parcels of land historically utilized the ditch to provide irrigation water for lawn and garden. At some point many years ago a portion of the irrigation was shifted to Lot 8 and the south 10 feet of Lot 9. It appears that this occurred when a house was built on Lot 7 reducing the irrigable land within the authorized place of use. Therefore, the proposed change in place of use is intended to reflect this historical change in irrigated land. The originally authorized Lot 7 has retained and currently utilizes 0.125 acres of irrigation. The proposed place of use (Lot 8 and the south 10 feet of Lot 9) currently utilizes the remainder of the right which is 0.125 acres of irrigation. Therefore, 0.25 of an acre of irrigation has been put to beneficial use.

The maximum authorized annual 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 a yard. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that a 2.6 acre-feet, per acre, for pasture/turf 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 approximate maximum water duty, for the crop listed above is up to a maximum of 3.5 acre-feet per year, per acre. This results in an allocation of 0.88 of an acre-foot per year for the irrigation of 0.25 acres.

The maximum authorized instantaneous water duty of this certificate is 0.01 cfs (4.5 gpm). It is estimated that the maximum instantaneous quantities authorized under this right are beneficially used.

Proposed Use

The primary purpose of this change is to correct the authorized place of use to what is actually irrigated. This is proposed to be accomplished by adding the adjacent parcels of land (Lot 8 and the south 10 feet of Lot 9) and removing the land that is no longer irrigated.

Since a division of the instantaneous quantities authorized under this right is not practical, a use agreement has been established. The use agreement is as follows:

- Charles Lewis (Lot 7)- Monday, Wednesdays, Fridays and Saturday PM
- Dave and Kathy Reniff (Lot 8 and the south 10 feet of Lot 9) - Tuesday, Thursday, Saturday and Sunday AM.

Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing water right certificates, permits, and claims in surrounding area of the Reniff Project. The search focused primarily on Section 4, T. 9 N., R. 39 E.W.M. The review of Ecology records shows no other water rights, other than those held by the City of Dayton for municipal supply, appurtenant to the authorized 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.

This application is currently requesting authorization to change a portion of the place of use, as granted under Touchet River Adjudicated Certificate No. 89. This right has been exercised and beneficially used in the past. The proposed change will not increase the amount of water withdrawn from the North Fork of the Touchet River, nor will it increase or expand the right. Therefore, no impairment is anticipated by changing a portion of the place of use.

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. 89. In accordance with Chapters 90.03 RCW, approval of this application to change the authorized 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 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:

0.01 cfs from 4/1 to 10/15
0.01 cfs from 10/15 to 4/1
0.88 acre-feet per year
Irrigation of 0.25 acres

Point of Diversion

NW¼SE¼ of Section 32, Township 10 North, Range 39 East W.M.

Place of Use

As described on Page 1 of this Report of Examination.

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.