DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT CHANGE

Changed Point of Diversion

PRIORITY DATE
January 1, 1908 (Class 46)

WATER RIGHT NUMBER
Walla Walla River Adjudicated Certificate No. 709

MAILING ADDRESS
Art Lesser
1606 Detour Road
Walla Walla, WA 99362

Total Quantity Authorized for Diversion

MAXIMUM DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.520	CFS	86

Purpose

PURPOSE	DIVERSION RATE	ANNUAL QUANTITY (AF/YR)
Irrigation	0.346 CFS from 04/01 to 07/01 0.260 CFS from 07/01 to 10/01 0.520 CFS from 10/1 to 04/01*	86

*when allowed in accordance with the Walla Walla Adjudication

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
24			

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Walla Walla	Walla Walla River	Columbia River	32-Walla Walla

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Walla Walla River	340736510013	7 N.	34 E.	36	SW¼NW¼	46.0446°N	-118.5107°W
						Datum: NAD83/WGS84	

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)
340736510013

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Beginning at a point in the west line of the Narcisse Raymond Donation Claim No. 37 in Township 7 N., Range 34 and 35 E.W.M., according to the government survey of said Donation Claim, 210 yards north of the SW corner thereof; thence east parallel with the south line of said Donation Claim 32 1/3 rods; thence north parallel with the west line of said Donation Claim 149.9 rods; thence westerly in a

straight line to a point in the west line of said Donation Claim 147 Rods north to the point of beginning; thence south to the point of beginning.

Proposed Works

Diversion pump, main line and sprinkler system

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?	Weekly
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

Water may be diverted only to the extent that the authorized quantities are available at the original point of diversion on the Little Walla Walla River. Flows at the original diversion (located in the W½NW¼NW¼ of Sec. 5, T 6 N., R. 35 E.W.M.) of the Little Walla Walla River must be monitored during the irrigation season. If at any time water is withdrawn from the main stem Walla Walla River in excess of what is available at the old head gate of the Vosberg Ditch on the Little Walla Walla River, the owner may be subject to fines of up to $5,000 per day, per violation.

Ground Water Certificate No. G3-21334 is issued as less any water diverted under Walla Walla Adjudicated Certificate No. 709.

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 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.

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.

Department of Fish and Wildlife Requirements
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 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.

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 the requested change of the point of diversion to Walla Walla River Adjudicated Surface Water Right 709, 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 **Pollution Control Hearings Board** 1111 Israel Road SW Ste 301 Tumwater, WA 98501	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 **Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this 22nd day of January, 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
Dan Tolleson, Department of Ecology
Water Right Control Number CS3-*28709J
Walla Walla River Adjudicated Certificate No. 709

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number CS3-*28709J (Walla Walla River Adjudicated Certificate No. 709). The application proposes to change the authorized point of diversion as granted under Walla Walla Adjudicated Certificate No. 709.

AUTHORIZED Water Right Attributes

Water Right Owner:	Henry E. Peterson
Priority Date:	1/1/1908 (Class 46)
Place of Use	Beginning at a point in the west line of the Narcisse Raymond Donation Claim No. 37 in Township 7 N., Range 34 and 35 E.W.M., according to the government survey of said Donation Claim, 210 yards north of the SW corner thereof; thence east parallel with the south line of said Donation Claim 32 1/3 rods; thence north parallel with the west line of said Donation Claim 149.9 rods; thence westerly in a straight line to a point in the west line of said Donation Claim 147 Rods north to the point of beginning; thence south to the point of beginning.

County	Waterbody	Tributary To	WRIA
Walla Walla	Little Walla Walla River	Walla Walla River	32-Walla Walla

PURPOSE	DIVERSION RATE	ANNUAL QUANTITY (AF/YR)
Irrigation of 26 acres	0.346 CFS from 04/01 to 07/01 0.260 CFS from 07/01 to 10/01 0.520 CFS from 10/1 to 04/01*	130

*when allowed in accordance with the Walla Walla Adjudication

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Little Walla Walla River	350605220007	6 N.	34 E.	5	NW¼NW¼		

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:	Art Lesser
Date of Application:	7/ 27/ 2004
Place of Use	Beginning at a point in the west line of the Narcisse Raymond Donation Claim No. 37 in Township 7 N., Range 34 and 35 E.W.M., according to the government survey of said Donation Claim, 210 yards north of the SW corner thereof; thence east parallel with the south line of said Donation Claim 32 1/3 rods; thence north parallel with the west line of said Donation Claim 149.9 rods; thence westerly in a straight line to a point in the west line of said Donation Claim 147 Rods north to the point of beginning; thence south to the point of beginning.

County	Waterbody	Tributary To	WRIA
Walla Walla	Walla Walla River	Columbia River	32-Walla Walla

PURPOSE	WITHDRAWAL OR DIVERSION RATE	MAXIMUM ANNUAL QUANTITY (AF/YR)
Irrigation of 26 acres	0.346 CFS from 04/01 to 07/01 0.260 CFS from 07/01 to 10/01 0.520 CFS from 10/1 to 04/01*	130

*when allowed in accordance with the Walla Walla Adjudication

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Walla Walla River	340736510013	7 N.	34 E.	36	SW¼NW¼	46.0446°N	-118.5107°W

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 Waitsburg Times on April 25 and May 2, 2013 and no protests were received.

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. This notice was submitted via email on September 16, 2013 to Steve Boessow with a 30 day request for comment. A letter dated September 27, 2013 recommends denial of the change application based on impacts to fish and/or wildlife per Chapter 77.57 (see below).

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, ditch systems 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 on September 9, 2013. The project is located approximately three miles east of Lowden, Washington. 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 point of diversion is a headgate for a ditch system that has been abandoned. The point of diversion is proposed to be changed to the existing pumping station located on the Walla Walla River. The proposed point of diversion consists of a 7.5 hp centrifugal pump, meter and fish screen. This diversion is proposed to provide water for both Walla Walla Adjudicated Certificate Nos. 709 and 869.

The authorized place of use lies directly north of Detour Road and south of the Walla Walla River within portions of the W½W½ of Section 36, T. 7 N., R. 34 E.W.M. The majority of the place of use consists of irrigated farm land. There is significant riparian vegetation on the north edge of the project adjacent to the Walla Walla River. A house with a yard and another building are located approximately 600-700 feet north of Detour Road on the east side of the project.

A portion of this water right was put into the Walla Walla Watershed Management Partnership bank. According to Art Lesser, this was only intended for unused annual quantity of water in the 2013 irrigation season and not intended to reduce his diversions in the future.

History of Water Use

Walla Walla Adjudicated Certificate No. 709 historically received water from the Vosberg Ditch. The Vosberg ditch diverted water from the Little Walla Walla River approximately ¾ of a mile above its confluence with the main stem Walla Walla River. The ditch system historically supplied water to many water rights in the area, but incrementally fell into disuse. By the late 1980s the ditch was completely abandoned. As the ditch was abandoned, many of the water right holders changed their pump stations without authorization to the main stem of the Walla Walla River.

Prior to 1971, the point of diversion for Walla Walla Adjudicated Certificate No. 709 was moved approximately 1.7 miles downstream from the Little Walla Walla River to the main stem Walla Walla River. Mr. Lesser's portion of the ditch system was abandoned due to ditch maintenance issues. Since that time, water has been diverted from a single pump station which is the point of diversion proposed under this application.

Walla Walla River Adjudicated Surface Water Certificate Nos. 709 and 869 have the same authorized place of use. These two rights are additive to one another, and originally authorized 30 acres of irrigation. Aerial photographs were used to help verify the extent of development, historical use and beneficial use of this project. Historically, it appears that the entire place of use was irrigated but in recent decades this use has been reduced to 24 acres of consistent irrigation. There are several acres of riparian vegetation and flood zone along the Walla Walla River that is not irrigable. The remainder of the place use is covered by buildings, roads and a yard. This reduced use, confirmed by aerial photographs, has occurred since at least 1989. Since only 24 acres have been irrigated in the last twenty-four plus years, the remaining two acres of Walla Walla River Adjudicated Surface Water Certificate No. 709 have been relinquished for non-use.

The maximum instantaneous quantity authorized under this right is apparently still being put to beneficial use, even though two acres of water right have been relinquished. The maximum authorized quantities are 0.346 CFS (155 gpm) from 04/01 to 07/01, 0.26 CFS (117 gpm) from 07/01 to 10/01 and 0.52 CFS (233 gpm) from 10/1 to 04/01.

The maximum authorized water duty of this certificate is 5-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 authorized 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, this right has been used to irrigate various crops with alfalfa having the highest water duty. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that 2.7 acre-feet per acre, is required for alfalfa in the Walla Walla area. At a 75% efficiency rate of application, the maximum water duty, for crop listed above, is 3.6 acre-feet per year, per acre. This results in an allocation of 86 acre-feet per year for the irrigation of 24 acres.

Proposed Use

The purpose of this change is to correct the location of the point of diversion. The applicant proposes to move the point of diversion downstream from the Little Walla Walla River to an existing Walla Walla River pump station.

Other Rights Appurtenant to the Place of Use

A review of Ecology records were conducted for existing water right certificates, permits, and claims in the surrounding area of the project. The search focused primarily on Section 36, T. 7 N., R. 34 E.W.M. The review of Ecology records show two other water rights appurtenant to the authorized place of use, which are as follows:

Walla Walla Adjudicated Certificate No. 869 authorizes up to 0.060 cubic feet per second for the irrigation of 4 acres. Walla Walla Adjudicated Certificate Nos. 709 and 869 describe the same place of use and are issued as additive. Change applications were filed on both water rights simultaneously, with each having a decision on its own respective finds.

Ground Water Certificate No. G3-21334C authorizes 30 gallons per minute, 62 acre-feet per year, from January 1 to December 31 , each year for the irrigation of 30 acres; 10 gallons per minute, 2 acre-feet per year, continuously for domestic supply and stockwater. Walla Walla Adjudicated Certificate Nos. 709 and 869, along with Ground Water Certificate No. G3-21334C shares the same place of use. Ground Water Certificate No. G3-21334C was issued as supplemental to any existing rights and will be proportionately reduced by existing rights to affect the maximum total for irrigation. This means the right is less any water diverted under Walla Walla Adjudicated Certificate Nos. 709 and 869 for irrigation. According to Mr. Lesser this water right has not been utilized for irrigation in recent years since the well doesn't always have adequate water available, but remains in use for domestic supply.

Impairment and Enlargement Considerations

"Impair" or "impairment" means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, not including earlier filed applications (HB 1832); 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 move the authorized point of diversion approximately 1.7 Miles downstream from the old headgate on the Little Walla Walla River to an existing pump station on the main stem of the Walla Walla River. The proposed point of diversion has been in use for the last 40 plus years without complaint.

The Little Walla Walla River is a tributary to the main stem Walla Walla River that lies primarily in Oregon but has its confluence in Washington. This river is the authorized source of this right which historically had a respectable flow that supplied many water rights from the Washington portion of the river. Over the past fifty plus years increased water use in the basin especially from Oregon diversions have significantly limited the flow of the Little Walla Walla River. In most years, the Little Walla Walla River does not have sufficient water to supply existing rights in Washington.

Since the authorized source which is the Little Walla Walla River has significantly less flow than the proposed source which is the main stem Walla Walla River, WWRAC No. 709 is restricted to the water available at the original headgate. This will ensure that the proposed change will not enhance or enlarge the right, which in turn will not cause impairment to existing rights. Therefore, this change is authorized with the following restriction: **Water may be diverted only to the extent that the authorized quantities are available at the original point of diversion on the Little Walla Walla River.** Flows at the original diversion of the Little Walla Walla River must be monitored during the irrigation season. If at any time water is withdrawn from the main stem Walla Walla River in excess of what is available at the old head gate of the Vosberg Ditch on the Little Walla Walla River, then the owner may be subject to fines of up to $5,000 per day, per violation.

The Department of Fish and Wildlife (WDFW) recommends denial of the change application based on impacts to fish and/or wildlife per Chapter 77.57. Specifically it sights impacts to existing water rights, such as Gardena Irrigation District and a concern for expansion of the right at the proposed location. In addition, they have a general concern of moving from a tributary to the main stem of the Walla Walla River which may increase negative impacts.

No impairment is anticipated by changing the authorized point of diversion, provided the proposed diversion is restricted to the quantity of water available at the original headgate on the Little Walla Walla River. The proposed change will not increase the amount of water diverted nor will it increase or enlarge the right. In addition, the restriction of the water right to the quantity available at the original headgate will address the concerns of WDFW.

Conclusions

In conclusion, there is a water right available for change under Walla Walla River Adjudicated Certificate No. 709. In accordance with Chapters 90.03 RCW, approval of this application to change the authorized point of diversion 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:

0.346 CFS from 04/01 to 07/01
0.260 CFS from 07/01 to 10/01
0.520 CFS from 10/1 to 04/01 (when allowed in accordance with the Walla Walla Adjudication)
86 acre-feet per year (when available)
Irrigation of 24 acres

Point of Diversion

SW¼NW¼ of Section 36, Township 7 North, Range 34 E.W.M.

Place of Use

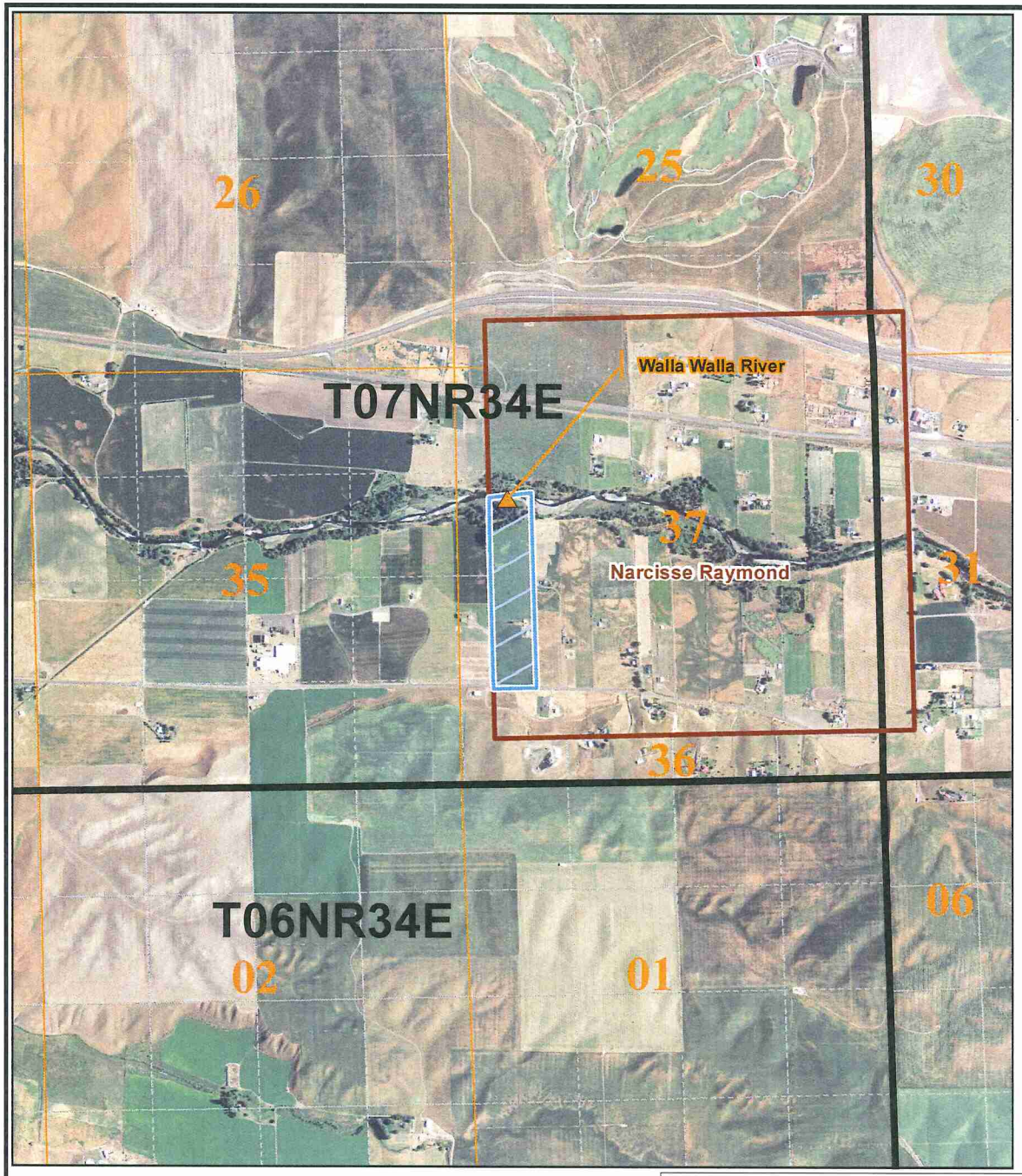
As described on Page 1 of this Report of Examination.

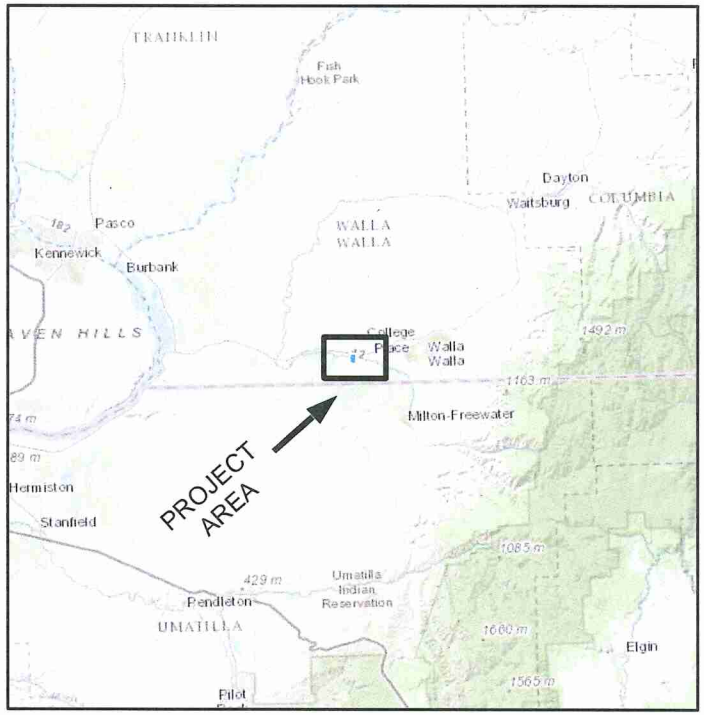
Dan Tall 1/22/2014

Dan Tolleson, 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.

Art Lesser
Walla Walla Adjudicated Certificate No. 709
T07N/R34E





Basemap - (ESRI US Topographic Maps)

Legend

- Authorized Place of Use
- Townships
- Sections
- Authorized Point of Diversion

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

Basemap - (NAIP 2011 1m color)

DEPARTMENT OF ECOLOGY State of Washington

Map Date: 12/21/2013

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

ATTACHMENT 1