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File NR CS3-28731J(C)
WR Doc ID 4323423

DEPARTMENT OF ECOLOGY
State of Washington

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

**PRIORITY DATE**
1911 (Class 49)

**WATER RIGHT NUMBER**
WWRAC 731(C)

**MAILING ADDRESS**
Ronald K. McAdams
230 Bunchgrass Lane
Walla Walla, WA 99362

**SITE ADDRESS (IF DIFFERENT)**

## Quantity Authorized for Diversion

| DIVERSION RATE | | UNITS | ANNUAL QUANTITY (AF/YR) |
|---|---|---|---|
| 0.113 | April 1 to July 1 | CFS | 32.65 |
| 0.085 | July 1 to October 1 | | |
| 0.165 | October 1 to April 1 | | |

## Purpose of Use

**PURPOSE**
Irrigation

| IRRIGATED ACRES | |
|---|---|
| **PRIMARY** | **NON-ADDITIVE** |
| 8.35 acres within 30.11 acres of POU | 0 |

## Source Limitations

| SOURCE FACILITY/DEVICE | DIVERSION RATE (CFS) | ANNUAL QUANTITY (AF/YR) | PERIOD OF USE (mm/dd) |
|---|---|---|---|
| Mill Creek | 0.113 | 32.65 | April 1 – July 1 |
| | 0.085 | | July 1 – October 1 |
| | 0.165 | | October 1 – April 1 |

## Source Location

| COUNTY | WATERBODY | TRIBUTARY TO | WATER RESOURCE INVENTORY AREA |
|---|---|---|---|
| Walla Walla | Mill Creek | Walla Walla RIVER | 32-Walla Walla |

| SOURCE FACILITY/DEVICE | PARCEL | TWP | RNG | SEC | QQ Q | LATITUDE | LONGITUDE |
|---|---|---|---|---|---|---|---|
| Diversion #1 | 350727120005 | 7N | 35E | 27 | SW¼NE¼ | 46.058836 | -118.415531<br>Datum: WGS84 |

## Place of Use (See Attached Map)

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

350727120004(20.11 acres) and 350727120005 (10 acres)

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

Beginning at a point where the center line of State Road 3, as now constructed and paved, is intersected by a line drawn parallel to and 118.0 feet East of the North and the South center line of Sec. 27 in T. 7 N., R. 35 E.W.M., said point being in the NW¼NE¼ of Sec. 27, and running thence South on a line drawn parallel to and 118.0 feet East of the North and South center line of Sec. 27, 1000.0 feet, more or less, to the intersection thereof with the center of the channel of Mill Creek as the same now flows through the SW¼NE¼ of said Sec. 27; thence Easterly along the center of the channel of Mill Creek to the intersection thereof with a line drawn parallel to and 255.0 feet West of the East line of the W½NE¼ of said Sec. 27; thence North, parallel to said subdivision line 1185.0 feet, more or less, to a point in the East and West center line of the NW¼NE¼ of said Sec. 27; thence N. 41$^{0}$47'W 555.0 feet, more or less, to a point in the centerline of said State Road No. 3; thence Southwesterly along the centerline of said State Road No. 3, a distance of 810.0 feet, more or less, to the point of beginning

## Proposed Works

Pump, pipes, meter, fish screen

## Development Schedule

| BEGIN PROJECT | COMPLETE PROJECT | PUT WATER TO FULL USE |
|---|---|---|
| Begun | Completed | In use |

## Measurement of Water Use

| | |
|---|---|
| How often must water use be measured? | Weekly |
| How often must data be reported to Ecology? | Upon Request by Ecology |
| 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 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", 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.

**Department of Fish and Wildlife Requirement(s)**

The intake(s) shall 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/

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**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.

**Schedule and Inspections**
Department of Ecology personnel, upon presentation of proper credentials, shall 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.

**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 Application for change to WWRAC 731(C), 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
Ying Fu, Department of Ecology
Water Right Control Number
Walla Walla Adj. Cert. No. 731(C)

## BACKGROUND

Walla Walla River Adjudicated Certificate Vol. 4B, Page 731, issued August 23, 1929. The priority date of WWRAC 731 is 1911(class 49). In 1974, Certificate of Change No. 118 was issued to move the point of diversion (POD) from the NW¼NW¼ of Sec. 26 to the NW¼SE¼NE¼ of Sec. 27 all within T. 7 N., R. 35 E.W.M.

In 2005, WWRAC 731 w/chg No. 118 was split administratively into three parts: WWRAC 731(A), 731(B) and 731(C). WWRAC 731(C) was issued to Mr. Ronald McAdams.

The actual POD for WWRAC 731(C) is currently located in the SW¼NE¼ of Sec. 27, T. 7 N., R. 35 E.W.M. at GPS coordinates 46.058836; -118.415531. This POD location has been authorized for WWRAC 731(C) by Ecology for several years through the Department's seasonal change authorization process.

### Application

On December 18, 2006, Ronald McAdams filed a change application to formally change the legal POD for WWRAC 731(C) to the location where water is currently being diverted. The application proposes to change the POD from the NW¼SE¼NE¼ Section 27 to the SW¼NE¼ Section 27, all within T. 7 N., R. 35 E.W.M.

The place of use (POU) of the superseding certificate WWRAC 731(C) was defined and issued as following:

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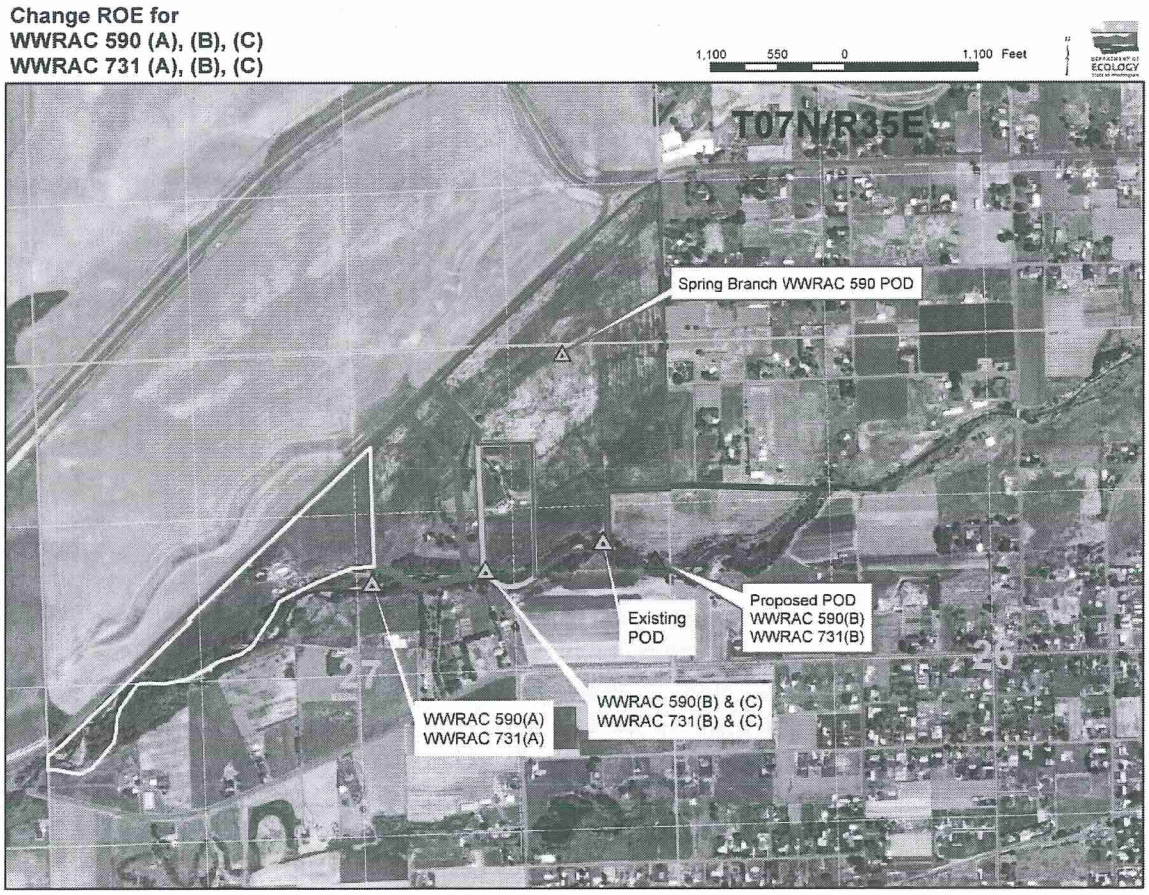
Beginning at a point where the center line of State Road 3, is intersected by a line draw parallel to and 118.0 feet East of the North and South center line of Sec. 27 in T. 7 N., R. 35 E.W.M., said point being in the NW¼NE¼ of Sec. 27, and running thence South on a line drawn parallel to and 118.0 feet East of the North and South center line of Sec. 27, 1000 feet, more or less, to the intersection thereof with the center of the channel of Mill Creek as the same now flows through the SW¼NE¼ of said Sec. 27; thence Easterly along the center of the channel of Mill Creek to the intersection thereof with a line drawn parallel to and 255.0 feet West of the East line of the W½NE¼ of said Sec.27; thence North, parallel to said subdivision line 1185.00 feet, more or less, to a point in the centerline of said State Road No. 3; thence Southwesterly along the centerline of said State Road No. 3, an distance of 810.00 feet, more or less, to the point of beginning.




## Attributes of the Existing Water Right and Proposed change

### Table 1 WWRAC 731(C) Existing and Proposed attributes

| Attributes | Existing | Proposed |
|---|---|---|
| Name | Ronald McAdams | Ronald McAdams |
| Priority Date | 1911(class 49) | 1911 (Class 49) |

| | | |
|---|---|---|
| Instantaneous Quantity: Qi cfs (cubic feet per second) | 0.113cfs: 4/1 to 7/1<br>0.085cfs: 7/1 to 10/1<br>0.165cfs: 10/1 to 4/1 | No change |
| Annual Quantity: Qa | 41.65 af/yr | No change |
| Purpose of Use | Irrigation | Irrigation |
| Place of Use: for the irrigation of 8.65 acres | Beginning at a point where the center line of State Road 3, is intersected by a line draw parallel to and 118.0 feet East of the North and South center line of Sec. 27 in T. 7 N., R. 35 E.W.M., said point being in the NW¼NE¼ of Sec. 27, and running thence South on a line drawn parallel to and 118.0 feet East of the North and South center line of Sec. 27, 1000 feet, more or less, to the intersection thereof with the center of the channel of Mill Creek as the same now flows through the SW¼NE¼ of said Sec. 27; thence Easterly along the center of the channel of Mill Creek to the intersection thereof with a line drawn parallel to and 255.0 feet West of the East line of the W½NE¼ of said Sec.27; thence North, parallel to said subdivision line 1185.00 feet, more or less, to a point in the centerline of said State Road No. 3; thence Southwesterly along the centerline of said State Road No. 3, a distance of 810.00 feet, more or less, to the point of beginning | same |
| Point of Diversion | NW¼SE¼NE¼ of Sec.27, T. 7 N., R. 35 E.W.M. | SW¼NE¼ of Sec. 27, T. 7 N., R. 35 E.W.M. |

## Legal Requirements for 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 Times, a weekly newspaper of the City of Waitsburg and the County of Walla Walla, during the weeks of February 15 and February 22, 2007. No protests or objections were received.

- **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.

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- It is a surface water right application for more than 1 cubic feet 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;
- it is a groundwater right application for more than 2,250 gallons per minute;
- it is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- 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);
- 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.

This application is exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21 RCW, due to the fact that the cumulative quantities of water for this project under all water rights constitute a withdrawal of less than one (1) cubic foot per second, and none of the other conditions described above are met.

- **Water Resources Statutes and Case Law**

RCW 90.03.380(1) allows for a water right that has been put to beneficial use to be changed. The point of diversion, place of use, and purpose of use may be changed if the change would not result in harm or injury to existing 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.*

A point of diversion for a surface water right may be changed. RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed if it would not result in detriment or injury to other water rights.

## INVESTIGATION

Reports and materials considered during the course of this investigation include the following:

- Change applications for WWRAC 590(C) and WWRAC 731(C)
- State Water Code, administrative rules and policies, relevant case law
- Related water right files
- Notes documenting one site visit by Ying Fu and other Ecology WRP staff
- Washington Irrigation Guide (WIG)
- Aerial photographs when they are available for the past 10 years
- USGS topographic maps
- Farm Service Administration crop records
- Walla Walla County Assessor records
- Discussions with other Ecology staff in the ERO Water Resources Program

## Site Inspections

The project site is located approximately one mile west of City of the College Place and four miles west of the City of Walla Walla, along State Hwy 12 in Walla Walla County, Washington.

A field examination was conducted by Ying Fu and Ecology staff Dan Tolleson and Jeff MacLennan on July 12, 2012. A meeting was conducted to meet with all five land owners and water right holders to discuss the pending change applications for WWRAC 590(A), (B), (C) and WWRAC 731(A), (B), (C) together.

Mr. Richard Czyhold provided copies of historical FSA crop records for all farm land in the collective places of use of these water rights. From 1980s to 2006, Mr. Czyhold farmed the approximate 100 acres which covered the place of use of the original surface rights WWRAC 590 and 731. Crop records submitted for 1998 to 2010 show crops have been rotated; they include pasture, alfalfa, wheat, barley, and oats.

Dan Tolleson took a GPS reading for the proposed McAdams POD for WWRAC 731(C), which would be at the same location as the Cockerline POD for WWRAC 731(B). The GPS reading was 46.0588360; -118.4155319. In the past, the PODs were authorized at this location through annual seasonal changes to the two water rights.

At the time of the site visit, a pumping system was online, a fish screen was installed, and a 10 hp pump was used for the diversion lift. Two flow meters split off from one 10 HP pump at Mill Creek, one for McAdams and one for Cockerline. Pumping or metering records were not available.

## Other Rights Appurtenant to the Place of Use

One surface right overlaps the POU with WWRAC 731(C): surface water right WWRAC 590(C). See map in previous section of this report.

Ronald McAdams also holds two water claims: Surface Claim No. 133030 and Ground Water Claim No. 133031. Claim No. 133030 is probably not valid because all surface water rights were adjudicated in the Walla Walla basin area. The validity of Claim No. 133031 can only be determined through the court adjudication process.

## History of Water Use

Washington State Supreme Court, in Okanogan Wilderness vs. Town of Twisp and Department of Ecology 133 Wn.2d 769,947 P.2d 732 (1997), held that applications for change may be granted only to the extent the water has been 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 relinquished or abandoned, 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 rights extent, validity

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and priority, Ecology is required to make a tentative determination of these factors for purposes of making decisions on change applications.

The site visit and FSA crop records confirm that water has been historically and beneficially used on Ronald McAdams' property for the irrigation of 8.35 acres within the legally authorized place of use of 30.11 acres. Although no metering records or power records were presented by Mr. McAdams, the crop records submitted allow calculation of historical water use for Mr. McAdams' property.

The quantities of water beneficially used were determined by using the Washington Irrigation Guide, and the FSA crop records, to estimate water use for the highest water duty crop grown in the most recent five consecutive years, which is alfalfa.

WWRAC 731(C) authorizes 8.35 acres of irrigation within the 30.11 acre parcel. From 1998 to 2010 FSA crop records, alfalfa was determined to be the highest water duty crop, and is used to calculate the historical water usage as follows:

$$\left(\text{Crop acres} \times \frac{^{1}\text{Crop water need}}{12\ \text{inch}/1\text{ft}} \Big/ {}^{2}\text{Ea}\right) = \underline{\quad ? \quad}\ \text{AF (acre-feet)}$$

[1]The specific crop water need is based on Washington State Irrigation Guide 2010. Alfalfa requires 32.85 inches of water in the project area.
[2]The application efficiency Ea is determined in Ecology guidance document GUID-1210. For hand-line irrigation, it is determined to be 70% efficient.

(8.35 acres x 32.85 inch/12 inch/ft)/70% = 32.65 acre-ft

WWRAC 731(C) authorizes an annual quantity of 41.65 acre-ft of water. The difference between the authorized annual quantity and the highest historical beneficial use quantity is determined to be subject to relinquishment due to non-use.

Therefore, 9.0 ac-ft (41.65 – 32.65) of the annual quantity for WWRAC 590(A) is relinquished due to non-use.

## Hydrologic/Hydrogeologic Evaluation

The approval of this proposed change would authorize a change in the POD for WWRAC 731(C) that was made five years ago in 2008 through seasonal changes. The original POD was located approximately ¼ mile above the proposed POD at Mill Creek.

The amended WRIA 32 Basin Water Management Rule (WAC 173-532) was adopted in 2007. Through this rule, instream flows were adopted on Mill Creek for the reach of stream in which the proposed change would take place {WAC 173-532-030(5)}. This rule also requires that these instream flow water rights be protected from impairment by all future changes and transfers of both senior and junior water rights {WAC173-532-030(3)}. This change would authorize a point of diversion approximately ¼ river mile downstream from the original POD, which should enhance flows through this reach of Mill Creek. There would be no change in the season of use of water under the right through this change.

Mill Creek originates in the Blue Mountains in the State of Oregon and flows in a northwesterly direction, crossing into Walla Walla County, Washington. Mill Creek is the principal tributary of the Walla Walla River and furnishes a large part of the water supply for the irrigation of lands in the project area. Moving the POD approximately ¼ mile downstream will not result in any enhancement to the water right, and will increase the instream flow in that reach of the creek.

### 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) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150).

WWRAC 731(C) shares the same authorized place of use as WWRAC 590(C). Both rights are owned by Ronald McAdams. Both rights have been exercised at the current place of use since the 1980s, and from the same point of diversion since 2008. Change applications for the two water rights were submitted to change the legally authorized PODs for the two rights, in order to make them reflect the temporary changes in the PODs that occurred five years ago. Diversion and beneficial use of water from Mill Creek under these two rights has not caused any impairment to other water users in the past, so exercise of these two rights in a similar manner should not cause impairment of any water rights in the future.

Instream flows of this reach of Mill Creek should actually benefit from this change to WWRAC 731(C), because the new POD will reduce ditch conveyance loss and the new POD will be ¼ river mile downstream from the original POD on Mill Creek. There is sufficient flow in Mill Creek during the irrigation season to satisfy all existing water rights on this reach of the creek. There will be no impairment to other existing water rights on this reach of Mill Creek.

### Public Interest Considerations

Public interest considerations do not apply to changes to surface water rights authorized through RCW 90.03.380, which includes the subject application.

### Consideration of Protests and Comments

No protests or comments regarding this application were received.

### CONCLUSIONS

Based on the investigation of relevant information regarding the proposed change, the following are the conclusions of the examiner as the statutory and legal criteria for the proposed change to WWRAC 731(C):

1). **Tentative Determination of Extent and Validity:** The subject water right has been historically beneficially used. The extent of use is determined to be

Qi: 0.113cfs from 4/1 to 7/1; 0.085cfs from 7/1 to 10/1; 0.165cfs from 10/1 to 4/1.
Qa: 32.65 acre-ft.

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The difference between the originally allocated annual quantity (41.65 ac-ft) and the annual quantity that has been historically beneficially used (32.65 ac-ft) is 9.0 ac-ft per year. That portion of the annual quantity is subject to relinquishment due to non-use (RCW 90.14.160).

POU: Irrigation of 8.35 acres within an authorized POU of 30.11 acres.

2). **No Impairment of Existing Water Rights**: The point of diversion proposed for the subject water right would be moved approximately ¼ mile downstream from the original POD for WWRAC 731, which would benefit instream flows in this reach. There are sufficient flows in the affected reach to satisfy all existing water rights; no impairment will occur to the one diversion point located between the existing and proposed diversion points for this water right. This is further confirmed by the fact there have been no complaints regarding the exercise of this water right in five years since the existing POD has been in place in 2008. Approval of the proposed change will not impair any existing water rights.

3). **Is Water Available for the Subject Change**: A perennial flow of the Mill Creek is present through the reach of river that would be affected by this change. The source of water for this right will remain the same, and there is sufficient water to satisfy the existing diversions within the affected reach. There is sufficient water available for the proposed change in point of diversion.

4). **The Proposed Change is for a Beneficial Use**: The purpose of use for this right (irrigation) is specifically identified as a beneficial use in RCW 90.54.020, and will not change through this application.

**RECOMMENDATIONS**

Based on the above investigation and conclusions, I recommend that the request for change to Walla Walla River Adjudication Certificate No. 731(C), be approved in the amount and within the limitations listed below and subject to the provisions in this report.

**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:

- 0.113cfs from 4/1 to 7/1; 0.085cfs from 7/1 to 10/1; 0.165cfs from 10/1 to 4/1
- 32.65 acre-ft per year
- Seasonal irrigation of 8.35 acres within the authorized place of use of 30.11 acres.

**Point of Diversion**

At a point on Mill Creek with GPS coordinates of 46.0588360; -118.4155319, within the SW¼NE¼ of Sec. 27, T. 7 N., R. 35 E.W.M.

**Place of Use**

Beginning at a point where the center line of State Road 3, is intersected by a line draw parallel to and 118.0 feet East of the North and South center line of Sec. 27 in T. 7 N., R. 35 E.W.M., said point being in the NW¼NE¼ of Sec. 27, and running thence South on a line drawn parallel to and 118.0 feet East of the

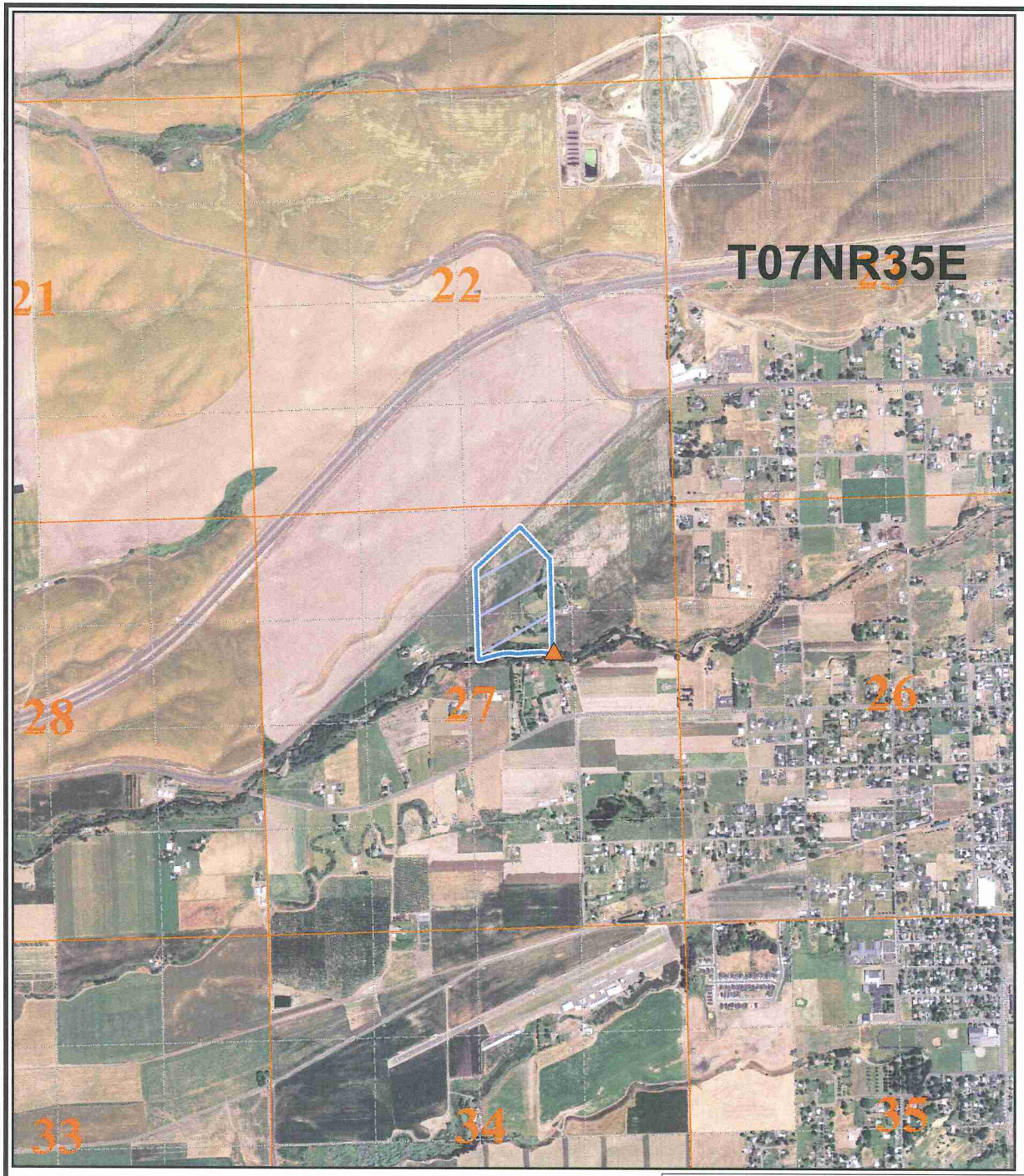
North and South center line of Sec. 27, 1000 feet, more or less, to the intersection thereof with the center of the channel of Mill Creek as the same now flows through the SW¼NE¼ of said Sec. 27; thence Easterly along the center of the channel of Mill Creek to the intersection thereof with a line drawn parallel to and 255.0 feet West of the East line of the W½NE¼ of said Sec.27; thence North, parallel to said subdivision line 1185.00 feet, more or less, to a point in the centerline of said State Road No. 3; thence Southwesterly along the centerline of said State Road No. 3, a distance of 810.00 feet, more or less, to the point of beginning.

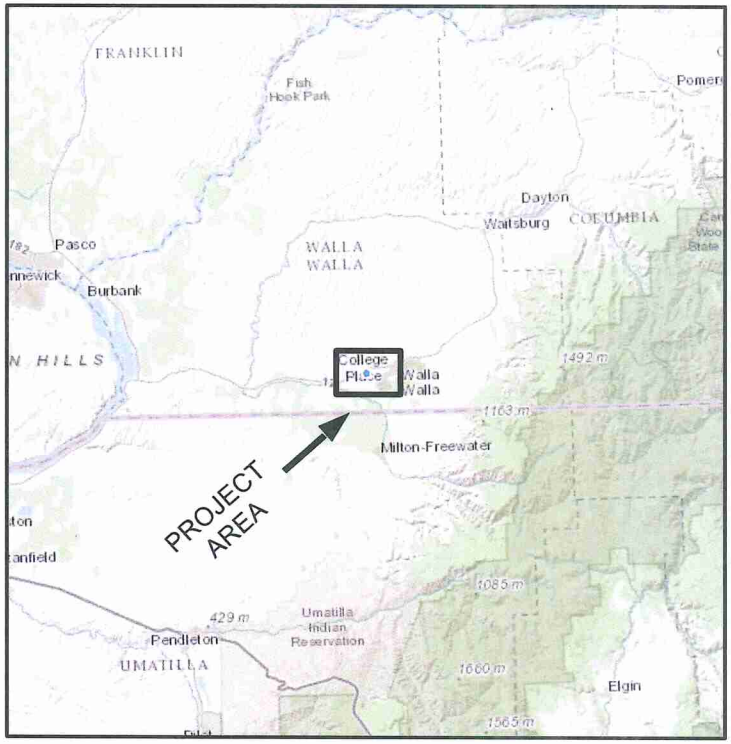
_____

*Ying Fu, 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.

Ronald K. McAdams
WWRAC731(C)
T07N/R35E




Basemap - (ESRI US Topographic Maps)

**Legend**

**Authorized Place of Use**

Townships

Sections

**Authorized Point of Diversion**

0 660 1,320 2,640 3,960 5,280 6,600 Feet

Basemap - (NAIP 2011 1m color)

DEPARTMENT OF ECOLOGY State of Washington

Map Date: 4/1/2013

**Comment:**
Place of use and source locations are as defined within the Report of Examination cover sheet for the document identfied in the header above.

ATTACHMENT 1