

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 1926 (Class 64)	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER Walla Walla River Adjudication Certificate No. 836(A)
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NAME Phil Lane, Jr.			
ADDRESS (STREET) 756 Mill Creek Road	(CITY) Walla Walla	(STATE) Washington	(ZIP CODE) 99362

PUBLIC WATERS TO BE APPROPRIATED

SOURCE Titus Creek
TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND 0.120	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR 24
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QUANTITY, TYPE OF USE, PERIOD OF USE

0.080 cubic feet per second (36 gpm) from April 1 to July 1; 0.060 cubic feet per second (27 gpm) from July 1 to October 1; and 0.120 cubic feet per second (54 gpm), when allowed, from October 1 to April 1, for the irrigation of 6 acres

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION-WITHDRAWAL

100 feet South and 250 feet East of the Center of Sec. 13

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) NW $\frac{1}{4}$ SE $\frac{1}{4}$	SECTION 13	TOWNSHIP N. 7	RANGE, (E. OR W.) W.M. 36 E	W.R.L.A. 32	COUNTY Walla Walla
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RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
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LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

Beginning at a point on the center line of Mill Creek County Road N 00°19'50" W 219.5 feet from the center of Sec. 13, T. 7 N., R. 36 E. W.M.; thence along said center line N 77°27'20" E 358.33 feet; thence S 09°52'40" E 1026.9 feet; thence S 50°19'10" W to a point on the north-south center line of said Sec. 13; thence northerly along said center line to the point of beginning; LESS the west 49 feet thereof and LESS roads

DESCRIPTION OF PROPOSED WORKS

Pump, meter, pipeline, sprinklers.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: Started	COMPLETE PROJECT BY THIS DATE: Completed	WATER PUT TO FULL USE BY THIS DATE: May 1, 2011
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REPORT

BACKGROUND

Application

An application for change was filed by Charles Smith, owner/operator of K Vintners, on April 3, 2002. The application was accepted and processed. The applicant proposes to add a point of diversion and change the place of use for 2 acres of water right under Walla Walla River Adjudication Certificate No. 836, together with Certificate of Change at Vol. 2, Page 932 ("Adj. Cert. No. 836").

Notice

A notice of application was duly published in the Waitsburg Times on May 16th and 23rd, 2002. Due to an error in publication, the notice was republished in the Waitsburg Times on July 4th and 11th, 2002. No protests or letters of concern were received.

SEPA

This application is categorically exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21 RCW, due to the fact that the quantities involved are less than 1.0 cubic foot per second.

INVESTIGATION

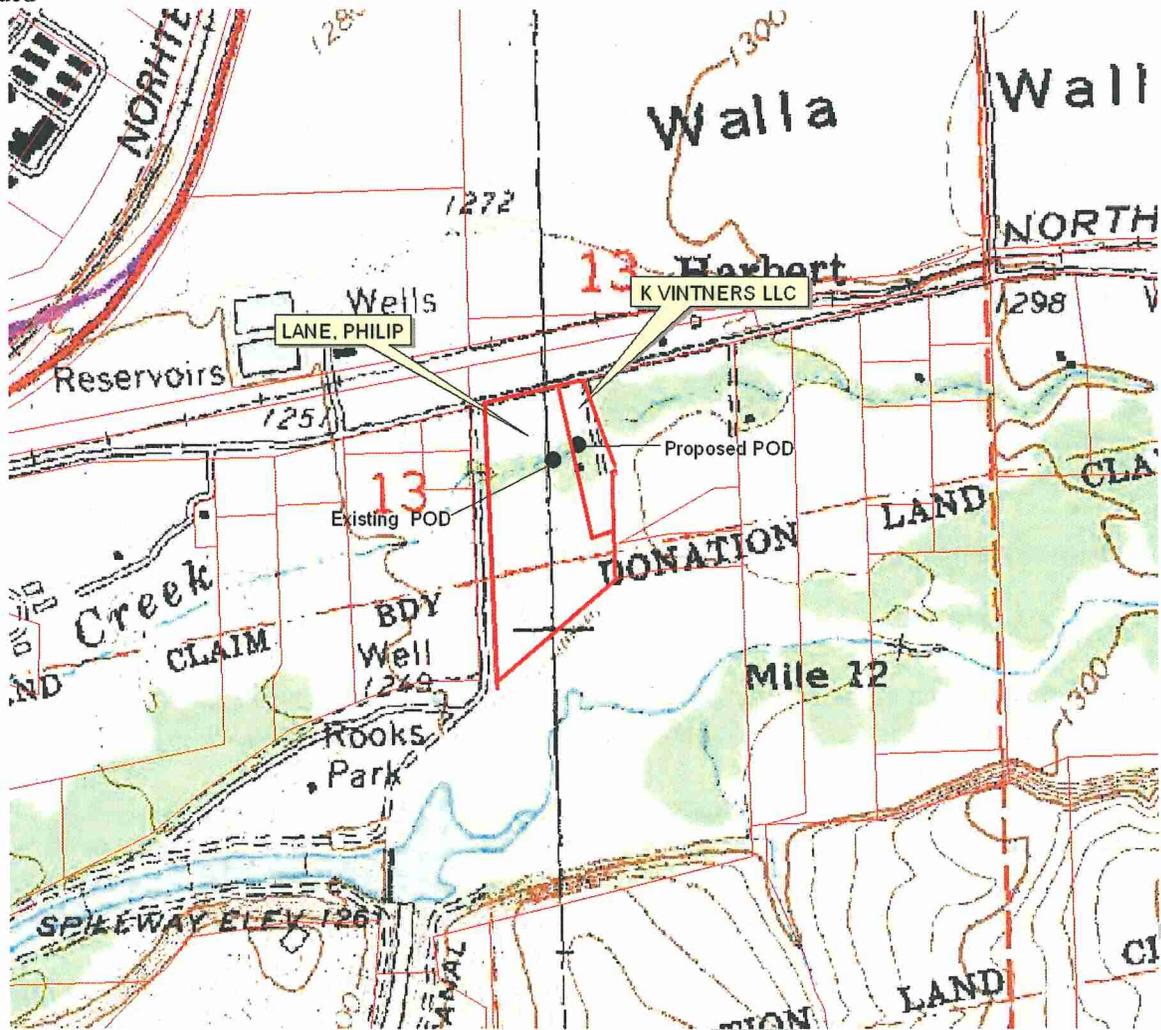
In considering the proposed change, the investigation included, but was not limited to, research and review of (1) appropriate rules and statutes; (2) Adj. Cert. No. 836 and records of other water rights/claims/applications in the vicinity; (3) Farm Service Agency records; (4) USGS topographic maps and vicinity/plat maps; (5) aerial photographs, (6) discussions with regional program staff; and (6) site visits conducted by Bill Neve.

Project Description

A field examination was conducted by Bill Neve with Charles Smith on August 24th, 2005. Subsequent contacts were made with Dan Clark, the legal representative for Phil Lane Jr., who owns the property adjacent to Mr. Smith's on the west, and on whose land Adj. Cert. No. 836 is currently appurtenant. The project site is located approximately 1 mile east of Walla Walla, along Mill Creek Road.

Titus Creek is a distributary of Mill Creek, originating just below Seven-Mile Road near Tracy elevator. The actual headwater location of this stream will vary from year to year, and in some years a gravel dam is manually constructed into Mill Creek in order to direct water down Titus Creek. Titus Creek flows a distance of 3.5 – 4 miles, where it discharges back into Mill Creek at the west end of the Walla Walla Community College campus. The upper half of Titus Creek is characteristic of a natural stream, while the lower half has historically been managed more as an irrigation ditch. Water to this lower portion was commonly shut off on October 1, when these rights no longer were valid and also to allow the bed of the stream to be cleaned of brush, grass and debris. WW Adj. Cert. No. 836 is appurtenant to lands on this lower section of Titus Creek.

According to Walla Walla County Assessor records, Mr. Smith owns approximately 3.23 acres within the authorized place of use of Adj. Cert. No. 836. These same records show that Mr. Lane owns a total of 13.46 acres of land adjacent to Mr. Smith.



Existing Water Rights/Claims

The subject water right for this application authorizes the diversion of water as follows:

Walla Walla River Adjudication Certificate No. 836, W/Cert/ of Change Vol. 2, Page 932

- Priority Date:** 1926 (Class 64)
 - Source:** Titus Creek
 - Quantities:** 0.107 cubic feet per second (cfs) from April 1 to July 1; 0.080 cfs from July 1 to October 1; and 0.160 cfs from October 1 to April 1, when authorized
 - Purpose of Use:** Irrigation of 8 acres
 - Diversion Point:** NW¼SE¼ of Sec. 13, T. 7 N., R. 36 E.W.M.
- Ecology records show one (1) other water right appurtenant to the subject place of use:

Ground Water Certificate No. 6172-A

- Priority Date:** March 6, 1967
- Source:** A well (basalt aquifer)
- Quantities:** 120 gallons per minute, 50 acre-feet per year
- Purpose of Use:** 48 acre feet for irrigation; 2 acre feet for stockwater and domestic supply
- Season of Use:** April 1 to October 1 for irrigation; continuously for stock and domestic supply
- Well Location:** SW¼SW¼NE¼ of Gov't Lot 2, Sec. 13, T. 7 N., R. 36 E.W.M.

The authorized place of use for this right is the same as Adj. Cert. No 836. This right was issued as supplemental supply to the 8 acres authorized for irrigation under Adj. Cert. No. 836, as well as primary right for an additional 4 acres. The total diversion of water under both rights for irrigation purposes is limited to a maximum of 48 acre-feet per year.

Evaluation of Walla Walla Adjudicated Certificate No. 836

The Washington State Supreme Court, in *Okanogan Wilderness v. Town of Twisp and Department of Ecology*, 133 Wn.2d 769, 947 P.2d 732 (1997), found that applications for change may be granted only to the extent the water has been historically put to beneficial use, as beneficial use determines the measure of a water right. They also found that the existence and quantification of a water right must be determined, including whether or not the water right has been lost for non-use before the Department can approve a change or transfer of the water right. While the Superior Court, through an adjudicative process, is the only authority that can make a final determination as to a water right's extent, validity and priority, Ecology can make a tentative determination of these factors for purposes of making decisions on change applications.

Adj. Cert. No. 836 originally issued in 1929 with a place of use that included both the Smith and Lane properties, as well as a considerable number of acres (approximately 71) lying to the east and south of the Lane/Smith lands. In 1947 the place of use of use of this right was changed through Certificate of Change Vol. 1, Page 239 to include only

the Lane/Smith properties. In 1967 the place of use of the entire right was again changed, through Certificate of Change Vol. 2, Page 932, to cover only the Lane property.

Through a Quit Claim Deed recorded on March 8, 1971, in Book 339 at Page 528 of Deeds, Walla Walla County, Phil Lane Sr. conveyed a 3-acre share of Adj. Cert. No. 836 to the property now owned by Mr. Smith. The place of use of a water right can only be changed through the process set forth in statute (RCW 90.03.380), and cannot be changed through the conveyance of a deed. That fact is what has generated this application. While the Quit Claim Deed conveyed a 3-acre share of Adj. Cert. No. 836 to the land Mr. Smith now owns, Mr. Smith only needs, and has only requested, transfer of a 2-acre share of the subject water right herein.

A review of Farm Service Agency records and the personal knowledge of this writer show that 12 acres have been irrigated between the Lane/Smith properties, with the highest water use crop grown being pasture. The Washington State Irrigation Guide (WA210-VI-WAIG, October 1985) was used to determine the water requirement for pasture in this area. The Irrigation Guide shows a net irrigation requirement of 34.83 inches for pasture/turf. At a 70% system efficiency for hand line sprinklers, there is a total water requirement of 49.75 inches per year per acre, or the equivalent of 4.15 acre-feet per acre. However, Ground Water Certificate No. 6172-A was provisioned such that the combined use of water under that right and Adj. Cert. No. 836 is not to exceed 4 acre-feet per acre, which is then the upper limit of annual use for these rights.

It appears that the full instantaneous quantities (cfs/gpm) authorized under Adj. Cert. No. 836 have been put to beneficial use. These quantities would be divided proportionately between Mr. Smith and Mr. Lane.

The difference between the annual quantities beneficially used (32 acre feet for irrigation of 8 acres) and those which issued under the original certificate (40 acre-feet for irrigation of 8 acres), being 8 acre-feet, are tentatively determined to be relinquished due to more than 5 successive years of non-use without sufficient cause.

FINDINGS

Applications for change of water right permits and certificates are governed by RCW 90.03.380 which state in part that: the holder of a valid surface water right may, without losing priority of right, change the point of diversion of a water right, provided that:

- The change must not cause detriment or injury to existing rights;
- A valid right/claim exists that is eligible to be changed;
- The change shall not allow for the enhancement of the right perfected under the original certificate.

No Detriment/Injury to Existing Rights

“Impair” or “impairment” means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, including earlier filed applications, 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).

The proposed additional point of diversion is located approximately 100 feet upstream from the existing pumping station. There is generally sufficient water in Titus Creek to satisfy this particular right from April 1 to October 1; in some years, however, this right is regulated in favor of senior downstream rights during times of shortage. There are no water rights or pumps in Titus Creek in the reach between the existing and proposed pumps.

Provided the diversion of water from the proposed additional diversion point is consistent with the provisions and limitations under which such a change would be granted, the proposed change would not impair or create injury to any downstream water rights.

No Enhancement of the Original Right

The proposed change would not enhance the original right, provided pumping rates from the two diversion points is consistent with the allocations of water afforded to each.

Ground Water Certificate No. 6172-A was issued as supplemental supply to Adj. Cert. No. 836 to the extent of 8 acres, and primary right for an additional 4 acres, for a total of 12 acres of irrigation. To prevent an unauthorized expansion of the supplemental portion of GW Cert. No. 6172-A, that right shall be reduced by the annual quantity and acres proposed for transfer herein – 8 acre-feet per acre for the irrigation of 2 acres. GW Cert. No. 6172-A will then become supplemental to the remaining 6 acres of water right on Mr. Lane’s property, and primary right for 4 acres, for irrigation of a total of 10 acres.

A Valid Right Exists that is Eligible to be Changed

For purposes of acting on the subject application, a tentative determination as to the extent and validity of the subject water right was made, the result of which determined that the quantities of water available for this change are as follows:

Adj. Cert. No. 836(A) – (Lane) 0.080 cubic feet per second from April 1 to July 1; 0.060 cubic feet per second from July 1 to October 1; and 0.120 cubic feet per second, when allowed, from October 1 to April 1, 24 acre-feet per year, for the irrigation of 6 acres.

Adj. Cert No. 836(B) – (Smith) 0.027 cubic feet per second from April 1 to July 1; 0.020 cubic feet per second from July 1 to October 1; and 0.040 cubic feet per second, when allowed, from October 1 to April 1, 8 acre-feet per year, for the irrigation of 2 acres.

CONCLUSION

It is the conclusion of this examiner that, in accordance with RCW 90.03.380, an existing, valid right is eligible to be changed; that the change would not result in an unauthorized enhancement or enlargement of the original water right; that the change, if approved, would not create an impairment/injury to existing water rights. Based on beneficial use, 8 acre-feet are relinquished, this being the difference between the quantities of water listed on the original certificate (40 acre-feet) and those approved herein (32 acre-feet).

This right shall be divided between Mr. Lane and Mr. Smith reflecting their proportionate allocations of this right, as outlined above. As both parties need to install meters, separate authorizations with developments schedules shall be prepared for each.

RECOMMENDATIONS

It is recommended that this application to add a point of diversion be approved, subject to the following provisions:

“This authorization adds a point of diversion as provided by Chapter 90.03.380 RCW, and when perfected will supersede Walla Walla Adjudication Certificate No. 836, recorded in Vol. 4B of Water Right Certificates at Page 836 and dated September 28th, 1929, as modified by Certificate of Change No. Volume 1, Page 239; issued September 17, 1947 and Certificate of Change No. 932, dated August 2, 1967.”

“This authorization results in the division of Walla Walla River Adjudication Certificate No. 836 into two parts:

Adj. Cert. No. 836(A) – (Lane) 0.080 cubic feet per second from April 1 to July 1; 0.060 cubic feet per second from July 1 to October 1; and 0.120 cubic feet per second, when allowed, from October 1 to April 1, 24 acre-feet per year, for the irrigation of 6 acres.

Adj. Cert No. 836(B) – (Smith) 0.027 cubic feet per second from April 1 to July 1; 0.020 cubic feet per second from July 1 to October 1; and 0.040 cubic feet per second, when allowed, from October 1 to April 1, 8 acre-feet per year, for the irrigation of 2 acres.”

“The combined use of water on these lands under Adj. Cert. No. 836(A) – (6 acres) and Ground Water Certificate No. 6172-A – (10 acres) shall not exceed 40 acre-feet per year for the irrigation of 10 acres.

“When the supply of water for irrigation purposes from April 1 to October 1 is insufficient in the Walla Walla River Valley to fill any adjudicated surface right, the owner of such a right is entitled to divert water during the period of October 1 to April 1.”

“Water available under this authorization may not provide a continual supply throughout each irrigation season.”

“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 and required for the actual crop(s) grown on the number of acres and the place of use specified.”

“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.”

“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.”

“Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances, or regulations.”

“A Superseding Certificate will not be issued until a final examination is made. Quantities of water authorized for use and/or acres irrigated may be reduced at the time of issuance of a final water right certificate commensurate with those quantities actually diverted/withdrawn and put to beneficial use and/or the number of acres actually irrigated.”

Report Continued

An approved measuring device shall 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", Chapter 173-173 WAC. Water use data shall be recorded monthly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to Ecology by January 31st of each calendar year.

The following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit/Certificate/Claim No., source name, annual quantity used including units of measurement, maximum rate of diversion including units of measurement, *monthly meter readings including units of measurement, peak monthly flow including units of measurement, Department of Health WFI water system number and source number(s), purpose of use, fish screen status, well tag number, open channel flow or pressurized diversion, other, and period of use.* In the future, Ecology may require additional parameters to be reported or more frequent reporting. Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

Chapter 173-173 WAC 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.

Dated at Spokane, Washington this day of 2009.

Bill Neve - Watermaster
Water Resources Program
Walla Walla Field Office-Eastern Region

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