DEPARTMENT OF ECOLOGY
State of Washington

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

DRAFT

Changed Point of Diversion

**PRIORITY DATE**
Year 1892
(class 30)

**WATER RIGHT NUMBER**
Walla Walla River Adjudicated
Surface Water Certificate No. 403

**MAILING ADDRESS**
Newell Binde
PO Box 284
Walla Walla, Washington 99362

**PHYSICAL ADDRESS**
3321 Fiddle Court,
3307 Fiddle Court,
172 County Road #448

## Total Quantity Authorized for Diversion

| MAXIMUM DIVERSION RATE | UNITS | ANNUAL QUANTITY (AF/YR) |
|---|---|---|
| 0.2 | CFS | 20.5 |

## Purpose

| PURPOSE | WITHDRAWAL OR DIVERSION RATE | ANNUAL QUANTITY (AF/YR) |
|---|---|---|
| Irrigation | 0.133 CFS from 04/01 to 07/01<br>0.10 CFS from 07/01 to 10/01<br>0.20 CFS from 10/1 to 04/01* | 20.5 |

*when allowed in accordance with the Walla Walla Adjudication

| IRRIGATED ACRES | | PUBLIC WATER SYSTEM INFORMATION | |
|---|---|---|---|
| ADDITIVE | NON-ADDITIVE | WATER SYSTEM ID | CONNECTIONS |
| 5.25 | | | |

## Source Location

| COUNTY | WATERBODY | TRIBUTARY TO | WATER RESOURCE INVENTORY AREA |
|---|---|---|---|
| Walla Walla | Spring Branch | Walla Walla River | 32-Walla Walla |

| SOURCE FACILITY/DEVICE | PARCEL | TWP | RNG | SEC | QQ Q | LATITUDE | LONGITUDE |
|---|---|---|---|---|---|---|---|
| Pump Station | 35061130063 | 6 N. | 35 E. | 11 | NE¼SW¼ | 46.0121° N | -118.4003°W |
| | | | | | | Datum: NAD83/WGS84 | |

## Place of Use (See Attached Map)

**PARCELS (NOT LISTED FOR SERVICE AREAS)**

35061130066, 35061130063, 250611310062, 350611310070

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

Lots 1, 2, 3 and 4 of that certain short plat recorded May 16, 1996 in Book 3 of Short Plats at Page 88 as Auditor's File No. 9604852 of Official Records of Walla Walla, County State of Washington. Situated in Walla Walla County, State of Washington.

## Proposed Works

Pump station, mainlines and sprinklers for irrigation

## Development Schedule

| BEGIN PROJECT | COMPLETE PROJECT | PUT WATER TO FULL USE |
|---|---|---|
| Started | December 1, 2014 | December 1, 2015 |

## 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 Diversion (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.

Water use data shall be recorded weekly and maintained by the property owner for a minimum of five years. The maximum rate of withdrawal and the annual total volume shall be submitted to the Department of Ecology by January 31st of each calendar year. Recorded water use data shall be submitted to the Eastern Regional Office.

**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/

**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 *superseding certificate* 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.

The total diversion capacity will need to be verified and reduced if necessary, which includes Mr. Bellemere's unauthorized diversion. The maximum authorized quantities are 0.133 CFS (59 gpm) from 04/01 to 07/01, 0.10 CFS (45 gpm) from 07/01 to 10/01 and 0.20 CFS (90 gpm) from 10/1 to 04/01.

**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**
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, the owner of such right is entitled to divert water during the period of October 1 to April 1.

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.

Therefore, I ORDER the request to change the point of diversion under change to Walla Walla River Adjudicated Surface Water Right 403, 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**<br>Attn: Appeals Processing Desk<br>300 Desmond Drive SE<br>Lacey, WA 98503 | **Department of Ecology**<br>Attn: Appeals Processing Desk<br>PO Box 47608<br>Olympia, WA 98504-7608 |
| **Pollution Control Hearings Board**<br>1111 Israel Road SW Ste 301<br>Tumwater, WA 98501 | **Pollution Control Hearings Board**<br>PO Box 40903<br>Olympia, WA 98504-0903 |

Signed at Spokane, Washington, this day of 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-*28403J
Walla Walla River Adjudicated Surface Water Right 403

## BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number CS3-*28403J (Walla Walla River Adjudicated Surface Water Right 403). The applicant proposes to change the authorized point of diversion as granted under Walla Walla Adjudicated Surface Water Certificate No. 403.

### EXISTING Water Right Attributes

| | |
|---|---|
| **Water Right Owner:** | Harry N. Dyer |
| **Priority Date:** | 1892 (class 30) |
| **Place of Use** | Beginning at the NE corner of the SW¼of Section 11, T. 6 N., R. 35 E.W.M. and running thence west on the east and west centerline of said Section 11 a distance of 660 feet, more or less; thence south at right angles a distance of 660 feet; thence east at right angles a distance of 660 feet, more or less, to the east line of said Section 11; thence north to the place of beginning. |

| County | Waterbody | Tributary To | WRIA |
|---|---|---|---|
| Walla Walla | Spring Branch | Walla Walla River | 32-Walla Walla |

| Purpose | Diversion Rate | Annual Quantity (Af/Yr) |
|---|---|---|
| Irrigation of 10 acres | 0.133 CFS from 04/01 to 07/01<br>0.10 CFS from 07/01 to 10/01<br>0.20 CFS from 10/1 to 04/01* | 50 |

*when allowed in accordance with the Walla Walla Adjudication

| Source Name | Parcel | Twp | Rng | Sec | Lot | Latitude | Longitude |
|---|---|---|---|---|---|---|---|
| Spring Branch | In Oregon | 06N | 35E | 14 | Opposite lot 3 | | |

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:** | Newell Binde |
| **Date of Application:** | 3/19/2004 |
| **Place of Use** | Beginning at the NE corner of the SW¼of Section 11, T. 6 N., R. 35 E.W.M. and running thence west on the east and west centerline of said Section 11 a distance of 660 feet, more or less; thence south at right angles a distance of 660 feet; thence east at right angles a distance of 660 feet, more or less, to the east line of said Section 11; thence north to the place of beginning. |

| County | Waterbody | Tributary To | WRIA |
|---|---|---|---|
| Walla Walla | Spring Branch | Walla Walla River | 32-Walla Walla |

| Purpose | Diversion Rate | Annual Quantity (Af/Yr) |
|---|---|---|
| Irrigation | 0.133 CFS from 04/01 to 07/01<br>0.10 CFS from 07/01 to 10/01<br>0.20 CFS from 10/1 to 04/01* | 50 |

*when allowed in accordance with the Walla Walla Adjudication

| Source Name | Parcel | Twp | Rng | Sec | QQ Q | Latitude | Longitude |
|---|---|---|---|---|---|---|---|
| Spring Branch | 35061130063 | 6N | 35E | 11 | NE¼SW¼ | 46.0121° N | -118.4003°W |

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 Union Bulletin on March 1 and 8, 2009, but there was an error in the publication. An Amended Notice of this application was published in the Union Bulletin on April 12 and 19, 2009 and no protests were received.

### *Consultation with the Department of Fish and Wildlife*

The Department must give notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water. This notice was submitted via email on September 16, 2013 to Steve Boessow. A letter dated September 27, 2013 recommends denial of the change application based on impacts to fish and/or wildlife per Chapter 77.57. The recommendation was in error since the data used in the analysis was incorrect. A follow up recommendation email dated October 1, 2013 indicates the proposed change is generally beneficial, provided it follows the hydraulic code (Chapter 77.55) and fish screen statutes (RCW 77.57).

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, 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, with Newell Binde on March 25, 2013. The project is located south of College Place, Washington near the Oregon stateline. 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 east of the Old Milton Highway and is bisected by Spring Branch within portions of the NE¼SW¼ of Section 11, T. 6 N., R. 35 E.W.M. The place of use has been subdivided into four lots. The eastern two lots (Lot Nos. 2 and 3) are currently owned by Mr. Newell Binde. His irrigation system consists of solid set sprinkler for the pasture and yard. The northwestern lot (Lot No. 1) is owned by Mrs. Julie Gray and consists of sprinklers to irrigate the yard. The southwest lot (lot No. 4) is owned by Mr. David Bellemere and is irrigated by sprinklers. Each of the land owners has a house with various out buildings.

The authorized source is Spring Branch that originates in Oregon. The stream, has for the most part, been channelized and has the characteristics of an irrigation ditch. Much of the system on the Washington side of the system is relatively straight-line ditches or is conveyed in pipes. The system has several branches but eventually any remaining water ends up in the Walla Walla River.

The authorized point of diversion is proposed to be changed from the abandoned site near the state line to the existing pumping station located directly downstream. The proposed point of diversion consists of a centrifugal pump, meter and fish screen. According to the applicant the meter has not worked for some time and will need to be repaired. The proposed point of diversion is located on Mr. Binde's lot and is utilized for the irrigation of his lots and Mrs. Gray's lot, which consists of Lot Nos. 1-3. Mr. Bellemere's Lot No. 4 utilizes an unauthorized point of diversion. This unauthorized point of diversion will need to be added to this right with a new change application.

According to the land owners, domestic water use for each of the homes and irrigation of the yards immediate to the homes are provided under the exemption (RCW 90.44.050). Each house has its own domestic well.

## History of Water Use and Beneficial Use

Aerial photographs were used to help verify the extent of development, historical and beneficial use of the water right. The place of use currently describes approximately 8.5 acres, which is less than the water right authorization of 10 acres. This discrepancy appears to be from lot adjustments due to roads and their current layout, which takes up more land than when the certificate was issued. Mr. Binde owns 5.2 acres of land made up of two parcels that are mostly pasture and yard. Of this, only the pasture is irrigated from the surface water right for a total of 4.25 acres. Mr. Binde uses his exempt well to supply domestic water in his home and to irrigate his yard, including a drip system for a small line of trees. Mrs. Gray owns 1.43 acres of land that consists of a home and yard. Of this, only the back yard is irrigated from the surface water right for a total of 0.75 acres. An exempt well is used to supply domestic water for the home and to irrigate the remainder of the yard. Mr. Bellemere owns 1.95 acres of land that consists of a home and yard. Of this, only the area adjacent to the ditch is irrigated from the surface water right for a total of 0.25 acres. An exempt well is used to supply domestic water to the home and to irrigate the rest of the yard. The remainder of the place use is either not irrigated or covered by buildings and roads. Therefore, a total of 5.25 acres total are irrigated under this right, with the rest being relinquished from non-use.

Since approximately 1.5 acres of the authorized place of use are now roads the legal description will be reduced to what is actually irrigated. The place of will be reduced to Lots 1-4 of the plat recorded May 16, 1996 in Book 3 of Short Plats at Page 88 as Auditor's File No. 9604852 of Official Records.

It is estimated that the maximum instantaneous quantities authorized under this right are still being put to beneficial use. It appears that the irrigation system may have more capacity than authorized under the right, but was not confirmed since the meter did not work. Production from the proposed pump station and Mr. Bellemere's unauthorized pump station together cannot exceed the maximum authorized quantity and shall be reduced if necessary. The maximum authorized quantities of this right are 0.133 CFS (59 gpm) from 04/01 to 07/01, 0.10 CFS (45 gpm) from 07/01 to 10/01 and 0.20 CFS (90 gpm) from 10/1 to 04/01. Water is typically available from the source but not always in the quantities authorized.

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 pasture/yard. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that a 2.9 acre-feet, per acre, for pasture is required in the Walla Walla area. At a 75% efficiency rate of application, the approximate maximum water duty, for crop listed above, is up to a maximum of 3.9 acre-feet per year, per acre. This results in an allocation of 20.5-acre-feet per year for the irrigation of 5.25 acres.

## Proposed Use

The purpose of this change is to correct the location of the point of diversion. The applicant proposes to move the point of diversion downstream to the existing pump station.

## 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 vicinity of the project. The search focused primarily on Section 11, T. 6 N., R. 35 E.W.M. The review of Ecology records shows no other water rights being 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; 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 point of diversion of Walla Walla River Adjudicated Certificate No. 403, downstream approximately ¾ of a mile to an existing pump station. There is no significant change in the stream or major diversions between the authorized and proposed points of diversion. The proposed pump station has been in use for decades without any complaints. Therefore, no impairment is anticipated by changing the authorized point of diversion. The proposed change will not increase the amount of water withdrawn from Spring Branch nor will it increase or expand the right.

## Conclusions

In conclusion, there is a water right available for change under Walla Walla River Adjudicated Certificate No. 403. In accordance with Chapters 90.03 RCW, approval of this application to change the authorized 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 this request for a water right 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:

0.133 CFS from 04/01 to 07/01
0.10 CFS from 07/01 to 10/01
0.20 CFS from 10/1 to 04/01 (when allowed in accordance with the Walla Walla Adjudication)

20.5 acre-feet per year

Irrigation of 5.25 acres

Point of Diversion

NE¼SW¼ Section 11, Township 6 North, Range 35 E.W.M.

Place of Use

Lots 1, 2, 3 and 4 of that certain short plat recorded May 16, 1996 in Book 3 of Short Plats at Page 88 as Auditor's File No. 9604852 of Official Records of Walla Walla, County State of Washington. Situated in Walla Walla County, State of Washington.

**Mr. Bellemere, the owner of Lot No. 4, needs to file an application for change to add his unauthorized point of diversion.**

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.*