



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Change of Point of Diversion
WRTS File No. CS3-*13015J

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
The Year 1889 (Class 5)			Stone Creek Adjudicated Certificate No. 15

NAME		
Robert Keatts		
ADDRESS/STREET	CITY/STATE	ZIP CODE
711 Clay Street	Walla Walla, Washington	99362

PUBLIC WATERS TO BE APPROPRIATED

SOURCE		
Stone Creek		
TRIBUTARY OF (IF SURFACE WATERS)		
Walla Walla River		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
0.0267		8.4
QUANTITY, TYPE OF USE, PERIOD OF USE		
0.0267 cubic feet per second, 8.4 acre-feet per year, from April 1 to November 1, each year for the seasonal irrigation of 2 acres		

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL					
1350 feet East and 750 feet South from the W ¹ / ₄ corner of Section 28, T. 7 N., R. 36 E.W.M.					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
NE ¹ / ₄ SW ¹ / ₄	28	7 N.	36 E.W.M.	32	Walla Walla
PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM		
360728310012	46.0200° N	118.3627° W	NAD 83		

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

[Attachment 1 shows location of the authorized place of use and point(s) of diversion or withdrawal.]

Within portions of the SW¹/₄NE¹/₄SW¹/₄ of Section 28, T. 7 N., R. 36 E.W.M., more particularly described as follows: Attachment A (continued legal description)

DESCRIPTION OF PROPOSED WORKS

Diversion pump and hand lines

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Started	April 1, 2012	April 1, 2013

PROVISIONS

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", chapter 173-173 WAC. <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>
2. Water use data shall be recorded bi-weekly (every other week) and maintained by the property owner for a minimum of five years. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to the Department of Ecology by January 31st of each calendar year.
3. Chapter 173-173 WAC 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".
<http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

Fish and Department of Fish and Wildlife

4. 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.wdfw.wa.gov/reg/regions.htm>

Schedule and Inspections

5. 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 provisions, and to inspect at reasonable times any measuring device used to meet the above provisions.
6. The water right holder shall file the notice of Proof of Appropriation of water (under which the certificate of change 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 of change will reflect the extent of the project perfected within the limitations of the change authorization. Elements of the proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

General Conditions

7. 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.
8. Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.
9. 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.
10. 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.
11. 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.
12. The maximum instantaneous diversion from the pump station shall be reduced to 0.0267 cubic feet per second or approximately 12 gallons per minute. **Any unauthorized use of water maybe subject to fines of up to \$5,000 per day, per violation.**

FINDINGS OF FACT AND ORDER

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 the requested change of Point of Diversion under Stone Creek Adjudicated Certificate No. 15, subject to existing rights and the provisions specified above.

You have a right to appeal this action to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this document. 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 this document:

- File your appeal and a copy of this document 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 document on Ecology in paper form - by mail or in person. (See addresses below.) Email is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Please also send a copy of your appeal to:

Mr. Keith L. Stoffel
Department of Ecology
Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205-1295

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>.

Signed at Spokane, Washington, this day of 2011.

Keith L. Stoffel, Section Manager
Water Resources Program
Eastern Regional Office

BACKGROUND

Description and Purpose of Proposed Change

An application for change/transfer was submitted by Robert Keatts of Walla Walla, Washington, to Ecology on December 5, 2003. Robert Keatts proposes to add a point of diversion to his portion of Stone Creek Adjudicated Surface Water Certificate No. 15 (Certificate No. 15).

Attributes of the Certificate and Proposed Change

Table 1 Summary of Proposed Changes to Water Right No. 15

<i>Attributes</i>	<i>Documented</i>	<i>Proposed</i>
Name	Frank and Robert Moore	Robert Keatts
Dates	Priority Date: The year 1889	Date of Application for Change: December 5, 2003
Instantaneous Quantity	0.088 cubic feet per second	<i>No change</i>
Annual Quantity	37 acre-feet	<i>No change</i>
Source	Stone Creek	<i>No change</i>
Point of Diversion/Withdrawal	SW ¹ / ₄ NE ¹ / ₄ of Sec. 28, T. 7 N., R. 36 E.W.M.	NE ¹ / ₄ SW ¹ / ₄ of Sec. 28, T. 7 N., R. 36 E.W.M.
Purpose of Use	Irrigation of 6.6 acres	<i>No change</i>
Period of Use	April 1 to November 1	<i>No change</i>
Place of Use	Approximation: Portions of the N ¹ / ₂ SW ¹ / ₄ of Sec. 28, T. 7 N., R. 36 E.W.M.	<i>No change</i>

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in point of diversion.

- **Public Notice**

A notice of application was duly published in accordance with RCW 90.03.280 in The Waitsburg Times on January 22nd and 29th, 2009, and no protests were received.

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

Environmental review under SEPA is required for many projects; however, some minor projects are categorically exempt from SEPA. Appropriations of one cfs or less of surface water, or of 2,250 gpm or less of ground water, for any purpose, and appropriations of 50 cfs or less for surface water used for irrigation are categorically exempt from SEPA. See WAC 197-11-305.

- **Water Resources Statutes and Case Law**

RCW 90.03.360 requires that the owner of any water diversion maintain substantial controlling works and a measuring device. It must be constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Technical requirements for the measuring and reporting of water use are described in WAC 173-173. This decision contains provisions requiring the measuring and reporting of the quantities of water withdrawn or diverted.

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 changes/transfers, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Stone Creek Adjudicated Certificate No. 15, and other water rights/claims/permit in the vicinity; (3) diversion works; (4) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide (Natural Resources Conservation Service 1997) and; (5) discussions with Department of Ecology regional program staff.

A site visit of the project was conducted on June 9, 2009 by Dan Tolleson with Robert Keatts. This project is located within the eastern portion of the City of Walla Walla, Washington on Stone Creek. In the adjudication, this portion of the creek is referred to as Upper Stone Creek. 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.

History of Water Use

The authorized place of use is approximately 8 acres of land, lying along the upper Stone Creek within portions of the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28, Township 7 north, Range 36 E.W.M. This water right overlaps portions of eleven lots with nine individual owners. Multiple homes with irrigated yards and outbuildings are located within this area. This water right authorizes enough acres to potentially provide irrigation for all the place of use that remains irrigable. Because of multiple owners, this change will apply to that portion of the water right proposed for change by Robert Keatts. The two lots owned by Mr. Keatts are approximately 2.3 acres of land all within the authorized place of use. Stone Creek runs through the extreme northern portion of his lots with Clay Street making up the southern boundary. Currently, his lots have a house, driveway and outbuildings with most of the remaining area being irrigated.

Aerial photographs were used to help verify the extent of development, historical and beneficial use of Stone Creek Certificate No. 15. Historically, this water right was used to irrigate farm land. It was subdivided into housing lots in the 1950's to 1960's. Use was then changed from the irrigation of agriculture to yards and gardens. Approximately two acres of the lots owned by Robert Keatts have been historically irrigated. The remainder of these lots is not irrigable due to the placement of the creek, buildings and his driveway.

The authorized water duty of this certificate is approximately 5.6 acre-feet per year, per acre (1 cfs per 75 acres of land or 9 $\frac{3}{5}$ acre-inches for each thirty day period). In recent years, this right has predominately been used to irrigate yards. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that an estimated 2.9 acre-feet, per acre, is required for grass/turf in the Walla Walla area. The current irrigation system of hand lines is estimated at a 70% efficiency rate of application. With a 70% efficiency rate of application an estimated 4.2 acre-feet per acre would need to be applied to provide for a consumptive use of 2.9 acre-feet per acre. The remaining acre-feet, per acre, is no longer required due to modern irrigation practices. Continued irrigation of the lot owned by Mr. Keatts will require 8.4 acre-feet per year for the irrigation of 2 acres. Generally, full water quantities are available, even in dry years.

The authorized point of diversion was located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 7 N., R. 36 E.W.M. This historical gravity feed ditch was abandoned well over 20 years ago. The system has since been changed to individual pumps in the creek for each lot that still irrigates under this right. Mr. Keatts's diversion has an approved fish screen, meter and 3-horsepower centrifugal pump. This pump station currently produces approximately 20 gallons per minute as an instantaneous rate. His portion of the instantaneous quantity of the right is 0.0267 cubic feet per second or approximately 12 gallons per minute. The current diversion shall be reduced to the authorized quantity. Any use of water over what is authorized maybe subject to fines of up to \$5,000 per day, per violation.

The place of use of Mr. Keatts's portion of the this right will be narrowed down to the smallest legal description possible which is described on Page 1 of this Report of Examination.

Other Rights Appurtenant to the Place of Use

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 28, Township 7 North, Range 36 E.W.M. The review of Ecology records shows three water rights overlap the authorized place of use, and they are as follows:

Ground Water Certificate No. 423-A authorizes 30 gallons per minute, 19 acre-feet, per year, for the irrigation of 4.67 acres, with a 24-acre place of use. This right was issued as being less the amount of water available from Stone Creek, with no rights specified. It is unknown where the actual use under this right occurred, due to the large place of use. No use under this right has occurred on Mr. Keatts's lot since he bought it approximately 20 years ago.

Ground Water Certificate No. 102-A authorizes 100 gallons per minute, 40 acre-feet, per year, for the irrigation of 10 acres. This right overlaps only that portion of the place of use of Certificate No. 15, lying north of the Stone Creek. Mr. Keatts's irrigated portion of the place of use of Certificate No. 15, lies south of Stone Creek and does not actually overlap. This water right is not used on Mr. Keatts's project.

Stone Creek Adjudicated Certificate No. 8 w/chg. 1-250 authorizes 0.045 cubic feet per second for the irrigation of 3.41 acres, within approximately a 4-acre place of use. The place of use under Certificate No. 8 overlaps less than a one-tenth of an acre of the place of use of Certificate No. 15 irrigated by Mr. Keatts. This water right is not used on Mr. Keatts's project.

(The validity and extent of above listed water rights and claims 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 proposed point of diversion is located approximately one-half (½) mile downstream from the point of diversion authorized under the original certificate. No other major diversions or significant changes occur in Stone Creek between the originally authorized point of diversion and the proposed point of diversion. The proposed point of diversion has been in use for well over 20 years with no apparent impairment. No water is authorized to be diverted above what has been historically used, and it is not anticipated that the proposed change/transfer would cause impairment to existing water rights.

Enhancement Considerations

The proposed change will not increase the amount of water diverted from Stone Creek, nor will it increase or expand the right. No withdrawal of water over and above what has been historically authorized would be approved through this change.

CONCLUSIONS

There is a water right available for change/transfer under Stone Creek Adjudicated Certificate No. 15 in the amount of 0.0267 cubic feet per second, 8.4 acre-feet per year, from April 1 to November 1, each year for the seasonal irrigation of 2 acres.

It is the conclusion of this examiner that, in accordance with Chapters 90.03, this application for change (to add a point of diversion, as granted under Stone Creek River Adjudicated Certificate No. 15) will not enlarge the quantity of water historically used under Mr. Keatts's portion, nor will it impair existing rights provided the recommendations are followed.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to diversion be authorized, in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2.

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.

- 0.0267 cubic feet per second
- 8.4 acre-feet per year
- 2 acres of irrigation

Point of Diversion

NE¼, SW¼, Section 28, Township 7 North, Range 36 E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

Report by: _____ Date _____
Dan Tolleson, Water Resources Program

If you need this publication in an alternate format, please call 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.

ATTACHMENT A (continued legal description)

Parcel A: Beginning at a point in the east line of the NE¼SW¼ of Section 28, Township 7 North, Range 36 E.W.M., which point is 88.51 feet north of the southeast corner of said NE¼SW¼, thence North 89°52' West 1105.30 feet' thence due North 25 feet to a point which is the true point of beginning for this description. From said true point of beginning; thence North 89°52' West 220 feet; thence North 0°04' West 446 feet, more or less, to the center of Stone Creek; thence Easterly along the center of Stone Creek to a point therein which is North° 04' West of the true point of beginning, aforesaid, thence South° 04' East 425 feet, more or less, to said true point of beginning.

Parcel B: Beginning at a point in the Southerly line of Lot 15 of Paxton Park Addition to the City of Walla Walla, Washington, according to the official plat thereof of record in the office of the Auditor of Walla Walla County, Washington, in Book G of Plats at page 12, which point is North 71°59' East 28.45 feet from the southwest corner of said lot 15; thence along the Southerly line of Lots 15 and 14 of said Addition by the following courses and distances; North 13°43' East 16.05 feet; thence North 48°16' East 15.65 feet; thence North 83°52' East 112.95 feet; thence south 62°20' East 27.90 feet; thence South 27°01' East 24.05 feet; thence South 69°45' East 51.70 feet; thence North 87°35' East 8.09 feet to the Southeast corner of said lot 14; thence North 00°04' West 30.99 feet; thence North 50°55' West 26.64 feet to a point in the easterly line of said Lot 14, which is South 24°11' East 100.00 feet from the Northeast corner of said lot 14; thence North 72°58½' West 64.72 feet; thence North 88°45' West 66.60 feet to a point in the Westerly line of said lot 14 which is South 6°30' East 95.00 feet from the Northwest corner of said lot 14; thence South 79°54' west 71.99 feet to a pint in which is North 00°04' West of the point of beginning; thence South 00°04' East 41.72 feet, more or less, to the point of beginning.

W/Draft ROEs/Tolleson 2011/SCAC 15 Keatts

