

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 May 31, 1983	APPLICATION NUMBER G3-27546	PERMIT NUMBER G3-27546P	CERTIFICATE NUMBER
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NAME Gerald H. Filan			
ADDRESS (STREET) 3334 Mill Creek Road	(CITY) Walla Walla	(STATE) Washington	(ZIP CODE) 99362

cc: Thomas Filan, 296 Seven Mile Road, Walla Walla, Washington 99362

PUBLIC WATERS TO BE APPROPRIATED

SOURCE A Well		
TRIBUTARY OF (IF SURFACE WATERS)		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE 40	MAXIMUM ACRE FEET PER YEAR 26

QUANTITY, TYPE OF USE, PERIOD OF USE

40 gallons per minute; 26 acre feet per year: 24 acre feet per year from January 1 to December 31, each year, for the irrigation of 5 acres and 2 acre feet, per year, continuously, for domestic supply for one home

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION—WITHDRAWAL

450 feet North and 550 feet West from the S¹/₄ corner of Section 16

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) SE ¹ / ₄ SW ¹ / ₄	SECTION 16	TOWNSHIP N 7	RANGE, (E. OR W.) W.M. 37 E.	W.R.I.A. 32	COUNTY Walla Walla
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RECORDED PLATTED PROPERTY

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

5 acres within: Lot "A" of that certain short plat filed January 29, 1996, in volume 3 of short plats at page 72 in the office of the auditor of Walla Walla, Washington. Together with the West 232.09 feet of parcel "A" of that certain short plat filed March 28, 1997, in volume 3 of short plats at page 129 in the office of the Auditor of Walla Walla County, Washington; south of Mill Creek, being within Section 16, T. 7 N., R. 37 E.W.M.

DESCRIPTION OF PROPOSED WORKS

Well and pump for irrigation and domestic supply.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: Started	COMPLETE PROJECT BY THIS DATE: May 1, 2010	WATER PUT TO FULL USE BY THIS DATE: May 1, 2011
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REPORT

BACKGROUND

An application for change/transfer was submitted by Gerald Filan of Walla Walla, Washington, to Ecology on July 1, 2002. Gerald Filan proposes to change the place of use and change the point of withdrawal as granted under Ground Water Permit No. G3-27546P.

Ground Water Permit No. G3-27546P

Name on Permit:	Gerald H. Filan
Priority Date:	May 31, 1983
Original Source:	A well
Purpose of use:	Irrigation and group domestic supply
Period of use:	Each year, continuously
Place of use:	Approximation: portions of the west 1066 feet of the SW $\frac{1}{4}$ of Sec. 16, T. 7 N., R. 37 E.W.M., less right of ways

Proposed Change/ Transfer:

Name of Applicant:	Gerald Filan
Date of Application for Change/Transfer:	July 1, 2002
Point of Withdrawal/Diversion:	Change to existing well
Purpose of Use:	No change
Period of Use:	No change
Place of Use:	Approximation: portions of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Sec. 16, T. 7 N., R. 37 E.W.M., lying south of Mill Creek and west of Seven Mile Road; excepting therefrom the west 1066 feet thereof

Notice

A notice of application was duly published in accordance with RCW 90.03.280 in the Walla Walla Union Bulletin on August 17 and August 24, 2005 and no protests were received.

SEPA

This application is categorically exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21C RCW due to the fact that the water quantities proposed for change are less than 2,250 gallons per minute.

INVESTIGATION

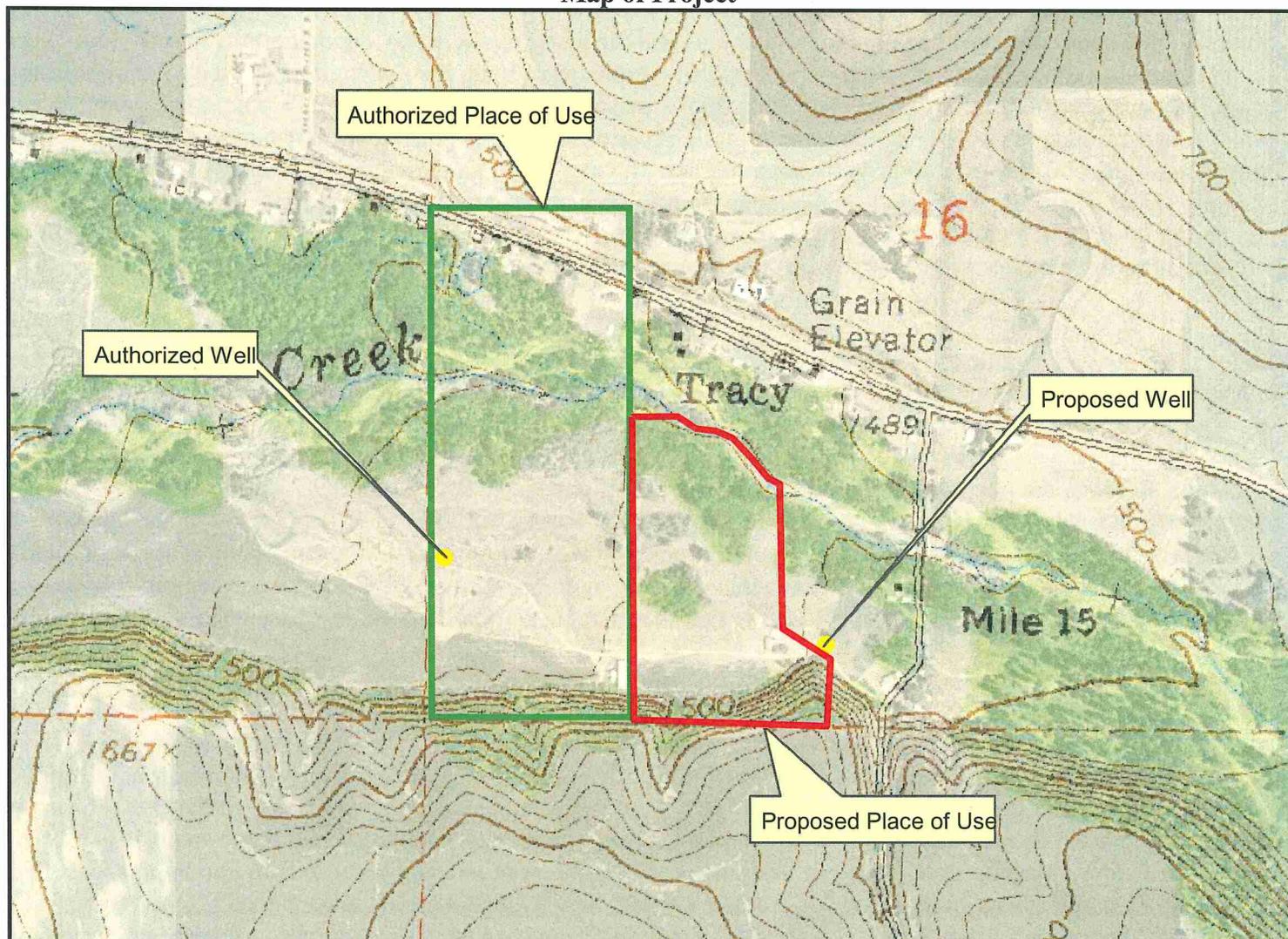
In considering the proposed changes/transfers, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Ground Water Permit No. G3-27546P and other water rights/claims/applications in the vicinity; (3) water well reports for the applicant's wells, and other wells in the vicinity; (4) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide (WA210-VI-WAIG, October 1985) and; (5) discussions with Department of Ecology regional program staff.

A site visit of the project was conducted on August 31, 2005 by Dan Tolleson. The proposed location for change is located approximately 4 miles east of Walla Walla, Washington. The water right permit is located in the Walla Walla Basin and is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32.

The place of use authorized under Ground Water Permit No. G3-27546P is described as being within portions of the west 1066 feet of the SW $\frac{1}{4}$ of Sec. 16, T. 7 N., R. 37 E.W.M., less right of ways. This parcel of land is bisected in the northern half by Mill and Titus Creek. The area adjacent to both creeks is covered by extensive riparian vegetation. The land to the south of the creeks and its riparian vegetation is relatively flat and is partially dry land farmed. The southern border is steep terrain at the base of a bluff. The land to the north of the creeks and its riparian vegetation has several houses and is bisected by Mill Creek Road. Much of the land adjacent to Mill Creek Road is not owned by Mr. Filan. (See below)

The proposed place of use is directly to the east of the authorized place of use. The applicant proposes to move five acres of irrigation and domestic supply to portions of the S½SW¼ of Sec. 16, T. 7 N., R. 37 E.W.M., lying south of Mill Creek and west of Seven Mile Road (excepting therefrom the west 1066 feet thereof). This area is quite large and is owned by several people other than Gerald Filan. According to the applicant, he only intends to move five acres of the water right and domestic supply to a parcel of land which is owned by him and Thomas Filan (known as Lot "A" of Filan Short Plat). Most of the land located in the northern portion of this lot is covered by extensive riparian vegetation from Mill Creek. Much of the center and southern portions of the lot are pasture land. A single home is also located toward the southeasterly boundary. The southern boundary is steep terrain at the base of a bluff. (See below.)

Map of Project



One well was authorized under this permit which has been constructed. This well site does not have power and is not properly capped under WAC 173-160. The closest power line appears to be approximately 3,000 feet to the east of the well. The proposed well is constructed and is currently in use for domestic supply. This proposed well is not located on land owned by Mr. Filan.

Well Specifications

Well	Status	Diameter (in)	Depth (feet)	Meter Status
Authorized	Offline: no pump or works	8	155	n/a
Proposed	Online: in use	8	265	Required

EVALUATION OF THE WATER RIGHT AND BENEFICIAL USE ANALYSIS

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.

Ground Water Permit G3-27546P was authorized on January 29, 1986. The permit was issued with the following development schedule: Beginning of Construction due on April 1, 1987, Completion of Construction due on April 1, 1988 and Proof of Appropriation due on April 1, 1989.

Beginning of Construction was received on April 1, 1987 and Completion of Construction was received on March 9, 1988. Four extensions for Proof of Appropriation were requested and authorized. A completed Proof of Appropriation form was received on March 22, 1993.

On June 25, 2002 Bill Neve and Lynn Maser conducted a field exam for Proof of Appropriation. During that investigation it was discovered that none of the permit had been developed within the authorized place of use. At that time five acres of irrigation and domestic supply had been developed without authorization on the adjacent lot east of the authorized place of use. It appears that the owner of the permit did not realize he was outside of the place of use authorized under the permit. A change/transfer application was submitted on July 1, 2002, which requested to change the place of use and the point of withdrawal to the land actually developed. This change was submitted with the understanding that five acres of irrigation, 40 gallons per minute and domestic supply for two homes were available for change, and the remainder of the permit was cancelled.

Aerial photographs were reviewed to verify the extent of historical development and beneficial use. It appears that none of the authorized place of use has been irrigated other than a small garden located near Gerald Filan's house. This garden is reportedly irrigated under Walla Walla Adjudicated Certificate No. 828 (see Report of Exam dated September 29, 2004). It appears that several acres were developed for irrigation and a house was built within the proposed place of use.

As with any water right in the permit/development phase it is required that "due diligence (RCW 90.03)" must be shown to the project. It is also required that any extensions of a permit must be done in "good faith"; which is the completion of a project in a timely fashion. It appears that 55 out of the 60 acres of irrigation authorized under this permit have not been developed in the last nineteen years since the permit was issued. Therefore, the undeveloped 55 acres are cancelled.

The maximum authorized water duty of this permit is approximately 4.73 acre-feet per year, per acre. Historically, this permit has been used to irrigate pasture. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that 2.9 acre feet, per acre, for pasture is required in the Walla Walla area. At a 70% efficiency rate of application, the approximate maximum water duty, for crops listed above, is 4.1 acre feet per year, per acre. It appears that the remaining 0.63 acre feet per acre may not be needed for this project and may be removed from the permit when a certificate is issued.

It appears that the proposed well has been used to supply two homes just to the east of the authorized place of use. Domestic supply is estimated at approximately 2 acre feet, per home, per year. Under this change only the house that is located within the proposed place of use (Lot "A" of Filan Short Plat) will have domestic supply from this permit. The other house that withdraws water from the proposed well appears to withdraw water under the domestic exemption. Therefore, it appears that a total of two acre feet have been developed under this permit for single domestic supply. The three remaining acre feet for group domestic supply have not been developed under this permit and are cancelled.

HYDROGEOLOGIC ANALYSIS

Applications for change of water right permits and certificates are governed by RCW 90.44.100, which states in part that the holder of a valid right to withdraw public ground waters may, without losing his priority of right, construct wells at a new location in substitution for, or in addition to, those at the original location, or he may change the manner or the place of use of the water. Any amendment shall be issued by the Department of Ecology (Ecology) only under the conditions that: (1) an additional or substitute well or wells shall tap the same body of public ground water as the original well or wells; (2) use of the original well or wells shall be discontinued upon construction of the substitute well or wells; (3) the construction of an additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (4) all existing water rights shall not be impaired. Ecology may specify an approved manner of well construction and shall require a showing of compliance with the provisions of the amendment.

The point of withdrawal for this change application is located within the Walla Walla Basin, a hydrologic sub basin of the Columbia Plateau. This basin developed as a structural trough within the Columbia River Basalt Group that was later overlain by unconsolidated sediments. The lowermost sediment unit is referred to as the "blue clay" which rests directly on the basalt basement rock. Directly overlying the "blue clay" and interfingering with it, is the gravel unit. The various unconsolidated gravels serve as the aquifer material which forms the uppermost, unconfined, water table aquifer. Aquifers are also present within the consolidated, Tertiary-aged, Columbia River Basalt Group. These predominately confined basalt aquifers are separated from the gravel aquifer by the "blue clay" unit. Basalt aquifers in the Walla Walla Basin are part of a large ground water reservoir occurring in a thick series of basalt flows known as the Columbia River Basalt Group. The thickness of the basalts varies from a few hundred feet at the Spokane River to over 10,000 feet in the Pasco Basin.

The Authorized Well is identified as 8" x 155 feet deep. The well was constructed in 1985. The static water level was described as 15 feet below land surface and the land surface elevation is approximately 1460 feet above mean sea level. The well is described as being cased to a depth of 41 feet and sealed to a depth of 20 feet. As constructed this well appears to be developed into the Columbia River Basalt Group.

The Proposed Well is identified as 8" x 256 feet deep. The well was constructed in 1987. The static water level was described as 20 feet below land surface and the land surface elevation is approximately 1480 feet above mean sea level. The well is described as being cased to a depth of 34 feet and sealed to a depth of 20 feet. As constructed this well appears to be developed into the Columbia River Basalt Group.

EXISTING RIGHTS

A review of Ecology records was conducted for existing water rights, permits, and claims in the area surrounding the project. The search focused primarily on Section 16, T. 7 N., R. 37 E.W.M. The review of Ecology records shows four (4) water rights appurtenant to this project.

Appurtenant to the Authorized place of use:

- Walla Walla Adjudicated Surface Water Certificate 828

The above listed water right is designated as possibly being a primary right to portions of this permit. It appears that this adjudicated water right has not been used in the last five years on lands owned by Mr. Filan and is subject to relinquishment. The portion of the water right permit that was possibly supplemental was never developed and is canceled.

Appurtenant to both the proposed and authorized places of use:

- Walla Walla Adjudicated Surface Water Certificate 459

The above listed water right is designated as possibly being a primary right to portions of Ground Water Permit No. G3-27546P. It appears that 1.5 acres of this water right are being used within the northern portion of the authorized place of use of Ground Water Permit No. G3-27546P (See ROE G3-27546P dated September 29, 2004). The portion of this water right permit that was possibly supplemental was never developed and is cancelled. It appears that the proposed place of use does not actually overlap the historically irrigated place of use.

Appurtenant to the proposed place of use:

- Walla Walla Adjudicated Surface Water Certificate 458
- Walla Walla Adjudicated Surface Water Certificate 827

It appears that the proposed place of use does not actually overlap the historically irrigated place of use of the above listed surface water rights. It appears that most, if not all of the above listed adjudicated acres of irrigation are subject to relinquishment due to non use.

(The validity and extent of the above listed water rights and claims are not determined in this report.)

IMPAIRMENT ANALYSIS

“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) 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). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

It appears the Ground Water Permit No. G3-27546P has been partially exercised and beneficially used in the past. The proposed change will not increase the amount of water withdrawn from the aquifer nor will it increase or expand the right.

FINDINGS

There is a water right permit available for change/transfer under Ground Water Permit No. G3-27546P in the amount of 40 gallons per minute for five acres of irrigation and domestic supply.

When considering an application for change to a water right permit, Ecology must determine that the proposed change can be made without detriment or injury to existing water rights. Factors considered when determining potential impact include the following:

No Impairment to Existing Rights

There has been no documented history of pumping interference between existing wells in this area and it is not anticipated that the proposed change/transfer would cause impairment to existing water rights.

No Detriment to the Public Welfare

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.

No Enhancement of the Original Right

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

Same Source of Water

The ground water to be withdrawn is supplied by the same body of public water.

CONCLUSION

It is the conclusion of this examiner that, in accordance with Chapters 90.03 and 90.44, this application for change (to change the place of use, and change the point of withdrawal, as granted under Ground Water Permit No. G3-27546P) will not enlarge the quantity of water historically authorized, nor will it impair existing rights or be detrimental to the public welfare provided the terms and conditions below are followed.

RECOMMENDATIONS

It is recommended that the applicant's request to change the place of use and change the point of withdrawal as granted under Ground Water Permit No. G3-27546P be **approved**, subject to the following provisions:

"That portion of this authorization relating to irrigation is classified as a Family Farm Permit in accordance with Chapter 90.66 RCW (Initiative Measure No. 59). This means the land being irrigated under this authorization shall comply with the following definition: Family Farm - a geographic area including not more than 6,000 acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than 6,000 acres of irrigated agricultural lands in the State of Washington which are irrigated under water rights acquired after December 8, 1977. Furthermore, the land being irrigated under this authorization must continue to conform to the definition of a family farm."

"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."

"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 grown on the number of acres and the place of use specified."

"The water quantities and uses recommended and/or the number of acres to be irrigated may be reduced at the time of issuance of a final water right commensurate with the capacity of the installed system and the uses and/or the number of acres actually irrigated."

"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."

"A certificate of water right will not be issued until a final examination is made."

"The water source and/or water transmission facilities are not wholly located upon the land owned by the applicant. Issuance of a permit by this Department for appropriation of the waters in question does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtainment of such right is a private matter between applicant and owner of that land."

"An approved measuring device shall be installed and maintained for each of the sources identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. Water use data shall be recorded monthly and maintained by the property owner for a minimum of five years, and shall be promptly submitted to Ecology upon request."

The rule above 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."

"All water wells constructed within the State shall meet the minimum standards for construction and maintenance as provided under RCW 18.104 (Washington Water Well Construction Act of 1971) and Chapter 173-160 WAC (Minimum Standards for Construction and Maintenance of Water Wells)."

"Any future pump test data for the new well shall be submitted as it is obtained to the Department of Ecology."

The well originally authorized under this permit (located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 16, T. 7 N., R. 37 E.W.M.) shall be properly capped under WAC 173-160.

“Installation and maintenance of an access port as described in Ground Water Bulletin No. 1 is required. An airline and gauge may be installed in addition to the access port.”

Signed at Spokane, Washington
this ____ day of ____, 2009

DAN TOLLESON
Water Resources Program
Department of Ecology

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