STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
APPLICATION FOR CHANGE/TRANSFER
REPORT OF EXAMINATION
TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

☒ Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)

☐ Ground Water (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
The year 1926 (class sixty-four)			Walla Walla Adj. Certificate No. 859

NAME
Michael Buckley

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
11537 West Highway 12	Walla Walla	WA	99362

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
Walla Walla River

TRIBUTARY OF (IF SURFACE WATERS)
Columbia River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
2.133 cfs from April 1 to July 1 1.600 cfs from July 1 to October 1 3.200 cfs from October 1 to April 1		402

QUANTITY, TYPE OF USE, PERIOD OF USE

2.133 cubic feet per second from April 1 to July 1, 1.6 cubic feet per second form July 1 to October 1, 3.2 cubic feet per second from October 1 to April 1; 402 acre-feet per year, each year, for the irrigation of 103 acres

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL

Diversion No. 1- SE¼SW¼, of Sec. 29
950 feet North and 450 feet West from the S¼ corner of Sec. 29

Diversion No. 2- Government Lot No. 2 (SE¼SE¼) of Sec. 29
500 feet North and 1900 feet East from the S¼ corner of Sec. 29

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE, (E. OR W.) W.M.	W.R.I.A.	COUNTY
	29	7	34 E	32	Walla Walla

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

103 acres within the S½ of Sec. 29, T. 7 N., R. 34 E.W.M., more specifically described as follows:

Beginning at the northwest corner of the Louis Dauney Donation Claim No. 38; thence north 89°46' east along the north line of said claim 1,644.4 feet; thence south 22°36' west 921.4 feet to the head of slough; thence follow along the center line of said slough to its junction with the Walla Walla River; thence westerly along said river to the west line of said claim; thence north 987-⅓ feet to beginning. Also, beginning at the southwest corner of Lot 5, section 28, township 7 N., range 34 E.W.M.; thence east on the south line of said lot 5 to the northwest corner of La Douccur's part of the Louis Dauney Claim No. 38; thence north 22°36' east to the south line of the right of way of the O.W.R & N. Co.; thence westerly along the southerly line of said right of way to the west line of said lot 5; thence south along the west line of said lot 5 to the point of beginning. Also, that part of lot 1 of section 29, township 7 N., range 34 E.W.M., lying south of the south line of the right of way of the O.W.R. & N. Co. as now located and established across said lot 1; and the W½ of the SE¼ and the E½ of the SW¼ of Sec. 29, township 7 N., range 34 E.W.M. ALL LYING NORTH OF THE WALLA WALLA RIVER AND SOUTH OF U.S. HIGHWAY 12

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DESCRIPTION OF PROPOSED WORKS

Two pumping stations for irrigation with hand lines and wheel lines

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	WATER PUT TO FULL USE BY THIS DATE:
Started	Completed	March 1, 2012

REPORT

BACKGROUND

An application for change/transfer was submitted by Michael Buckley of Walla Walla, Washington, to Ecology on September 29, 2003. Mr. Buckley proposes to change the point of diversion and add a second point of diversion, as granted under Walla Walla Adjudicated Certificate No. 859 (WWAC 859).

Walla Walla Adjudicated Certificate No. 859

Name on Permit:	Tim J. Buckley
Priority Date:	1926 (Class 64)
Instantaneous Quantity – Qi:	2.133 cfs April 1 to July 1, 1.6 cfs July 1 to Oct. 1, 3.2 cfs Oct. 1 to April 1
Annual Quantity – Qa:	640 acre-feet per year
Original Source:	Walla Walla River
Point(s) of Withdrawal/Diversion:	See Table No. 1
Purpose of use:	Irrigation
Period of use:	Seasonal irrigation
Place of use:	Approximation: S½ of Sec. 29, T. 7 N., R. 34 E.W.M., east of Lowden Road

Proposed Change/ Transfer:

Name of Applicant:	Michael Buckley
Date of Application for Change/Transfer:	September 29, 2003
Point of Withdrawal/Diversion:	Change and add point of diversion (Table No. 1)
Purpose of Use:	*No change*
Period of Use:	*No change*
Place of Use:	*No change*

In addition to this application filed under WWAC 859, one other application was filed by Michael Buckley on Walla Walla Adjudicated Certificate No. 865. Each application will have decisions based on its own respective findings.

Notice

A notice of application was duly published in accordance with RCW 90.03.280 in The Times on November 19 and November 26, 2006 and no protests were received. An amended notice was duly published in accordance with RCW 90.03.280 in The Times on December 7 and December 14, 2006 and no protests were received.

SEPA

This application is exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21 RCW.

INVESTIGATION

In considering the proposed changes/transfers, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Walla Walla Adjudicated Certificate Nos. 859, 865 and other water rights/claims/applications in the vicinity; (3) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide (WA210-VI-WAIG, October 1985) and; (4) discussions with Department of Ecology regional program staff.

A site visit of the project was conducted on October 26, 2006 by Dan Tolleson. The project is located approximately seven miles west of Walla Walla, Washington. The water right Certificate is located in the Walla Walla Basin and is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32.

The place of use authorized under Walla Walla Adjudicated Certificate No. 859 is described as portions of the E¾S½ of Sec. 29 and the W½SW¼ of Sec. 28, within T. 7 N., R. 34 E.W.M. This parcel is the relatively flat bottom land along both sides of the Walla Walla River. This bottom land is for the most part irrigated farm land. The project is bordered on the north by US Highway 12 and on the east by Lower Gardena Road. Two homes with out buildings are located north of the river within the place of use. A strip of thick riparian vegetation is located along both sides of the river. (see Attachment A.)

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The certificate authorizes one point of diversion from the Walla Walla River within the NE¼NE¼ of Sec. 33. The proposed points of diversion are approximately ¾ and 1 mile downstream from the original diversion. No dam or structure is involved with these diversions. According to Mr. Buckley, the original point of diversion was abandoned and the proposed points have been in use since.

Table No. 1
Diversion Specifications

Diversion	Status	Fish Screen	Meter Status	System
Authorized	Abandoned	n/a	n/a	Ditch diversion
Proposed No. 1	Online	In use	required	Centrifugal pump
Proposed No. 2	Online	required	required	Diesel pump

EVALUATION OF THE WATER RIGHT AND BENEFICIAL USE ANALYSIS

Historically, Walla Walla Adjudicated Certificate No. 859 utilized a gravity feed ditch diversion for irrigation within the place of use. This system has since been replaced with an electric pump and a pressurized impact sprinkler system.

Aerial photographs were used to help verify the extent of development, historical use and beneficial use of WWAC 859 and 865, which authorize the same place of use. It appears that most of the place of use under these two rights was historically irrigated. In recent years (significantly more than 5 years) much of the place of use has not been irrigated. The reduction of irrigation occurred as a result of construction of roads and buildings and the growth of riparian vegetation. The authorized place of use currently has 155 acres used for irrigation and the remainder is subject to relinquishment for non-use. It appears that WWAC 865 was primarily appurtenant to the lands south of the Walla Walla River and WWAC 859 was primarily appurtenant to the lands north of the river. Therefore, there are 103 acres available for change under WWAC 859 and 52 acres available for change under WWAC 865 (see attachment A).

Table No. 2
Water Right Specifications
WWAC 859 and 865

Water Right	Qi April 1 – July 1	Qi July – Oct. 1	Qi Oct. 1 – April 1	Qa	Acres
WWAC 865	1.067 cfs	0.8 cfs	1.6 cfs	203	52
WWAC 859	2.133 cfs	1.6 cfs	3.2 cfs	402	103
Total	3.2 cfs	2.4 cfs	4.8 cfs	605	155

The originally authorized remainder of each right above the listed totals is subject to relinquishment for non-use.
(Qi = instantaneous quantities) (Qa = annual quantities) (cfs = cubic feet per second)

The maximum authorized water duty of this certificate is 5 acre-feet per year, 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. In years that they follow up harvest with new seeding, water use is similar to the irrigation of alfalfa hay. The length of time of non-irrigation 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. At a 70% efficiency rate of application, the approximate maximum water duty, for crops listed above, is 3.9 acre-feet per year, per acre. The remaining 1.1 acre-feet per acre is no longer required due to modern farming practices and is subject to relinquishment for non-use.

Water rights are appurtenant to a specific parcel of land or place of use on an acre per acre basis. Therefore, the place of use of this permit will be narrowed down to the smallest legal description possible. The actual place of use is 103 acres within the S½ of Sec. 29, T. 7 N., R. 34 E.W.M., south of US Highway 12 and east of Lowden Road, more specifically described as follows: Beginning at the northwest corner of the Louis Dauney Donation Claim No. 38; thence 89°46' east along the north line of said claim 1,644.4 feet; thence south 22°36' west 921.4 feet to the head of slough; thence follow along the center line of said slough to its junction with the Walla Walla River; thence westerly along said river to the west line of said claim; thence north 987-⅓ feet to beginning. Also, beginning at the southwest corner of Lot 5, section 28, township 7 N., range 34 E.W.M.; thence east on the south line of said lot 5 to the northwest corner of La Douccur's part of the Louis Dauney Claim No. 38; thence north 22°36' east to the south line of the right of way of the O.W.R & N. Co.; thence westerly along the southerly line of said right of way to the west line of said lot 5; thence south along the west line of said lot 5 to the point of beginning. Also, that part of lot 1 of section 29, township 7N., range 34 E.W.M., lying south of the south line of the right of way of the O.W.R. & N. Co. as now located and established across said lot 1; and the W½ of SE¼ and the E½ of the SW¼ of Sec. 29, township 7N., range 34 E.W.M. ALL LYING NORTH OF THE WALLA WALLA RIVER (See Attachment A.)

EXISTING RIGHTS

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

Ground Water Certificate No. 7157-A (GWC 7157-A): This water right certificate authorizes 190 acres of irrigation within the western portion of the place of use of WWAC 859 and WWAC 865. This water right was issued as an alternate (original term of supplemental) source to Walla Walla Adjudicated Certificate No. 858 (WWAC 858). WWAC 858 is located northwest of the legal description of the GWC 7157-A and does not overlap. It appears that this was a typographical error and GWC 7157-A was intended to be an alternate supply to WWAC 859 and WWAC 865, not WWAC 858. Currently, a portion of GWC 7157-A is used as an alternate source to WWAC 859 and WWAC 865. The remainder of the right is subject to relinquishment for non-use. The well authorized under GWC 7157-A and G3-27042C is integrated with the proposed surface water diversions of WWAC 859 and 865.

Ground Water Certificate No. G3-27042C: This water right certificate authorizes 169 acres of irrigation within the eastern portion of the place of use of WWAC 859, WWAC 865 and all of the place of use of Surface Water Certificate No. 1748 w/chg. 481 (the place of use of SWC 1748 w/chg. 481 is directly south of the place of use of WWAC 859, WWAC 865). Ground Water Certificate No. G3-27042C appears to have been issued as an alternate source to WWAC 859, WWAC 865 and Surface Water Certificate No. 1748 w/chg. 481. Currently, this right is used as an alternate supply when surface water is not available. The well authorized under GWC 7157-A and G3-27042C is integrated with the proposed surface water diversions of WWAC 859 and 865.

(The validity and extent of above listed water rights & claims are not determined in this report.)

IMPAIRMENT ANALYSIS

"Impair" or "impairment" means to: 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, 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 proposed points of diversion are located approximately 2500 feet and 5000 feet down stream from the point of diversion authorized under the original certificate. No diversions or significant changes occur in the Walla Walla River between the originally authorized point of diversion and the proposed points of diversion. Therefore, no impairment exists by moving the diversion to the proposed sites.

This application to change WWAC 859 requests authorization to change the point of diversion and add a second point of diversion, as granted under Walla Walla Adjudicated Certificate No. 859. WWAC 859 has been partially exercised and beneficially used in the past. The proposed change will not increase the amount of water withdrawn from the Walla Walla River nor will it increase or expand the right.

FINDINGS

There is a water right available for change/transfer under Walla Walla Adjudicated Certificate No. 859 in the amount of 2.133 cfs April 1 to July 1, 1.6 cfs July 1 to October 1, 3.2 cfs October 1 to April 1, 402 acre-feet per year, each year, for the irrigation of 103 acres.

Surface water has been historically and beneficially used under this certificate.

When considering an application for change to a water right, Ecology must determine that the proposed change can be made without detriment or injury to existing water rights. Factors considered when determining potential impact include the following:

No Impairment to Existing Rights:
No water will be diverted above what has been historically used, and it is not anticipated that the proposed change/transfer would cause impairment to existing water rights.

No Enhancement of the Authorized Right:
No withdrawal of water over and above what has been historically authorized would be approved through this change.

FINDINGS OF FACT AND DECISION

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated.

Therefore, I ORDER that the requested change is approved, subject to the following:

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.

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

Please also send a copy of your appeal to:

Mr. Keith L. Stoffel
Department of Ecology
Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205-1295

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 .

Signed at Spokane, Washington, this day of, 2011.

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

CONCLUSION

It is the conclusion of this examiner that, in accordance with Chapters 90.03, this application for change (changing the point of diversion and adding a second point of diversion, as granted under Walla Walla Adjudicated Certificate No. 859) will not enlarge the quantity of water historically used, nor will it impair existing rights provided the terms and conditions below are followed.

RECOMMENDATIONS

The applicant's request to change/transfer this water right certificate (changing the point of diversion and adding a second point of diversion, as granted under Walla Walla Adjudicated Certificate No. 859) is **approved**, subject to the following provisions:

"The total amount of water authorized for withdrawal under Walla Walla River Adj. Certificate No. 865 and Walla Walla River Adj. Certificate No. 859 shall be limited to a maximum of 3.2 cfs from April 1 to July 1, 2.4 cfs from July 1 to October 1 and 4.8 cfs from October 1 to April 1, 605 acre-feet per year, each year, for the irrigation of 155 acres."

"This authorization to make use of public waters of the State is subject to existing rights, including any existing rights held by the United States for the benefit of Indians under treaty or otherwise."

"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."

"The water quantities and uses recommended and/or the number of acres to be irrigated may be reduced at the time of issuance of a final water right commensurate with the capacity of the installed system and the uses and/or the number of acres actually irrigated."

"Use of water under this authorization shall be contingent upon the water right holder's utilization of up to date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities."

"A superseding certificate of water right will not be issued until a final examination is made."

"An approved measuring device shall be installed and maintained for each of the sources identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. Water use data shall be recorded monthly and maintained by the property owner for a minimum of five years, and shall be promptly submitted to Ecology upon request."

The rule above describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements."

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions."

"This authorization is subject to Washington Department of Fish and Wildlife juvenile salmon and gamefish screening criteria (pursuant to RCW 77.16.220, RCW 77.55.040 and RCW 77.55.070). Please contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091, Attention: Habitat Program, Phone: (360) 902-2534, or call (509) 575-2734 for the Yakima Construction Shop to obtain technical assistance for your project. Juvenile salmon screening criteria are attached to the Report of Examination if applicable to your diversion."

Signed at Spokane, Washington
this ____ day of _____, 2011.

_____
DAN TOLLESON
Water Resources Program
Department of Ecology

W/Draft ROEs/Tolleson 2011/859 Buckley

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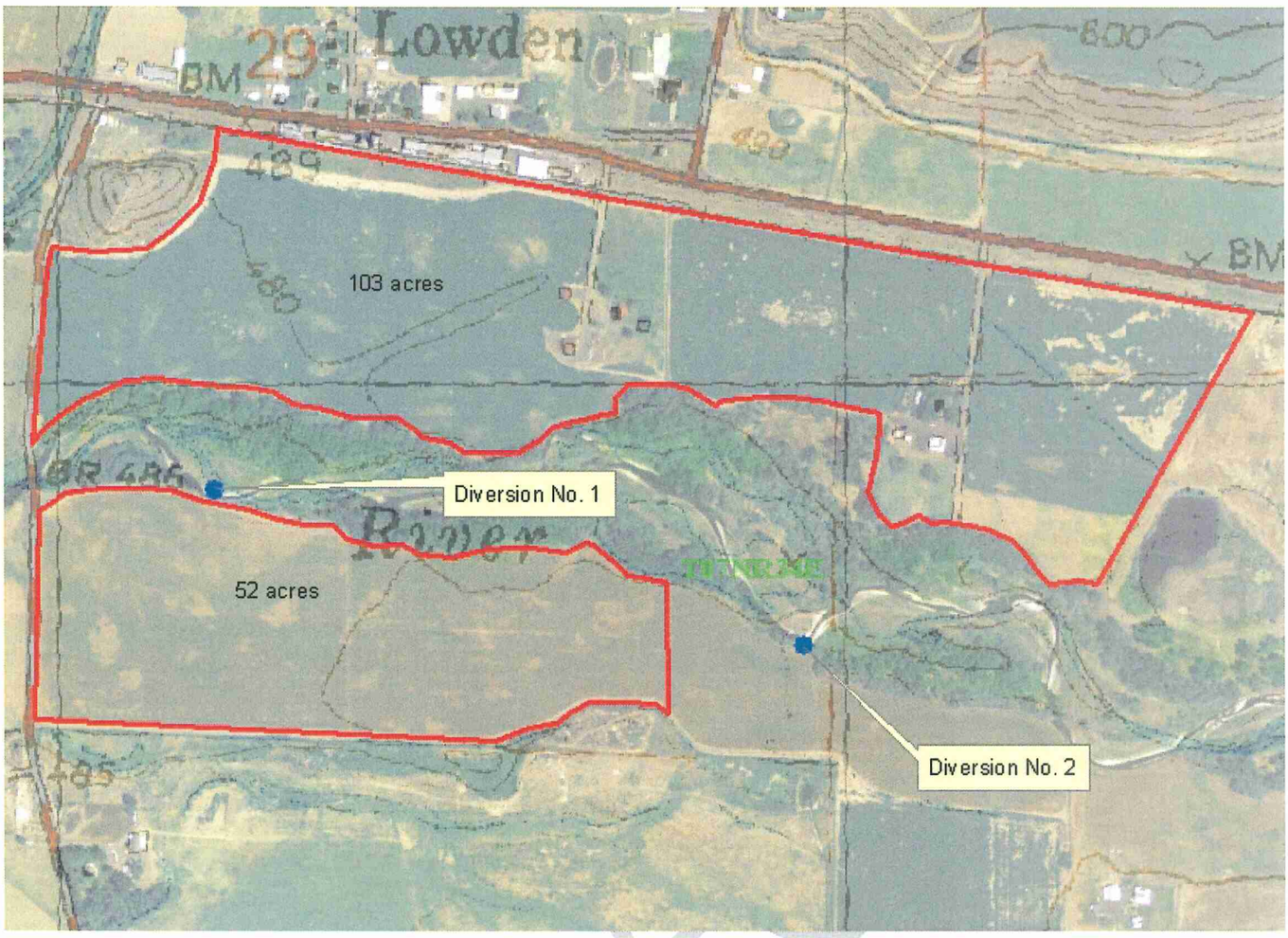
Attachment A



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