DEPARTMENT OF ECOLOGY
State of Washington

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

Add Point of Diversion
Change Place of Use

**PRIORITY DATE**
January 1, 1892 (class 30)

**WATER RIGHT NUMBER**
401(B)

**MAILING ADDRESS**
Clifford Nesteby, Jr.
4234 Old Milton Highway
Walla Walla, WA 99362

**SITE ADDRESS (IF DIFFERENT)**
4233 Old Milton Highway

## Total Quantity Authorized for Diversion

| MAXIMUM DIVERSION RATE | UNITS | ANNUAL QUANTITY (AF/YR) |
|---|---|---|
| 0.02 | CFS | 3.3 |

## Purpose

| PURPOSE | DIVERSION RATE | ANNUAL QUANTITY (AF/YR) |
|---|---|---|
| Irrigation | 0.013 CFS from 04/01 to 07/01<br>0.010 CFS from 07/01 to 10/01<br>0.020 CFS from 10/1 to 04/01* | 3.3 (non-additive) |

*when allowed in accordance with the Walla Walla Adjudication

| IRRIGATED ACRES | | PUBLIC WATER SYSTEM INFORMATION | |
|---|---|---|---|
| ADDITIVE | NON-ADDITIVE | WATER SYSTEM ID | CONNECTIONS |
| | 0.85 | | |

## Source Location

| COUNTY | WATERBODY | TRIBUTARY TO | WATER RESOURCE INVENTORY AREA |
|---|---|---|---|
| Walla Walla | Big Spring Branch | East Little Walla Walla River | 32-Walla Walla |

| SOURCE FACILITY/DEVICE | PARCEL | TWP | RNG | SEC | QQ Q | LATITUDE | LONGITUDE |
|---|---|---|---|---|---|---|---|
| Pump Station | 350614210042 | 6 N. | 35 E. | 14 | SE¼NW¼ | 46.0011 | -118.4033 |
| | | | | | | Datum: NAD83/WGS84 | |

## Place of Use (See Attached Map)

**PARCELS (NOT LISTED FOR SERVICE AREAS)**
350614210042

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

A parcel of land situated in Government Lot 2 of Section 14, Township 6 North, Range 35 East of the Willamette Meridian, Walla Walla County, Washington, being more particularly described as follows:

Commencing at the NE Corner of Tract "C" of that certain short plat filed in Volume 1 of Short Plats at Page 122 under AF NO. 7809658 and running thence S 84°55'04" E along the north line of said Tract "C" a distance of 168.66 feet to the true point of beginning for this description; thence S 05°04'56" E parallel to the east line of said Tract "C" a distance of 253.14 feet to a point in the northerly right of way of Stateline Road; thence S 88°33'44" W along said northerly right of way line a distance of 288.74 feet to a point in the centerline of Old Milton Highway as depicted on the Walla Walla County Right of Way Plan for County Road Project 03-02, Sheet 1 of 5; thence N 05°23'31" W along said centerline a distance of 234.79 feet to a point in the extended northerly line of said Tract "C"; thence N 84°55'04" E along said northerly line of Tract "C" a distance of 289.42 feet to the point of beginning. EXCEPTING THEREFROM all that portion lying within said Old Milton Highway and Stateline Road rights of way as shown on the above-cited right of way plan. Containing 1.40 acres, more or less.

## Proposed Works

Pump station, garden hoses and yard type sprinklers

## Development Schedule

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

## Measurement of Water Use

| | |
|---|---|
| How often must water use be measured? | Monthly |
| How often must water use data be reported to Ecology? | Annually (Jan 31) |
| What volume should be reported? | Total Annual Volume |
| What rate should be reported? | Annual Peak Rate of Withdrawal (cfs) |

## Provisions

When the supply of water for irrigation purposes from April 1 to October 1 is insufficient in the Walla Walla Valley to fill any right contained in the foregoing schedule, the owner of such right is entitled to divert water during the period of October 1 to April 1.

The total diversion allowed under Certificate 401(A) and that portion of Certificate 401(B) authorized for change within this Report of Examination, shall be limited to 0.03 CFS (13.5 gpm) from 04/01 to 07/01, 0.023 CFS (10 gpm) from 07/01 to 10/01 and 0.046 CFS (20 gpm) from 10/1 to 04/01, when allowed under the adjudication, 5.1 acre-feet for the irrigation of 1.3 acres. The additive instantaneous portion of Certificate 401(B) authorized for change within this Report of Examination, shall be limited to the first 3.3 acre-feet diverted for irrigation on 0.85 of an acre, within the place of use.

**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.

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.

**Department of Fish and Wildlife Requirement(s)**
The intake(s) must 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/

No dam or weir may be constructed in connection with this diversion.

**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 a certificate of change 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.

Therefore, I ORDER the requested change of Walla Walla River Adjudicated Surface Water Certificate No. 401(B), 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 4th day of February, 2016.

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
Dan Tolleson, Department of Ecology
Water Right Control Number CS3-*28401J(B)
Walla Walla River Adjudicated Surface Water Certificate No. 401(B)

## BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number CS3-*28401J(B).

### EXISTING Water Right Attributes (Portion Proposed for Change)

| | |
|---|---|
| **Water Right Owner:** | Clifford O. Nesteby, Jr. |
| **Priority Date:** | 1/1/1892 (Class 30) |
| **Place of Use:** | The parcel of land owned by Bernardo Lopez (PN: 350614210043) situated in Government Lot 2 of Section 14, Township 6 North, Range 35 East of the Willamette Meridian, Walla Walla County, Washington |

| County | Water body | Tributary To | WRIA |
|---|---|---|---|
| Walla Walla | Big Spring Branch | East Little Walla Walla River | 32-Walla Walla |

| PURPOSE | DIVERSION RATE | ANNUAL QUANTITY (AF/YR) |
|---|---|---|
| Irrigation of 1 acre | 0.013 CFS from 04/01 to 07/01<br>0.010 CFS from 07/01 to 10/01<br>0.020 CFS from 10/1 to 04/01* | 5 |

*when allowed in accordance with the Walla Walla Adjudication

| Source Name | Location | Twp | Rng | Sec | | Latitude | Longitude |
|---|---|---|---|---|---|---|---|
| Big Spring Branch | Umatilla, Oregon | 6 N. | 35 E. | 14 | Opposite Lot 3 | | |

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

### REQUESTED Water Right Attributes

| | |
|---|---|
| **Applicant Name:** | Clifford O. Nesteby, Jr. |
| **Date of Application:** | 11/16/2011 |
| **Place of Use** | A parcel of land owned by Mr. Clifford Nesteby (PN: 350614210042), situated in Government Lot 2 of Section 14, Township 6 North, Range 35 East of the Willamette Meridian, Walla Walla County, Washington |

| County | Water body | Tributary To | WRIA |
|---|---|---|---|
| Walla Walla | Big Spring Branch | East Little Walla Walla River | 32-Walla Walla |

| PURPOSE | DIVERSION RATE | ANNUAL QUANTITY (AF/YR) |
|---|---|---|
| Irrigation of 1 acre (Non-additive) | 0.013 CFS from 04/01 to 07/01<br>0.010 CFS from 07/01 to 10/01<br>0.020 CFS from 10/1 to 04/01* | 5 (non-additive) |

*when allowed in accordance with the Walla Walla Adjudication

| Source Name | Parcel | | Twp | Rng | Sec | QQ Q | Latitude | Longitude |
|---|---|---|---|---|---|---|---|---|
| Big Spring Branch | 350614210042 | | 6 N. | 35 E. | 14 | SE¼NW¼ | | |

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

## Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the 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 Union-Bulletin on August 19th and 26th, 2013. No protests were received regarding this notice.

*Consultation with the Department of Fish and Wildlife*

The Department must give notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water. A letter was received from WDFW on 2/13/2015 that indicated they do not oppose the change since it will not have any additional impacts. The project is subject to state Hydraulic Code (Chapter 77.55 RCW) and fish screening statutes (RCW 77.57.010, RCW 77.57.040 and RCW 77.57.070). Contact the Department of Fish and Wildlife, at 600 Capitol Way N, Olympia, WA 98501-1091, Attention: Habitat Program or by phone at (360) 902-2534, if you have questions about screening criteria.

*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.

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

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

*Water Resources Statutes and Case Law*

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.

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.*

## INVESTIGATION

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits, and claims; (3) USGS topographic maps and aerial photographs; (4) diversion works, and place of use; (5) Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32 and Watershed Planning; (6) State of Washington Irrigation Guide (Natural Resources Conservation Service 1997); (7) Walla Walla River Adjudication; and (8) discussions with Department of Ecology regional program staff.

A field investigation was conducted by Dan Tolleson and Eric Hartwig with Clifford Nesteby, Jr. on June 8, 2015. The project is located south of College Place, Washington adjacent to the Oregon state line. The water right is located in the Walla Walla Basin, which is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32.

The authorized place of use, lies north-east of the interchange of the Old Milton Highway and Stateline Road within portions of the NW¼ of Section 14, T. 6 N., R. 35 E.W.M. This place of use is made up of 17 lots with various owners. The lot owned by Mr. Bernardo Lopez is the only portion of this water right that is proposed to be changed. His parcel of land has a house, driveway and a large irrigated yard. Water for this lot is currently provided under a permit exempt well.

The proposed place of use lies directly to the west of the lot owned by Mr. Lopez, within portions of the SE¼NW¼ of Section 14, T. 6 N., R. 35 E.W.M. Big Spring Branch runs through the western portion of this parcel of land, which is lined with bricks, rocks and cement along its shoreline. The place of use is primarily irrigated lawn with one older building that is used as a shop. The irrigation system consists of two garden hoses with yard type sprinklers.

The authorized source is Big Spring Branch which is a creek that originates in Oregon, to the south of the project. This stream is mostly channelized and has the characteristics of an irrigation ditch more than a natural creek. The authorized point of diversion is proposed to be changed from an abandoned ditch south of the state line to the existing pumping station located directly downstream. The proposed point of diversion consists of a portable gas powered centrifugal pump, with a flow meter and fish screen.

## Proposed Use

Mr. Nesteby proposes to increase the instantaneous quantities of Certificate 401(A), by moving a portion of certificate 401(B) from an adjacent lot (Mr. Lopez's lot) to his project. He proposes that the annual quantities and acres will be non-additive. In addition, he proposes to correct the location of the point of diversion of this portion of the right by adding a downstream pump station. The authorized diversion was part of a ditch system that has been abandoned for many years.

## History of Water Use

Walla Walla River Surface Water Certificate No. 401 was issued in 1929 under the adjudication. Aerial photographs were used to help verify the extent of development, historical and beneficial use of this project. Historically, the entire place of use of the right was irrigated farm land that was eventually broken into lots. In 2009, this water right was subdivided into two pieces by way of a *Request for Administrative Confirmation of Division of a Water Right*. The "A" portion of the right is appurtenant to Mr. Nesteby's lot and the "B" portion covers the remaining seventeen lots which includes the lot proposed for change under this application. The lot proposed for change is described under parcel number 350614210043, which contains one acre of land. Irrigation on this lot was provided by Big Spring Branch through 2009. It was historically reduced from one acre to an area of 0.85 of an acre due to a house and driveway. The remaining 0.15 of an acre of irrigation under this portion of the water right has been relinquished for non-use. After 2009, the instantaneous quantity of this portion of the right was utilized within the proposed place of use by Mr. Nesteby. This means the acres of irrigation and the associated annual quantity of water were reduced to non-additive, as indicated by the last five consecutive years of use.

The maximum instantaneous quantities authorized under the portion of the right proposed for change are 0.013 CFS (5.8 gpm) from 04/01 to 07/01, 0.01 CFS (4.5 gpm) from 07/01 to 10/01 and 0.02 CFS (9 gpm) from 10/1 to 04/01, when allowed under the adjudication. Although 0.15 of an acre of irrigation has been relinquished for non-use, it is estimated that all of the instantaneous quantities have been utilized. The proposed pump station is estimated to produce on average 15-20 gallons per minute. The pump station is gas powered, which allows for the system to have variable output. Therefore, the pump will need to be adjusted to the quantities authorized for each period of use. Water use beyond what is authorized may result in fines.

The maximum authorized water duty of this certificate is five acre-feet per year, per acre. According to the adjudication, 4.2-acre-feet per acre is the maximum allowed when water is available during the

regular irrigation season, which is from April 1 to October 1. If a full quantity of water is not available during the regular irrigation season, then water may be diverted from October 1 to April 1 up to a maximum of 5 acre-feet per acre. Historically, the highest water use under this certificate was for the irrigation of lawn. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that a 2.9 acre-feet, per acre, for pasture/turf is required in the Walla Walla area. At a 75% efficiency rate of application, the maximum water duty, for lawn is 3.9 acre-feet per year, per acre. This results in an allocation of 3.3-acre-feet per year for the irrigation of 0.85 of an acre.

## Other Rights Appurtenant to the Place of Use

A review of Ecology records were conducted for existing water right certificates, permits, and claims appurtenant to the project. The search focused primarily on Section 14, T. 6 N., R. 35 E.W.M. The review of Ecology records shows two other water rights being appurtenant to the authorized place of use.

Ground Water Certificate No. 503-A, authorizes 150 gallons per minute, 128 acre-feet per year for the irrigation of 32 acres. This right has the following provision: "less any amount of water available from Yellowhawk Creek water rights". It appears that the wrong source was listed on the water right, since Yellowhawk Creek is approximately one mile to the north and not practicable for diversion to this lot. According to the Adjudication, Certificate No. 401 was the only water right that overlapped this project and authorized a similar number of acres for irrigation. Therefore, Ground Water Certificate No. 503-A, is a non-additive, alternate source water right that is less any water provided under Certificate Nos. 401(A) and 401(B). A partial voluntary relinquishment was received from Mr. Lopez for his portion of the right and accepted by Ecology on July 8, 2015.

Surface Water Certificate No. 700, authorizes 0.19 cfs from East Spring Branch (appears to be Big Spring Branch) to provide "power for ram", that was used to lift water used under the existing Adjudicated Certificate No. 401. This water right was issued as junior to all adjudicated water rights and is totally non-additive. The use is non-consumptive and appears to have been abandoned many years ago when the system was changed from a water operated mechanical pump over to electric pumps. This water right is not used on Mr. Nesteby's or Mr. Lopez's lot. It appears to be relinquished for non-use.

*The validity and extent of above listed water rights are not determined in this report.*

## 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) 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.

The applicant is requesting authorization to add a point of diversion to Walla Walla River Adjudicated Certificate No. 401(B), located downstream approximately ½ a mile. There is no significant change in the stream or major diversions between the authorized and proposed points of diversion. The proposed pump station has been in use for many years on the proposed lot without any complaints. Therefore,

no impairment is anticipated by adding the proposed point of diversion. The change will not increase the amount of water withdrawn from Big Spring Branch nor will it increase or expand the right.

### Conclusions

In conclusion, there is a water right available for change under Walla Walla River Adjudicated Certificate No. 401(B). In accordance with Chapters 90.03 RCW, approval of this application to add a point of diversion and change the place of use for a portion of the water right will not enlarge the quantity of water historically authorized, nor will it impair existing rights provided the terms and conditions above are followed.

The amount of water recommended is a maximum limit that shall not be exceeded, and the water user may only use that amount of water within the specified limit that is reasonable and beneficial. This authorization does not increase in any way the original amounts authorized by the certificate.

## RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

*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:

0.013 cfs from 04/01 to 07/01
0.010 cfs from 07/01 to 10/01
0.020 cfs from 10/1 to 04/01 (when allowed in accordance with the Walla Walla Adjudication)
3.3 acre-feet per year (non-additive)
Irrigation of 0.85 acres (non-additive)

Point of Diversion

SE¼NW¼ of Section 14, Township 6 North, Range 35 E.W.M.

Place of Use

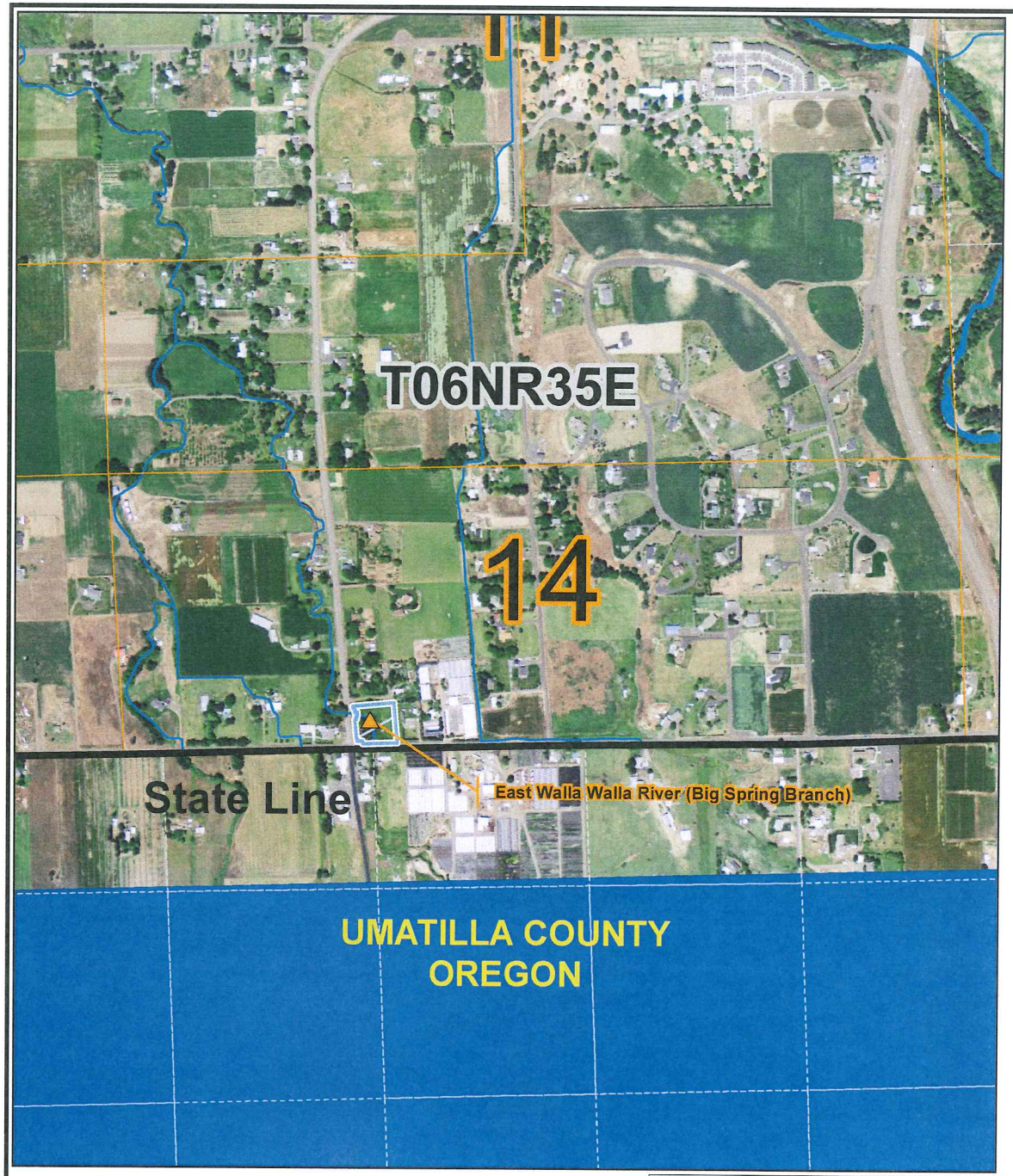
As described above beginning on Page 1 of this Report of Examination.

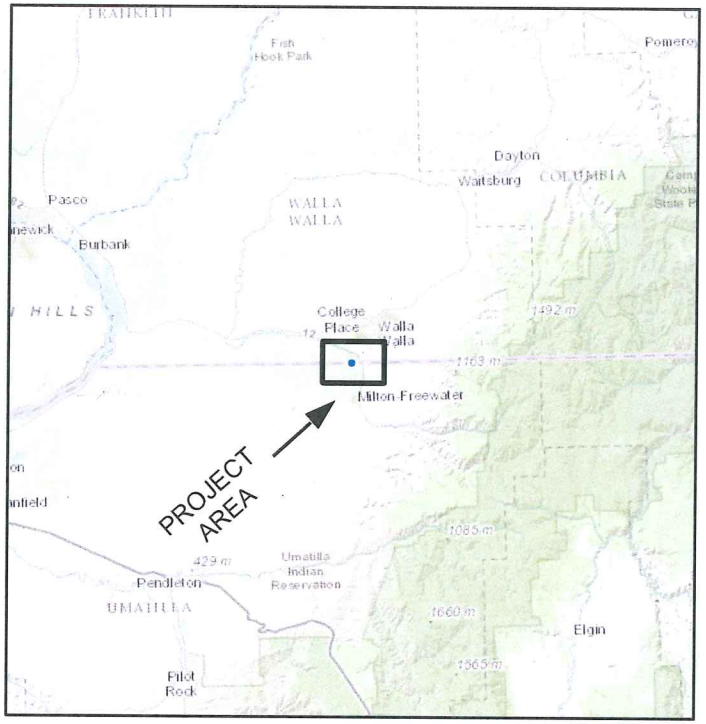
Dan Tall 2-4-2016

*Dan Tolleson, Report Writer* *Date*

If you need this document in an alternate format, please call the Water Resources Program at 360-407-6872. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Clifford Nesteby Jr.
401(B)
T06N/R35E




Basemap - (ESRI US Topographic Maps)

**Legend**

**Authorized Place of Use**

Townships

Sections

**Authorized Point of Diversion**

**(Source locations may vary in their accuracy and precision as stated within the body of the report.)**

0 660 1,320 2,640 Feet

Basemap - (NAIP 2013 1m color)

DEPARTMENT OF ECOLOGY State of Washington

Map Date: 7/30/2015

**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