



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

**REPORT OF EXAMINATION**  
*Change of: Point of Diversion*  
**WRTS File No. CS4-00334CTCL**

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
April 30, 1909	00334		

NAME		
Shawn Fagalde and Dale Wilson		
ADDRESS/STREET	CITY/STATE	ZIP CODE
200 South Elliot Street	Ellensburg, WA	98926-3072

**PUBLIC WATERS TO BE APPROPRIATED**

SOURCE		
Reecer Creek		
TRIBUTARY OF (IF SURFACE WATERS)		
Yakima River		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
0.42		62.0

QUANTITY, TYPE OF USE, PERIOD OF USE  
60.0 acre-feet per year for irrigation of 19 acres from April 1 to October 31 each year;  
2.0 acre-feet per year for stock watering, year round.

**LOCATION OF DIVERSION/WITHDRAWAL**

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL  
Approximately 1,500 feet east and 300 feet north from the southwest quarter corner of Section 34, being within the SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 34, T. 18 N., R. 18 E.W.M.

SOURCE	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
Reecer Creek	34	18 N.	18 EWM.	39	Kittitas
PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM		
17-18-02032-0003	47.00043	-120.57571			

**LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED**  
[Attachment 1 shows location of the authorized place of use and point of diversion]

W<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 2, T. 17 N., R. 18 E.W. M.

**DESCRIPTION OF PROPOSED WORKS**

Water from Reecer Creek will be conveyed through a closed pipe system and pumped to the place of use. Pump intake will be properly screened.

**DEVELOPMENT SCHEDULE**

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Complete	Complete	October 31, 2011

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## PROVISIONS

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### Measurements, Monitoring, Metering and Reporting.

1. An approved measuring device shall be installed and maintained for each of the sources authorized by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173. <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>
2. Water use data shall be recorded weekly and maintained by the property owner for a minimum of five years. The maximum monthly rate of diversion and annual total volume shall be submitted to the Department of Ecology (Ecology) by January 31 of each calendar year. Ecology is requiring submittal of monthly meter readings to collect seasonal information for water resource planning, management and compliance.
3. Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.
4. 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. <http://www.ecy.wa.gov/pubs/ecy070170.pdf>
5. WAC 173-173 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 Requirement". <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>
6. 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, diversions, measuring devices and associated distribution systems for compliance with water law.

### Provisions set forth by the Conditional Final Order, Washington State Dept. of Ecology v. James J. Acquavella, et al.

7. It has been ordered through the Yakima Adjudication that all water rights confirmed in subbasin No. 7 shall have already installed an approved metering or measuring device at each confirmed surface water diversion point. The metering or measuring device must comply with the requirements contained in WAC 173-173-090 through 175. Please refer to Yakima County Superior Court Order No. 77-2-01484-5 for complete metering, measuring, and reporting requirements for all subbasins (1-31) in Benton, Kittitas, and Yakima Counties.

### Department of Fish and Wildlife

8. 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://www.wdfl.wa.gov/reg/regions.html>

### Proof of Appropriation

9. The water right holder shall 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.

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## FINDINGS OF FACT AND ORDER

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Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not be detrimental to existing rights.

Therefore, I ORDER approval of the recommended change in point of diversion under Change Application No. CS4-00334CTCL, subject to existing rights and the provisions listed above.

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior

Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2<sup>nd</sup> Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
- Facts that demonstrate the appellant is entitled to obtain judicial review;
- The appellant's reasons for believing that relief should be granted; and
- A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed**. The appeal must be filed in the same manner as described above.

Signed at Yakima, Washington, this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

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Robert F. Barwin  
Acting Section Manager  
Water Resources Program/CRO

**BACKGROUND**

**Description and Purpose of Proposed Change**

On May 15, 2007, Shawn Fagalde and Dale Wilson filed a Water Right Change application, to change the point of Diversion (POD) for Court Claim No. 00334. The application was accepted as complete on May 22, 2007 and assigned identifier CS4-00334CTCL. The purpose of this application is to change the authorized POD to support fish benefit in lower Reecer Creek and provide a POD location that is more convenient for the applicants. The applicants propose to divert water from Reecer Creek into a closed pipe system to irrigate land authorized in Court Claim No. 00334. This transfer will result in a more efficient use of available water for irrigation and better fish habitat utilization through passage and screening upgrades.

WAC 173-152-050(3)(a) provides that Water Right Change Applications may be processed prior to applications submitted at an earlier date, provided that the proposed change would substantially enhance the quality of the natural environment.

On May, 2007 the Department of Ecology received a letter from the Kittitas County Conservation District, stating this application for change is part of a Salmon Recovery Funding Board (SRFB) project by the Kittitas County Conservation District, to make Reecer Creek fish screened and passable. Currently, the diversion is not screened and does not prevent entrainment of fish, nor is the check structure passable by juvenile salmonids. From the diversion on Reecer Creek, the water travels nearly a mile in earthen ditches before reaching the applicants property. The Kittitas County Conservation District currently has a grant from the SRFB to address unscreened and impassable diversions at the two lowest points on Reecer Creek; this includes the Fagalde/Wilson diversion. Part of this project involves moving the authorized POD for the Fagalde/Wilson water to a point in the SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 3, T. 18 N., R. 18 E.W.M. The Fagalde/Wilson diversion would then be pumped and delivered via a closed pipe system. Part of this project includes properly screening the pump intake. As part of the overall project, moving this POD will eliminate one diversion site that would require fish passage construction. Completion of the SRFB grant funded project will result in protection of fish from entrainment in the lower half mile of Reecer Creek.

**Attributes of the Claim and Proposed Change**

**Table 1**

Summary of Proposed Changes to Water Claim No. CS4-00334CTCL

<i>Attributes</i>	<i>Existing</i>	<i>Proposed</i>
Name	Shawn Fagalde/Dale Wilson	No change
Priority Date   Date of Application for Change	April 30, 1909 May 15, 2007	No change
Instantaneous Quantity	0.40 cfs for irrigation 0.02 cfs for stock watering	No change
Annual Quantity	60 acre-feet/yr for irrigation 2.0 acre-feet/yr for stock watering	No change
Source	Reecer Creek	No change
Point of Diversion/Withdrawal	NW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub> of Section 3, T. 17 N., R. 18 E.W.M.	SW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub> of Section 34, T. 18 N., R. 18 E.W.M.
Purpose of Use	Irrigation of 19.0 acres	No change
Period of Use	April 1–October 31 (irrigation) Year Round (stock water)	No change
Place of Use	W <sup>1</sup> / <sub>2</sub> NW <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub> of Section 2, T. 17 N., R. 18 E.W.M	No change

## Legal Requirements for Proposed Change

- **Statement of Authorities**

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.

Ecology cannot adjudicate a claim or a water right; only the superior courts have this authority. However, the Washington Supreme Court has held that Ecology, when processing an application for change to 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.*

- **Public Notice**

Notice of the application was published in the Ellensburg Daily Record on September 19 and September 26, 2008. Ecology received the *Affidavit of Publication* on October 15, 2008. The legal notice re-published on December 23 and December 30, 2008, due to the newspaper's error, regarding the nature of historic place of use, and Ecology received the *Affidavit of Publication* on February 9, 2009. No comments or protests were received during the 30-day comment period after the first and second publications.

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

According to WAC 197-11-800(4) and RCW 43.21C.035, Change Application No. CS4-00334CTCL is categorically exempt because the diversion is for an irrigation purpose and is less than 50 cfs.

## INVESTIGATION

The following information was obtained from a December 19, 2008 site visit, by Ecology staff Breean Zimmerman and Farida Leek, accompanied by Mark Crowley of the KCCD. The applicants were not present during the site visit.

To evaluate the change application for Court Claim No. 00334, the following were considered:

- The Washington State Water Code, administrative rules and policies.
- Kittitas County Conservation District Letter dated May 9, 2007.
- Conversations with Kittitas County Conservation District, Mark Crowley.
- Existing water rights on file.
- Other recorded water rights in the vicinity.
- Notes from site visit on December 19, 2008.
- Topographic and local area maps.
- Aerial photographs of the site.
- Yakima River Basin Water Right Adjudication Report of Referee.
- Affidavits submitted by the applicants.
- Kittitas County Desert Claim Wind Power Projection Final EIS
- Department of Ecology flow summary of streams and creeks to the Upper Yakima River (2000).

## History of Water Use

The Fagalde and Wilson property is located in the Yakima River Basin, within Water Resources Inventory Area (WRIA) No.39. The subject property is located northeast of Interstate 90, surrounded by the southwest portion of the City of Ellensburg.

According to Yakima River Basin Water Right Adjudication Report (Second Supplemental Report of Referee, Re: Subbasin No.7-Reecer Creek, Volume 23 and 23 B) a statement of Claim No. 00334 was first submitted by Carl and Clara Vandenberg for the use of waters from Reecer Creek. On December 17, 1991, Russ Longacre was substituted for the Vandenberg. Later on October 13, 1998, Shawn Fagalde was substituted for Russ Longacre.

The Referee recommended that a right be confirmed under the Prior Appropriation Doctrine with an April 30, 1909, date of priority for the diversion of 0.40 cfs, 60 acre-ft/year from Reecer Creek for the irrigation of 19.0 acres and 0.02 cfs, 2 acre-ft/year for stock watering. The Superior Court of the State of Washington for Yakima County authorized this water right in a Conditional Final Order signed on October 25, 2001.

Historically property associated with this water right has been flood irrigated for pasture grass. Water is diverted from Reecer Creek into an open ditch which feeds another open ditch and then is delivered to the authorized POU for Court Claim No. 00334. The Reecer Creek diversion is located at a point in the SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 34, T. 18 N., R. 18 E.W.M. Based on information provided by Mark Crowley during the site visit, the authorized POD may have never been used.

There is no metering data to show historic beneficial use. Based on the information received from Mark Crowley, Fagalde/Wilson's livestock drink water from the irrigation ditch and unnamed spring located in the southwest corner of the property. At the time of field visit there were 5 horses on the ranch.

Aerial photographs used in conjunction with ArcGIS v9.3 were used to determine the extent of the irrigation on the property. Examination of geo-referenced aerial photos from 2003 to 2006 and conversations with Mark Crowley, during the site visit, indicate that 19 acres have been irrigated.

### **Proposed Use**

Upon completion of this project, water will be applied to the 19.0 acres using one wheel line and three pods (k-lines). The lawn immediately surrounding the residence located within the POU will be irrigated using sprinklers, the northern half of the property will be irrigated using a wheel line, and the southern half of the property will be irrigated using three pods (k-lines).

From evaluation of aerial photos and information obtained during the site visit, it is tentatively determined the water right has been put to beneficial use to the extent and validity for which it was authorized. This proposed change to convert from an open ditch to a closed pipe system to deliver water will potentially increase conveyance efficiency due to decreased seepage and evaporation losses.

On August 5, 2008 the Department of Ecology received another letter from the Kittitas County Conservation District. The point of diversion were better defined, as 1,500 ft east and 300 feet north from the southwest quarter corner of Section 34, being within the SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 34, T. 18 N., R. 18 E. W. M.

### **Other Rights Appurtenant to the Place of Use**

There are no other water rights that are appurtenant to the property.

### **Impairment Considerations**

There were two points of diversions considered when looking at potential for impairment. One has the same location as the diversion proposed through this water right change which is located in the SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 34, T. 18 N., R. 18 E.W.M. The other point is located in the NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Section 3, T. 17 N., R. 18 E.W.M. Both these POD's are associated with Court Claim No. 1724-7 currently owned by Suncadia LLC.

Reecer Creek was studied by the Department of Ecology in a flow summary of streams and creeks tributary to the Upper Yakima River (2000). This study determined daily average discharge of Reecer Creek ranged from 68.0 cfs to 4.0 cfs. Conversation with Mark Crowley also confirmed water at the point of diversion is rarely limited by physical availability, but has occurred in very dry years.

The Fagalde/Wilson water right has a priority date post 1905, therefore, it is subject to curtailment during water short years. The source of water, Reecer Creek, will not change. Reecer Creek will not experience any decrease in flow as a result of the point of diversion change.

### **Consideration of Protests and Comments**

No protests or comments were received regarding this change application.

## **CONCLUSIONS**

The author finds that the water right under Court Claim No. 00334 is in the amount of 0.42 cfs, 62 acre-feet per year for irrigation of 19 acres and up to 2 ac-ft/yr for stock water and is eligible for change from the authorized POD located in the NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> of Section 3, T. 17 N.,R. 18 E.W.M. to a POD located in the SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 34, T. 18 N., R. 18 E. W.M.

Approval of this change request will not impair existing water rights.

**RECOMMENDATIONS**

Based on the above investigation and conclusions, I recommend that the request for change to Court Claim No. 00334 be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, et seq.

**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:

- 0.42 cubic feet per second
- 62.0 acre-feet per year
- Irrigation and stock watering

**Point of Diversion**

SW<sup>1</sup>/<sub>4</sub>SE <sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, Section 34, Township 18 N., Range 18 E. W. M.

**Place of Use**

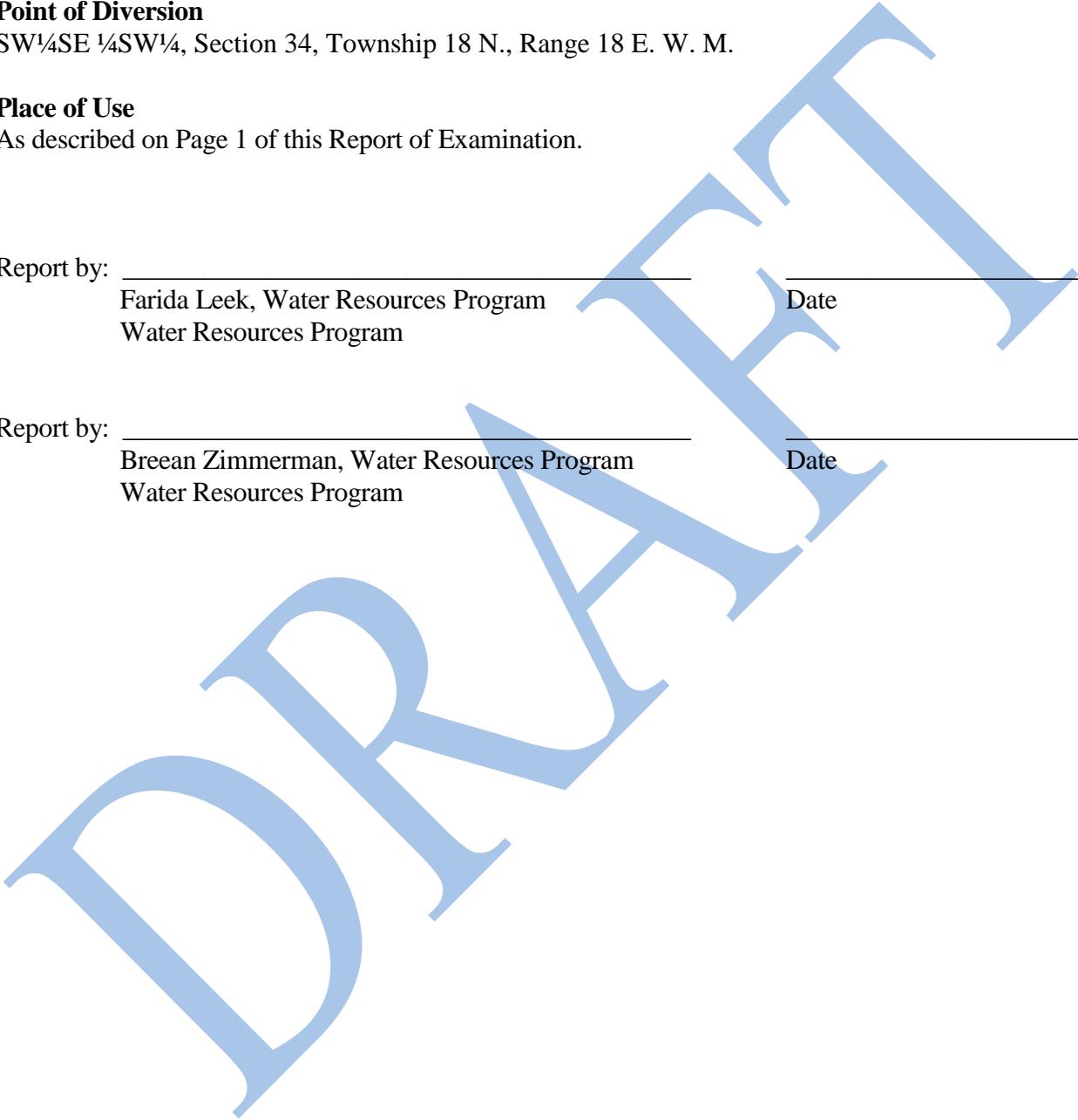
As described on Page 1 of this Report of Examination.

Report by: \_\_\_\_\_  
 Farida Leek, Water Resources Program  
 Water Resources Program

\_\_\_\_\_ Date

Report by: \_\_\_\_\_  
 Breean Zimmerman, Water Resources Program  
 Water Resources Program

\_\_\_\_\_ Date



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Attachment 1: Map

