File NR: CG3-*00291S
WR Doc ID: 4276309

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
Change of Point of Withdrawal

PRIORITY DATE
September 15, 1939

WATER RIGHT NUMBER
398-D(A)

MAILING ADDRESS
Cheryl Scholl and Michael Lasher
620 NW 4th Street
Pendleton, OR 97801

SITE ADDRESS (IF DIFFERENT)
511 Pearmain Avenue
Walla Walla, WA 99362

Source
A Well – Alluvial aquifer, in hydraulic continuity with Mill Creek

Quantity Authorized for Withdrawal

WITHDRAWAL RATE	INSTANTANEOUS QUANTITY (GPM)	ANNUAL QUANTITY (AF/YR)
The total quantities authorized for withdrawal under 398-D(A) and 4082-A(A) are limited to 108.07 gpm and 50.48 afy for the irrigation of 13.83 acres.	30.31	15.76

Purpose of Use
30. 31 gallons per minute, 15.76 acre-feet per year for the irrigation of 13.83 acres

Source Location

COUNTY	WATERBODY	WATER RESOURCE INVENTORY AREA
Walla Walla	Alluvial aquifer	32-Walla Walla

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
A well	350726220009	7 N.	35 E.	26	NW¼NW¼	46.060281	-118.4092502

Datum: WGS84

Place of Use (See Attached Map)
LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

The place of use is limited to 13.83 acres within a parcel # 350726220009 (which is 20.75 acres), and within portions of the NE¼NE¼ and the SE¼NE¼ of Sec. 27, the NW¼NW¼ and the SW¼NW¼ of Sec. 26, all within Township 7 N., Range 35 E.W.M. More specifically described as Blalock Orchards Adjustment Tract, as shown and recorded on SP 4-41, SP 4-53, Book 10, page 144, June 5, 2007, County of Walla Walla, State of Washington. Also Blalock Orchards Cockerline parcel, as shown and recorded on SP4-41, SP4-53, Book 9, Page 167, October 28, 2004, County of Walla Walla, State of Washington.

Water Right Term

BEGIN DATE	PROJECT SCHEDULE	END DATE
Begun	Completed	January 2017

Measurement of Water Use

How often must water use be measured?	Weekly
How often must data be reported to Ecology?	Annually
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm)

Provisions

The total quantities authorized for withdrawal under Groundwater Certificates 398-D(A) and 4082-A(A) are limited to 108.07 gpm and 50.48 afy for the irrigation of 13.83 acres.

Wells, Well Logs and Well Construction Standards

All wells constructed in the state must meet the construction requirements of WAC 173-160 titled "Minimum Standards for the Construction and Maintenance of Wells" and RCW 18.104 titled "Water Well Construction". Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard must be decommissioned.

All wells must be tagged with a Department of Ecology unique well identification number. If you have an existing well and it does not have a tag, please contact the well-drilling coordinator at the regional Department of Ecology office issuing this decision. This tag must remain attached to the well. If you are required to submit water measuring reports, reference this tag number.

Installation and maintenance of an access port as described in WAC 173-160- 291(3) is required.

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.

Well water use data shall be recorded weekly and maintained by the landowner for a minimum of five years. The weekly maximum rate of withdrawal and the annual total volume shall be reported to Ecology by January 31st of each calendar year.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Eastern Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Eastern Regional Office for forms to submit your water use data.

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 certificate of water right 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.

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.

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 398-D(A), 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 Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this 19th day of February, 2014.

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 # 4276309
Ground Water Certificate No. 398-D(A)

BACKGROUND

Ground Water Certificate 398-D was issued to Oliver E. Cockerline in 1947, as an alternate source for surface water rights WWRAC 590 and 731, and based on a declaration which claimed beneficial use of ground water. The certificate authorized a well, a point of withdrawal (POW) which is located within the SE¼SE¼ of Sec. 22, Township.7 N., Range 35 E.W.M. in Walla Walla, Washington.

In 2006, the original place of use (POU) for Certificate 398-D was split among three land owners: Cheryl Scholl/Michael Lasher; Roger Cockerline and Mary Ann Talley, Frank W. Scholl and Donald Scholl, through legal agreement. On May 13, 2013, the three land owners filed a Request for Administrative Confirmation of Division of a Water Right to split certificate 398-D into: 398-D(A) for Scholl/Lasher; 398-D(B) for Bunchgrass LLC, and 398-D(C) for Roger Cockerline. The administrative division was approved by Ecology in June of 2013 and three Superseding Certificates were subsequently issued.

In 2006, surface water rights WWRAC 590 and 731 were each administratively divided into three separate rights: WWRAC 590(A), (B), (C) and WWRAC 731(A), (B), (C). Through those divisions, Scholl/Lasher received a portion of WWRAC 590(B) and WWRAC 731(B). Then in 2013, WWRAC 590(B) and 731(B) were each administratively split. Scholl/Lasher claimed zero interest in each of those two surface water rights. As a result, Ground Water Certificate 398-D(A) became the primary water right for Scholl/Lasher. Ground Water Certificate 4082-A(A) is a supplemental right to 398-D(A).

Application

On June 26, 2006, Cheryl Scholl and Michael Lasher filed a change application to formally change the legal POW of the Scholl/Lasher portion of Certificate 398-D, which became Certificate 398-D(A) after the original right was administratively divided in June 2013. The application proposed to change the POW from the SE¼SE¼ of Section 22 to the NW¼NW¼ or SW¼SW¼ of Section 26, all within T. 7 N.; R. 35 E.W.M.

The well for the new Scholl/Lasher POW was drilled in December 2006. It is located in the NW¼NW¼ of Sec. 26, T. 7 N., R. 35 E.W.M. at GPS coordinates 46.060281; -118.4092502.

The authorized place of use for Certificate 398-D(A) is limited to 13.83 acres within a parcel # 350726220009 (which is 20.75 acres), and within portions of the NE¼NE¼ and the SE¼NE¼ of Sec. 27, the NW¼NW¼ and the SW¼NW¼ of Sec. 26, all within Township 7 N., Range 35 E.W.M. More specifically described as Blalock Orchards Adjustment Tract, as shown and

recorded on SP 4-41, SP 4-53, Book 10, page 144, June 5, 2007, County of Walla Walla, State of Washington. Also Blalock Orchards Cockerline parcel, as shown and recorded on SP4-41, SP4-53, Book 9, Page 167, October 28, 2004, County of Walla Walla, State of Washington.

Table 1 GW 398-D(A) Existing and Proposed Attributes

Attributes	Existing	Proposed
Name	Cheryl Scholl and Michael Lasher	same
Priority Date	September 15, 1939	same
Instantaneous Quantity: Qi gpm	30.31	same
Annual Quantity: Qa (acre-feet/yr)	15.76	same
Purpose of Use	Irrigation	same
Place of Use: for the irrigation of 13.83 acres	The place of use is 13.83 acres within a parcel # 350726220009 (which is 20.75 acres), and within portions of the NE¼NE¼ and the SE¼NE¼ of Sec. 27, the NW¼NW¼ and the SW¼NW¼ of Sec. 26, all within Township 7 N., Range 35 E.W.M. More specifically described as Blalock Orchards Adjustment Tract, as shown and recorded on SP 4-41, SP 4-53, Book 10, page 144, June 5, 2007, County of Walla Walla, State of Washington. Also Blalock Orchards Cockerline parcel, as shown and recorded on SP4-41, SP4-53, Book 9, Page 167, October 28, 2004, County of Walla Walla, State of Washington.	same
Point of Withdrawal	SE¼SE¼ of Sec.22, T7N, R35E.W.M.	NW¼NW¼ of Sec 26,T7N, R35EWM.

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 Walla Walla Daily Union-Bulletin, a daily newspaper for the County of Walla Walla, during the weeks of September 8th and September 15th, 2006. 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.

- 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 2250 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 2,250 gallons per minute, 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.*

RCW 90.44.100 allows Ecology to amend a ground water permit to (1) allow the user to construct a replacement or additional well at a new location outside of the location of the original well, or to (2) change the manner or place of use of the water. When changing or adding points of withdrawal to groundwater rights (RCW 90.44.100), the wells must draw from the *same body of public groundwater*.

INVESTIGATION

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

- Change application for GW 398-D(A).
- 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 surface water rights WWRAC 590(B) and WWRAC 731(B), and Ground Water Certificates 398-D and 4082-A, prior to the administrative divisions of these rights in 2013.

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 120 acres which covered the place of use of the original ground water rights: 398-D and 4082-A. From 2007 to 2012 Mr. Ted Reid planted and harvested Mr. Cockerline's land as the contract famer. In 2013, Mr. Cockerline farmed part of his own land, and alfalfa was planted as the only crop in 2013. Crop records submitted from 1998 to 2010 show crops have been rotated; they include pasture, alfalfa, wheat, barley, and oats. The irrigation system was set up using a handline piping system and sprinklers.

Dan Tolleson took a GPS reading for the proposed Scholl/Lasher well which was installed in 2006. This new well was proposed as an additional POW for existing groundwater rights 398-D and 4082-A, prior to the administrative division of these rights in 2013. The GPS reading was N46.060281; W118.4092502. This POW has not been in use since the well was installed in 2006, and is pending authorization through Ecology's issuance of this change ROE.

At the time of the site visit, a pumping system was online. The water meter serial number is 1200234. Pumping or metering records were not provided at the time of our visit.

Other Water Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing water rights surrounding the project's place of use. The search focused primarily on Sections 26 and 27, Township 7 N., and Range 35 E.W.M. where the Scholl/Lasher parcel occupies approximately five acres (in Sec. 27) , and 15.75 acres (in Sec. 26). The Table below lists those water rights that overlap some of the place of use of Superseding Certificate 398-D(A).

Table 2 Summary of Water Rights Overlapping POU with 398-D(A)

Water right #	Priority date	Recorded name	Purpose of use	Source water	Place of use
4082-A(A)	Feb. 8, 1960	Scholl/Lasher	Irrigation	Same well	Same as 398-D(A)
G3-29617	Jan. 24, 1994	Blalock Orchard District No. 12	Municipal	A well	70 connections in Service area
WWRAC 396	1892	Blalock Irrigation District No. 3	Irrigation	Mill Creek	369.66 acres within the District
WWRAC 621	1904		Irrigation	Mill Creek	247.44 acres within the District
WWRAC 636	1904		Irrigation	Spring branch	14.1 acres within the District
WWRAC 649	1904		Irrigation	Lower Butcher Creek	5 acres within the District

4082-A(A): This is a ground water right that is supplemental (additive Qi quantities) to 398-D(A), and is appurtenant to the same place of use.

G3-29617: This is a municipal water right. The Blalock Orchard District #12 provides domestic water to 70 connections. The added new well for the subject project will not interfere with the Water District water usage. The two source wells are about ¾ mile apart.

WWRAC 396, 621, 636, 649: These four adjudicated surface water rights belong to the same water right holder: Blalock Irrigation District #3. Their combined irrigated acres are approximately 500 acres and overlap with the POU of 398-D(A). The District diverts water from different surface water sources. The changes proposed in this Report of Examination (ROE) to the subject water right will not interfere, or have any impact to the District's ability to provide water to its customers.

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

Historical Beneficial Use

During the period that this change application was waiting to be processed by Ecology, the applicant also filed a trust application for Certificate 398-D in 2009, and a subsequent trust application for the supplemental right 4082-A in 2010. These change applications were processed together starting in 2013, so that evaluations and conclusions regarding all proposed changes would be consolidated and decisions being made would be consistent.

Two separate ROEs were issued in 2013 for the applications to place a portion of Certificates 398-D(A) and 4082-A(A) into the State Trust Water Program. Table 3 lists the quantities of the two certificates that were placed into Trust and the quantities that remain for irrigation under each of the two water rights.

Verified Boundary for Cert 398-D & 4082-A with 7/1/1996 and 2011 Photo Images

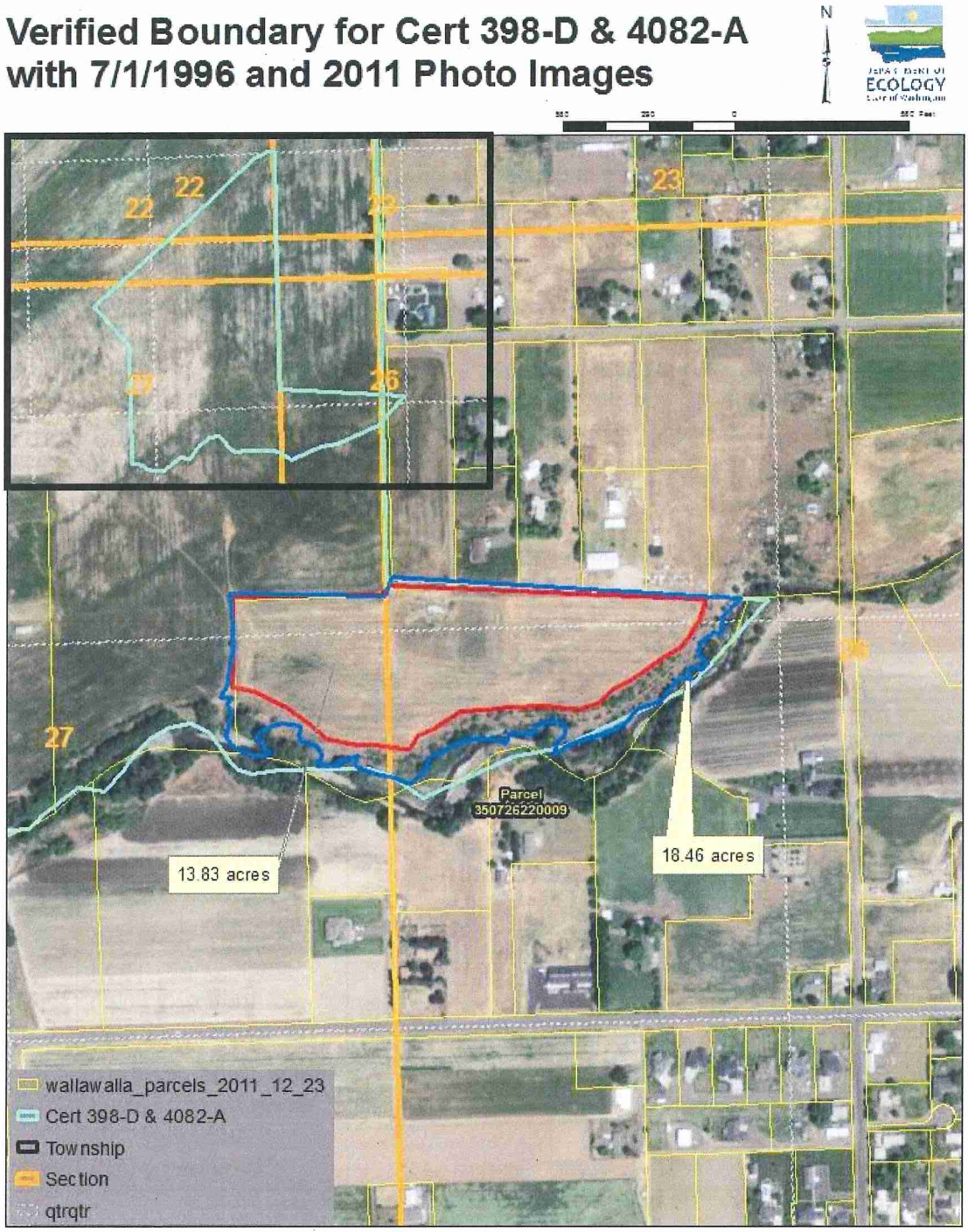


Table 3 Original, Trust Water and Remaining Irrigation Rights For Certificates 398-D(A) and 4082-A(A)

Water Right	Superseding Certificate Quantity	Relinquished Quantity	Trust Water Program Quantity	Remaining Right Quantity
398-D(A)	Qa: 32.66 ac-ft Qi: 40.8 gpm Parcel: 20.75 acres Irri area: 20.41 acres	Qa: 10.38 ac-ft Qi: 0	Qa: 16.9 ac-ft Qi: 10.49 gpm	Qa: 15.76 ac-ft Qi: 30.31 gpm POU: 14.85 acres Irri: 13.83 acres
4082-A(A)	Qa: 77.76 ac-ft Qi: 77.76 gpm POU: 20.75 acres Irri. area: 19.44 acres			Qa: 50.48 ac-ft (less any water withdrawn under 398-D(A) Qi: 77.76 gpm POU: 14.85 acres Irri: 13.83 acres
Total	Qa: 77.76 ac-ft Qi: 118.56 gpm Irri area: 20.41 acres			Qa: 50.48 ac-ft Qi: 108.07 gpm Irri.: 13.83 acres

Hydrologic/Hydrogeologic Evaluation

John Covert, Ecology Eastern Regional lead Hydro-geologist, provided the following analysis of ground and surface water in the project area:

The original well (398-D) authorized for use is located within the SE¼SE¼ Section of 22, T.7.N., R. 35 E.W.M. It was dug in 1939 to a depth of 30 feet. It was completed in a water bearing gravel. It had a static water level of 12 feet. The new well, located within the NW¼NW¼ of Section 26, T. 7 N., and R. 35 E., was drilled in 2006 to a depth of 78 feet. It was completed in unconsolidated sands and gravels. It had a static water level of 14 feet. Both wells are completed in the gravel aquifer of the Walla Walla basin and are completed within the same body of public groundwater.

The well proposed to be authorized for use for Certificates 398-D(A) and 4082-A(A) is located approximately 1500 to 2000 feet from Mill Creek, which is a tributary to the Walla Walla River. All of the water rights to these streams were adjudicated in the early 1900's, indicative of the long history of water shortages during the primary irrigation season for this basin. According to amended WAC 173-532 for WRIA 32 in 2007, Ecology established instream flow rules and a closure to new consumptive appropriations on the Walla Walla River and its tributaries. 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]). Based on the hydrogeology of the basin, gravel aquifers are hydraulically connected to surface waters in the basin WAC 173-532-040. 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]).

FINDINGS

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).

Certificate 398-D(A) and supplemental groundwater Certificate 4082-A(A) have been exercised at the current place of use since the 1980s. The change application for the subject water right was originally submitted to obtain authorization for a new source well for Certificate 398-D. The amended application now applies solely to administratively split Superseding Certificate 398-D(A). Past irrigation practice and withdrawal and beneficial use of water under this right has not caused any impairment to other water users in the vicinity, so exercise of the right in a similar manner should not cause impairment of any water rights in the future.

No Enhancement of the Original Certificate

No withdrawal of water over and above what has been historically put to beneficial use would be authorized through approval of this change.

Public Interest Considerations

There has been no public expression of protest or concern regarding the subject proposal, and no findings through this investigation indicate that there would be any detrimental impact to the public welfare through issuance of the proposed change to Certificate 398-D(A).

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 to Certificate 398-D(A), it is the conclusion of this examiner that irrigation is a beneficial use of water, there will be no enhancement of the existing right, the change will not cause impairment of existing water rights, the change is not contrary to the public interest, and the new well will withdraw water from the same body of public groundwater as the existing well.

RECOMMENDATIONS

Based on the above investigation, analysis and conclusions, I recommend the requested change to Certificate 398-D(A) be approved as follows:

Qi = 30.31 gpm
Qa = 15.76 acre-feet/year
Irrigated acres = 13.83

Point of Withdrawal = NW¼NW¼ section 26, T. 7 N., R. 35 E.; Latitude: 46.060281 and Longitude:-118.4092502.

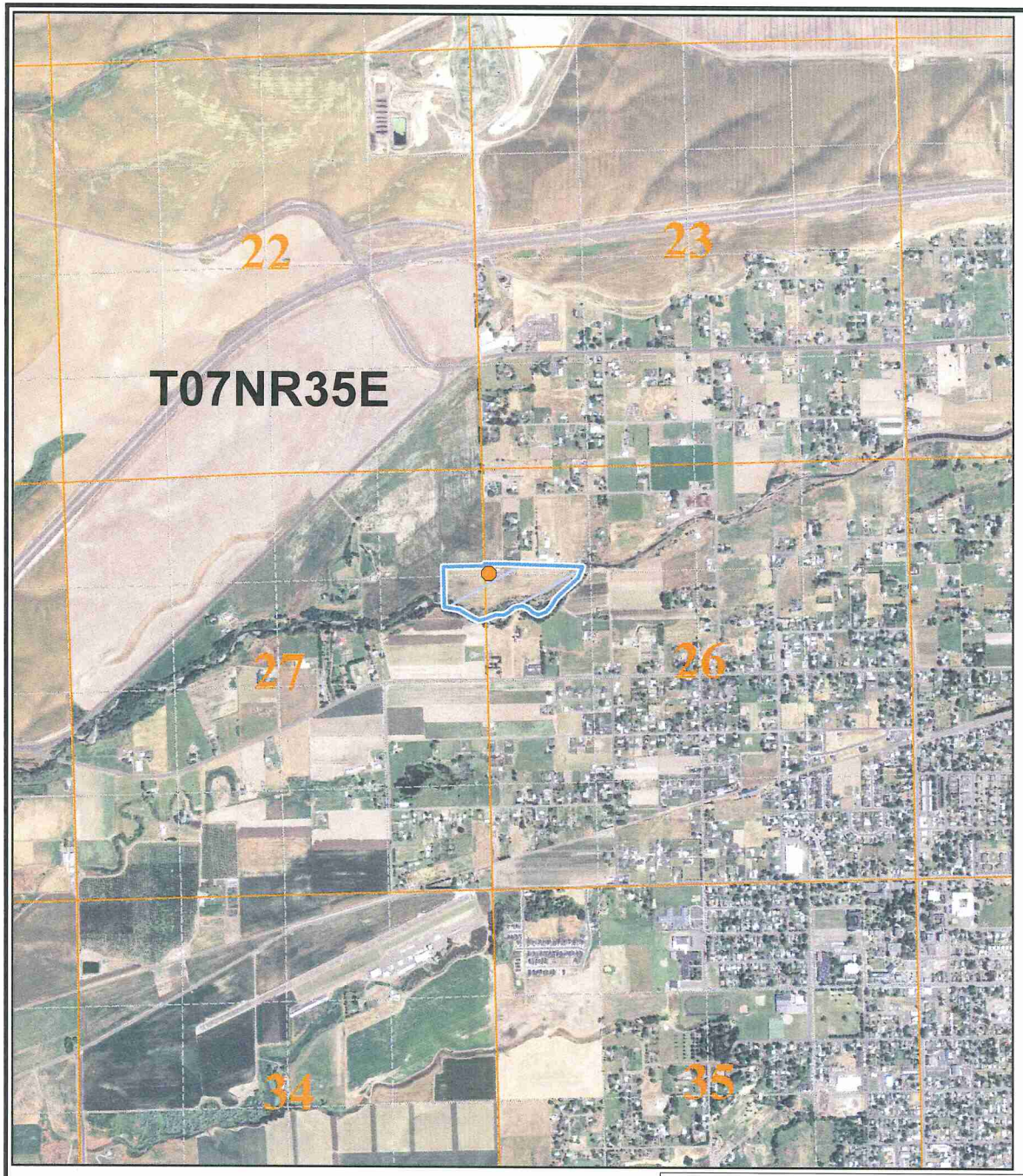
Place of Use = as described on page 1 of this document

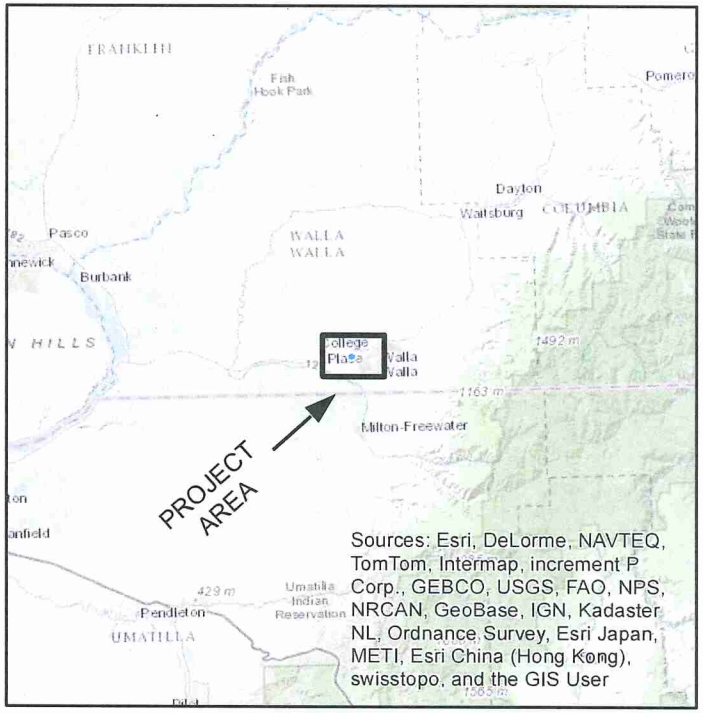
2/18/2014

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.

Cheryl Scholl and Michael Lasher
398-D(A)
T07N/R35E





Basemap - (ESRI US Topographic Maps)

Legend

Authorized Place of Use

Townships

Sections

Authorized Point of Withdrawl

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: 1/21/2014

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