STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Change of: Place of use
WRTS File # CS3-*28118J@1

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
The year 1878 (Class 17)			Walla Walla Adjudicated SW Certificate No. 118, w/chg. vol. 1, pg. 213

NAME
James Chastain

ADDRESS/STREET	CITY/STATE	ZIP CODE
130 Green Street	Walla Walla, Washington	99362

cc: Steve Brown, 210 Laurel Street, Walla Walla, WA 99362

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
Mill Creek

TRIBUTARY OF (IF SURFACE WATERS)
Walla Walla River

MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr)

QUANTITY, TYPE OF USE, PERIOD OF USE

DENIED

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
		N.	E.or W.M.	32	Walla Walla

PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM
360722110030			

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED
[Attachment 1 shows location of the authorized place of use and point(s) of diversion or withdrawal.]

DENIED

DESCRIPTION OF PROPOSED WORKS

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE

PROVISIONS

n/a

FINDINGS OF FACT AND ORDER

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

Therefore, I ORDER denial of the requested change of place of use under Change Application Walla Walla Adjudicated Surface Water Certificate No. 118, w/chg. Vol. 1, pg. 213.

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 4224 – 6th Avenue SE Rowe Six, Building 2 Lacey, WA 98503	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 9th day of September, 2010.

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

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 changes/transfers, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Walla Walla Adjudicated SW Certificate No. 118 w/chg. Vol. 1, page 213, and other water rights/claims/permit in the vicinity; (3) diversion works; (4) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide (Natural Resources Conservation Service 1997) and; (5) discussions with Department of Ecology regional program staff.

A site visit of the project was conducted on May 14, 2008, by Dan Tolleson. This project is located within the eastern portion of the City of Walla Walla, 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.

History of Water Right

Walla Walla Adjudicated Surface Water Certificate No. 118 was issued on May 16, 1929 with a priority date of the year 1878 (Class 17). This right authorized 25 acres of irrigation within the N½NW¼ of Sec. 22, T. 7 N., R. 36 E.W.M.

Certificate of Change Volume 1, page 213, issued August 29, 1944, authorized a change in place of use and point of diversion for a portion of WWAC 118. The change in place of use consisted of moving 21.5 acres of the original irrigation right to various lots within Valley Homes Addition. Theses various lots only totaled approximately 17 acres of land, which leave four acres unaccounted. The reason for this discrepancy is unknown but may have been intentionally done to provide more instantaneous quantity for this portion of the right. It is noted in the Certificate of Change petition that one-half acre of the right was abandoned to cover any potential conveyance loss of the ditch system. The change in point of diversion appears to consist of moving the diversion down stream approximately 2,500 feet to an existing diversion ditch (sometimes known as Mulhin Ditch) that was already used to supply water to various water rights within Valley Homes Addition. These existing rights that predated this certificate of change had poor priority dates and would have been interruptible. It is noted in the Certificate of Change petition that 14 of these water rights, which are specifically listed, were abandoned and replaced with WWAC 118. It appears that a few of these existing rights that predated this certificate of change were not specifically listed in the petition and may still be provided water from this ditch system.

Certificate of Change Volume 1, page 472, issued on July 3, 1956, authorized a change in place of use of a portion of WWAC 118 together with Certificate of Change Volume 1, page 213. The portion of the right appurtenant to Lot 29 of Valley Homes Addition was moved to Lot 69 of Valley Homes Addition. The point of diversion was not changed. These lots do not overlap the portion of the water right proposed for change under this application.

It appears that 3.5 acres of the original water right were never changed and remain appurtenant to the NW¼NW¼ of Sec. 22, T. 7 N., R. 36 E.W.M. This portion of the place of use is a shopping center and is not part of this change.

Table 2 Summary of Authorized Cubic Feet per Second as Related to the Certificates of Change

Portion of Walla Walla Adj. SW Cert. 118	April 1- July 1 Qi	July 1 – Oct. 1 Qi	Oct. 1 – April 1 Qi
Vol. 1, page 213 and Vol. 1, page 472	0.287 cfs (129 gpm)	0.215 cfs (96 gpm)	0.430 cfs (193 gpm)
Unchanged portion of the right	0.046 cfs (21 gpm)	0.035 cfs (16 gpm)	0.070 cfs (31 gpm)
Total	0.333 cfs	0.250 cfs	0.500 cfs

Qi = instantaneous quantities cfs = cubic feet per second gpm = gallons per minute

The place of use authorized under Walla Walla Adj. SW Cert. No. 118 w/chg. Vol. 1, pg. 213 is approximately 17 acres of land lying within Valley Homes Addition which is located within the S½NW¼ and the N½SW¼ of Sec. 22, T. 7 N., R. 36 E.W.M. The place of use currently consists of various houses, out buildings and irrigated yards and gardens. It appears that some of it is still irrigated with surface water from the ditch system. It appears that some

BACKGROUND

Description and Purpose of Proposed Change

An application for change/transfer was submitted by James Chastain of Walla Walla, Washington, to Ecology on April 29, 2003. James Chastain proposes to change a portion of the place of use to his lot as granted under Walla Walla Adjudicated Surface Water Certificate No. 118, w/chg. Vol. 1, page 213 (WWAC 118).

Attributes of the Certificate and Proposed Change

Table 1 Summary of Proposed Changes to Walla Walla Adjudicated Surface Water Certificate No. 118, w/chg. Vol. 1, page 213.

Attributes	*Documented*	*Proposed*
Name	Mary Preston	James Chastain
Priority Date | Date of Application for Change	The year 1878	April 29, 2003
Instantaneous Quantity	0.287 April 1 to July 1 0.215 July 1 to Oct. 1 0.430 Oct. 1 to April 1	*No Change*
Annual Quantity	87.5 af/year	*No Change*
Source	Mill Creek	*No Change*
Point of Diversion/Withdrawal	SE¼NW¼ of Sec. 22, T. 7 N., R. 36 E.W.M.	*No Change*
Purpose of Use	Irrigation of 17.5 acres	*No Change*
Period of Use	Per year	*No Change*
Place of Use	Various lots of Valley Homes Addition within a portions of Sec. 22, T. 7 N., R. 36 E.W.M.	Lot 71 in Valley Homes Addition

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in place of use.

- **Public Notice**

A notice of application was duly published in accordance with RCW 90.03.280 in The Walla Walla Union Bulletin on November 9 and 16, 2007 and no protests were received.

- **State Environmental Policy Act (SEPA)**

Environmental review under SEPA is required for many projects; however, some minor projects are categorically exempt from SEPA. Appropriations of one cfs or less of surface water, or of 2,250 gpm or less of ground water, for any purpose, and appropriations of 50 cfs or less for surface water used for irrigation are categorically exempt from SEPA. See WAC 197-11-305.

- **Water Resources Statutes and Case Law**

RCW 90.03.360 requires that the owner of any water diversion maintain substantial controlling works and a measuring device. It must be constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Technical requirements for the measuring and reporting of water use are described in WAC 173-173. This decision contains provisions requiring the measuring and reporting of the quantities of water withdrawn or diverted.

portions of the irrigation are being served by domestic wells and/or municipal water supplies. All of the in-house domestic water use is being supplied by domestic wells or municipal water.

The authorized point of diversion for Walla Walla Adj. SW Cert. 118 w/chg. Vol. 1, pg. 213 is within the SE¼NW¼ of Sec. 22, T. 7 N., R. 36 E.W.M. This diversion currently consists of a head-gate and a rudimentary screen for the pipe that diverts water under the levee of the flood control zone of Mill Creek. A weir is located beyond the flood control levee to determine the quantity of water diverted. Actual water diversion is roughly estimated by a notch in the weir which appears to be generally near what is authorized. The ditch system beyond the weir consists of various types of pipes, lined and unlined ditches and a small section of flume. Various internal pipe/ditch gates are used to provide water to the different sections of the system.

A water use agreement is in place for the ditch system described in Certificate of Change Volume 1, page 213. This agreement was established due to the low instantaneous quantity authorized. The current version is dated 1993 and includes seventeen water users. The water use agreement allows on average 2-3 irrigators to withdraw up to a total of the maximum authorized quantities from the ditch system at one time. It should be noted that this water use agreement is not strictly followed and is considered a fall back agreement in situations of conflict. Generally, the water users within this system work together to ensure that everyone gets their share of the water quantities authorized.

Three applications for change are filed under Walla Walla Adj. SW Cert. No. 118 w/chg. Vol. 1, pg. 213. The applicants are Wayne Brock, Steven Duquette and James Chastain. Each application will have decisions based on its own respective findings.

Proposed Use

James Chastain proposes to change the portion of the irrigation right appurtenant to Lot 30 of Valley Homes addition, which is owned by Steve Brown, to his lot which is known as 71 of Valley Homes Addition.

Extent of Beneficial Use

Walla Walla Adj. SW Cert. No. 118 w/chg. Vol. 1, pg. 213 currently has 38 lots with various land owners within the authorized place of use. This water right authorizes enough acres to potentially provide irrigation for all the places of use. Because of multiple owners, this change will only determine the extent and validity of that portion of the water right proposed for change by James Chastain.

According to Steve Brown, the owner of Lot 30, water from Walla Walla Adj. SW Cert. No. 118 w/chg. Vol. 1, pg. 213 has not been used on his lot since his new well was constructed in approximately 1987. The reason he discontinued use of the ditch system was that it was unreliable and little water was available to him because his lot is at the end to the system. Also, he said that the portion of the ditch system that served his lot was completely removed when Laurel Street was reconstructed several years ago. According to James Chastain, he purchased Steve Brown's portion of the right and began using water in the last few years. Therefore, it appears that there was approximately 15+ years of non use from when Mr. Brown quit using the right and Mr. Chastain began using the right.

The State law that governs relinquishment, Chapter 90.14.160 RCW, states the following:

> *Any person entitled to divert or withdraw waters of the state through any appropriation authorized by enactments of the legislature prior to enactment of chapter 117, Laws of 1917, or by custom, or by general adjudication, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to divert or withdraw for any period of five successive years after July 1, 1967, shall relinquish such right or portion thereof, and said right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250.*
>
> *[1981 c 291 § 1; 1979 ex.s. c 216 § 5; 1967 c 233 § 16.]*

In this case the portion of Walla Walla Adj. SW Cert. No. 118 w/chg. Vol. 1, pg. 213 that pertains to lot 30 of Valley Homes Addition has been relinquished from non use. They do not qualify for any of the sufficient causes of non use listed in Chapter 90.14.140 RCW.

Consideration of Impairment, Enhancement and Other Appurtenant Rights

Impairment to existing rights, enhancement of the authorized right and other rights appurtenant to the place of use have not been evaluated in this report, since this portion of the right is relinquished.

CONCLUSIONS

It is the conclusion of this examiner that, in accordance with Chapters 90.03 and 90.14, this application (which proposes changing a portion of the place of use, as granted under Walla Walla River Adjudicated Surface Water Certificate No. 118, w/chg. Vol. 1, pg. 213) it not available for change. That portion of the right that pertains to Lot 30 of Valley Homes Addition has been relinquished from nonuse.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for change to a portion of the place of use of Walla Walla Adj. SW Cert. No. 118 w/chg. Vol. 1, pg. 213 be **denied**.

Report by: Dan Tolleson — 9-9-2010

Dan Tolleson
Water Resources Program

Date

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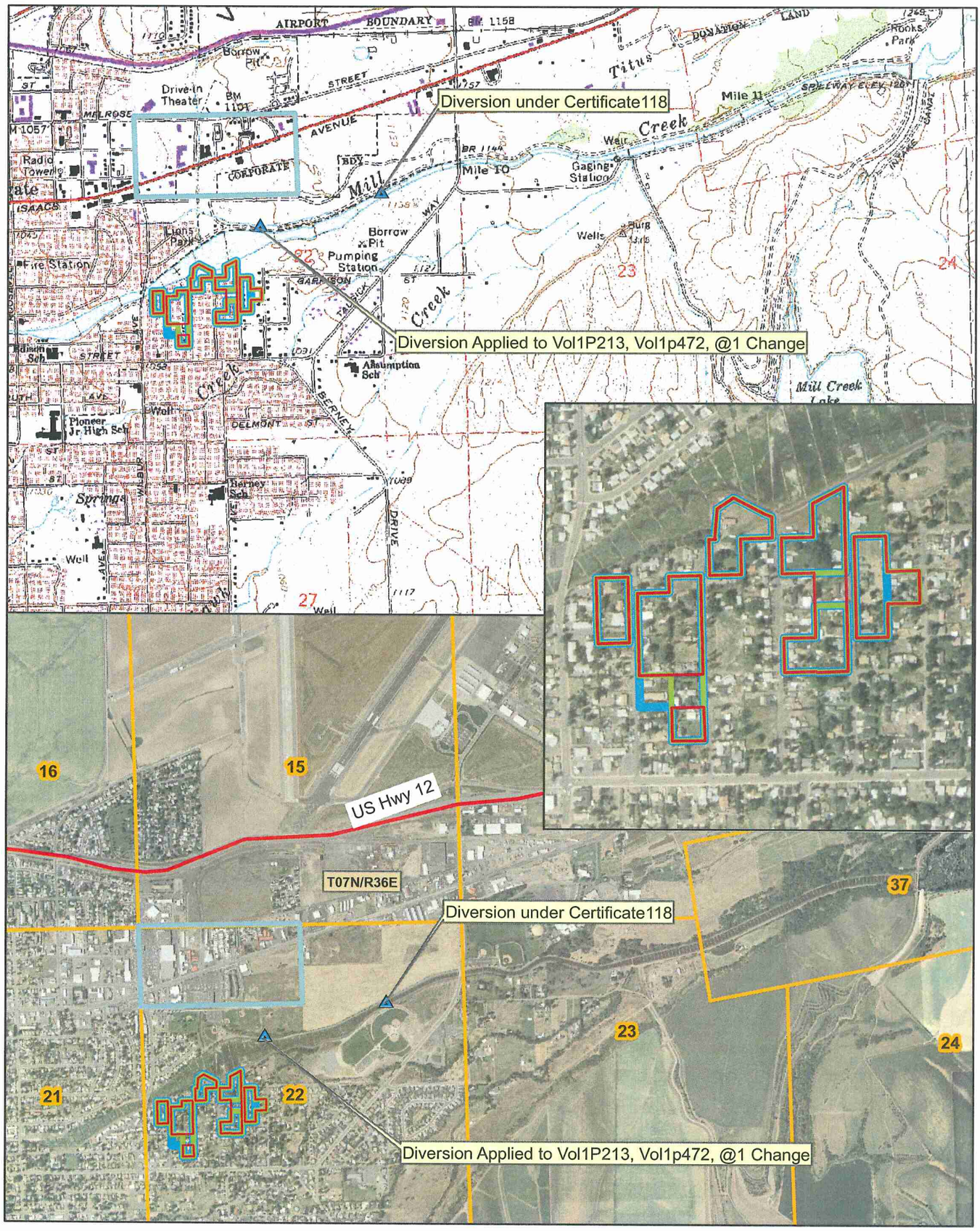
Y/Final docs/ROEs/Tolleson 2010/WWAC 118 Chastain

WASHINGTON STATE DEPARTMENT OF ECOLOGY

1: 24,000 Scale

Mr. James H. Chastain
Walla Walla Adjudicated Certificate 118
Certificate of Change CC Vol1 P 213 / CC Vol 1 P 472
Application for Change CS3-*2118J@1
Sec. 22, T x7N., R. 36 E.W.M.
WRIA 32 / Walla Walla County
Map based on Application for Change/Transfer of a Water Right Received 4/29/2003



0 1,320 2,640 5,280 7,920 Feet

Legend

- Section
- Township / Range
- County
- WRIA
- Major Roads
- Existing Point of Diversion
- App for Change CS3-*28118J@1
- CCVOL1P472
- CCVOL1P213
- Adj Cert 118

Comments:

2006 Aerial Photo Mapped 9/28/2007